

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

ANGELICA DIPIERRO, *on behalf of herself and all  
others similarly situated,*

Plaintiff,

v.

FLORIDA HEALTH SCIENCES CENTER  
INC. d/b/a TAMPA GENERAL HOSPITAL, a  
Florida corporation,

Defendant.

Case No.: 23-CA-013984

**SETTLEMENT AGREEMENT AND RELEASES**

This Settlement Agreement (“Settlement” or “Agreement”),<sup>1</sup> dated as of August 23, 2024, is entered into between Plaintiffs, Angelica DiPierro, Stacey Graham, Deborah Ivey, Keon Critchlow, and Aubrey Rassel, on behalf of themselves and the Settlement Class, on the one hand, and Defendant, Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital, on the other hand. The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

**I. Background**

1. On or around May 31, 2023, TGH detected unusual activity in its computer systems and ultimately determined an unauthorized third party had accessed TGH’s network and certain system files between May 12, 2023, and May 30, 2023.

2. TGH’s investigation confirmed the Data Security Incident included over one

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those ascribed to them in Section II below or as defined elsewhere in the Agreement.

million individuals' Personally Identifiable Information ("PII") and Protected Health Information ("PHI") (collectively, "Private Information"), including names, addresses, telephone numbers, dates of birth, Social Security numbers, health insurance information, medical record numbers, patient account numbers, dates of service and/or limited treatment information used by TGH for its business operations.

**3. Procedural History**

- a. On July 21, 2023, Plaintiff DiPierro filed this Action against TGH in the 13th Judicial Circuit Court, Hillsborough County, Florida, Case No. 23-CA-013984.
- b. On August 17, 2023, this Action was removed to the U.S. District Court for the Middle District of Florida.
- c. Thereafter, Plaintiff DiPierro propounded interrogatories and a request for production of documents on TGH in the federal action.
- d. On August 22, 2023, Plaintiffs filed an Amended Class Action Complaint on behalf of a nationwide class and a Florida subclass.
- e. On August 25, 2023, the Parties filed a Stipulated Protective Order Regarding Disclosure of Confidential or Highly Confidential Materials.
- f. On August 25, 2023, the Parties filed a Stipulation Concerning Protocol for Production of Documents and Electronically Stored Information.
- g. On September 6, 2023, the Court entered an Order granting the Parties' Agreed Motion for Entry of Stipulated Protective Order Regarding Disclosure of Confidential or Highly Confidential Materials and Parties Stipulation Concerning Protocol for Production of Documents and Electronically Stored Information.
- h. On September 25, 2023, TGH filed a Motion to Dismiss.

i. On September 26, 2023, the Parties filed a Uniform Case Management Report.

j. On October 9, 2023, Plaintiffs filed their Opposition to TGH's Motion to Dismiss.

k. On October 10, 2023, Plaintiffs served their Federal Rule of Civil Procedure 26 Initial Disclosures on TGH.

l. On November 6, 2023, the Parties participated in a full-day, private mediation before experienced data breach mediator Jill R. Sperber of Judicate West. In advance of the mediation, TGH provided Class Counsel with information related to the type of data disclosed in the Data Security Incident, the alleged impact to Plaintiffs, and information to assist in determining where jurisdiction is appropriate. The mediation concluded with the Parties agreeing to the material terms of a settlement that would resolve Plaintiffs' claims and those of the putative class.

m. In December of 2023, the Parties executed a settlement agreement with respect to the federal action, which Plaintiffs' filed in support of their motion for preliminary approval of class action settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure.

n. On December 28, 2023, Plaintiffs filed an unopposed motion for preliminary approval of their settlement.

o. On June 18, 2024, the United States District Court for the Middle District of Florida entered an order denying Plaintiffs' motion for preliminary approval and remanding the case to state court for lack of subject matter jurisdiction.

p. After preliminary approval was denied in that court, the Parties renegotiated various terms of the previous settlement for purposes of seeking approval in this Court.

q. On August 9, 2024, Plaintiffs filed a Second Amended Class Action Complaint in this Action (the operative Complaint), alleging claims against TGH for negligence, negligence per se, breach of implied contract, unjust enrichment, and violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.204 *et seq.*, on behalf of a nationwide class and a Florida subclass.

r. The Parties now agree to settle the Action entirely, without any admission of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. TGH has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the litigation costs and expenses, distractions, burden, and disruption to its business operations associated with further litigation. TGH does not in any way acknowledge, admit to, or concede any of the allegations made in the operative Complaint (and all other complaints in the Related Actions), and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Action lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, TGH, and all Settlement Class Members.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to

approval by the Court, as follows.

## II. Definitions

4. “Action” means the lawsuit entitled *DiPierro, et al. v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, Hillsborough County Circuit Court, Case No. 23-CA-013984.

5. “Application for Attorneys’ Fees, Costs, and Service Awards” means the application made with the Motion for Final Approval seeking Service Awards for Class Representatives and Class Counsel’s attorneys’ fees and reimbursement for costs.

6. “Cash Payment” means compensation paid to Settlement Class Members who elected either Cash Payment A or Cash Payment B.

7. “Cash Payment A” means compensation paid to Settlement Class Members for ordinary losses, extraordinary losses, and/or lost time.

8. “Cash Payment B” means a \$125.00 cash payment, subject to *pro rata* adjustment, if necessary.

9. “Claim” means the submission of a Claim Form by a Claimant.

10. “Claim Form” means the proof of claim, substantially in the form attached hereto as *Exhibit 3*, which may be modified, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator.

11. “Claim Form Deadline” shall be 15 days before the initial scheduled Final Approval Hearing and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class member to be eligible for a Cash Payment.

12. “Claimant” means a Settlement Class member who submits a Claim Form.

13. “Class Counsel” means: Jeff Ostrow and Kristen Lake Cardoso of Kopelowitz

Ostrow P.A.

14. “Class List” means a list of all individuals in the Settlement Class. TGH shall prepare and provide the Class List to the Settlement Administrator for Notice using information in its records. The Class List shall include the Settlement Class’s names, postal address (if available), and telephone number (if available).

15. “Class Representatives” means Angelica DiPierro, Stacey Graham, Deborah Ivey, Keon Critchlow, and Aubrey Rassel.

16. “Complaint” means the Second Amended Class Action Complaint filed in the Action on August 9, 2024.

17. “Court” means the Thirteenth Judicial Circuit in and for Hillsborough County, Florida and the Judge(s) assigned to the Action.

18. “Credit Monitoring” means one year of credit monitoring Settlement Class Members may elect.

19. “Data Security Incident” means the alleged May 2023 incident in which unauthorized third parties purportedly gained access to TGH’s network containing Private Information.

20. “Defendant” means Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital or TGH.

21. “Defendant’s Counsel” or “TGH’s Counsel” means Julie Singer Brady, Casie D. Collignon, and Sarah A. Ballard of Baker & Hostetler LLP.

22. “Effective Date” means 5 days after the entry of the Final Approval Order, provided there are no objections are made to the Settlement. If there are objections to the Settlement, then the Effective Date shall be the later of: (a) 30 days after entry of the Final Approval Order if no

appeals are taken from the Final Approval Order; or (b) if appeals are taken from the Final Approval Order, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal.

23. “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

24. “Final Approval” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form attached to the Motion for Final Approval.

25. “Final Approval Hearing” means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, and Service Awards.

26. “Final Approval Order” means the final order that the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of Service Awards awarded to Class Representatives and attorneys’ fees and costs awarded to Class Counsel.

27. “Long Form Notice” means the long form notice of the Settlement, substantially in the form attached hereto as *Exhibit 2*, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator.

28. “Motion for Final Approval” means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement.

29. “Motion for Preliminary Approval” means the motion that Plaintiffs shall file with

the Court seeking Preliminary Approval of the Settlement.

30. “Notice” means the Long Form Notice, Postcard Notice, Settlement Website and settlement telephone line that Plaintiffs and Class Counsel will ask the Court to approve in connection with the Motion for Preliminary Approval.

31. “Notice Program” means the methods provided for in this Agreement for giving Notice and consists of the Long Form Notice, Postcard Notice, Settlement Website and Settlement telephone line.

32. “Notice of Deficiency” means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

33. “Objection Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the initial scheduled Final Approval Hearing.

34. “Opt-Out Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the initial scheduled Final Approval Hearing.

35. “Party” means each of the Plaintiffs and Defendant, and “Parties” means Plaintiffs and Defendant collectively.

36. “Plaintiffs” means Angelica DiPierro, Stacey Graham, Deborah Ivey, Keon Critchlow, and Aubrey Rassel.

37. “Postcard Notice” means the postcard notice of the Settlement, substantially in the form attached hereto as *Exhibit 1*, that the Settlement Administrator shall disseminate to the Settlement Class by mail.

38. “Preliminary Approval” means the preliminary approval of the Settlement, which



occurs when the Court enters the Preliminary Approval Order, substantially in the form attached to the Motion for Preliminary Approval.

39. “Preliminary Approval Order” means the order preliminarily approving the Settlement and proposed Notice Program.

40. “Related Actions” means all actions against TGH filed after the *DiPierro* Action regarding the Data Security Incident:

- a. *Colon, et al. v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 23-CA-013991 (Fla. 13th Jud. Cir. Ct., Hillsborough Cty.) (filed on July 21, 2023 in Hillsborough County; currently on remand to this Court);
- b. *Wagner v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 23-CA-014367 (Fla. 13th Jud. Cir. Ct., Hillsborough Cty.) (filed on August 7, 2023 in Hillsborough County; remanded to this Court as of the date of this Agreement);
- c. *Bradds & Testa v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 23-CA-014364 (Fla. 13th Jud. Cir. Ct., Hillsborough Cty.) (filed on August 7, 2023 in Hillsborough County; remanded to this Court as of the date of this Agreement);
- d. *Doe 2 v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 23-CA-014376 (Fla. 13th Jud. Cir. Ct., Hillsborough Cty.) (filed on August 7, 2023 in Hillsborough County; remanded to this Court as of the date of this Agreement);
- e. *Morgan v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 23-CA-014396 (Fla. 13th Jud. Cir. Ct., Hillsborough Cty.) (filed on August

8, 2023 in Hillsborough County; remanded to this Court as of the date of this Agreement);

- f. *Raslavich v. Florida Health Sciences Center, Inc.*, No. 23-CA-014923 (Fla. 13th Jud. Cir. Ct., Hillsborough Cty.) (individual action filed on August 31, 2024 in Hillsborough County; presently stayed);
- g. *Robbins v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 8:23-cv-02170-KKM-AAS (M.D. Fla.) (filed on August 21, 2023 in Hillsborough County and removed to U.S. District Court for the Middle District of Florida on September 26, 2023; status report filed by Defendant on July 26, 2024 requesting remand);
- h. *Ramirez v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 8:23-cv-01890-KKM-TGW (M.D. Fla.) (filed on July 27, 2023 in Hillsborough County and removed to U.S. District Court for the Middle District of Florida on August 21, 2023; status report filed by Defendant on July 26, 2024 requesting remand);
- i. *Benck v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 23-CA-014449 (Fla. 13th Jud. Cir. Ct., Hillsborough Cty.) (filed on August 20, 2023 in Hillsborough County; voluntarily dismissed on February 14, 2024);
- j. *Russo v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 8:23-cv-01757-KKM-CPT (M.D. Fla.) (filed on August 7, 2023 in U.S. District Court for the Middle District of Florida; voluntarily dismissed on June 28, 2024);
- k. *Ruggiero v. Florida Health Sciences Center, Inc. d/b/a Tampa General*

*Hospital*, No. 8:23-cv-01778-KKM-AEP (M.D. Fla.) (filed on August 8, 2023 in U.S. District Court for the Middle District of Florida; voluntarily dismissed on July 9, 2024);

- l. *Doe 1 v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 8:23-cv-01988-KKM-AEP (M.D. Fla.) (filed on August 1, 2023 in Hillsborough County and removed to U.S. District Court for the Middle District of Florida on September 5, 2023; dismissed on November 15, 2023);
- m. *Doe 3 v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 8:23-cv-02072-KKM-TGW (M.D. Fla.) (filed on August 4, 2023 in U.S. District Court for the Middle District of Florida; voluntarily dismissed on August 7, 2023);
- n. *Borchers v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 8:23-cv-01728-MSS-AEP (M.D. Fla.) (filed on August 3, 2023 in U.S. District Court for the Middle District of Florida; voluntarily dismissed on August 4, 2023); and
- o. *Andriano v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital*, No. 8:23-cv-01745-TPB-TGW (M.D. Fla.).

41. “Releases” means the releases and waiver set forth in Section XIII of this Agreement.

42. “Released Claims” means the claims described in Section XIII of this Agreement. The Released Claims exclude personal injury claims.

43. “Released Parties” means TGH, and its present and former parents, subsidiaries, divisions, departments, affiliates, predecessors, successors and assigns, and any and all of their

past, present, and future directors, officers, executives, officials, principals, employees, stockholders, heirs, agents, servants, insurers, reinsurers, members, attorneys, accountants, actuaries, fiduciaries, advisors, consultants, representatives, partners, joint venturers, licensees, licensors, independent contractors, subrogees, trustees, executors, administrators, predecessors, successors and assigns, and any other person acting on TGH's behalf, in their capacity as such. It is expressly understood that to the extent a Released Party is not a party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

44. "Releasing Parties" means (i) Plaintiffs and all Settlement Class Members, (ii) each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, affiliates, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, (iii) any entities in which a Plaintiff and/or other participating Settlement Class Member has or had a controlling interest or that has or had a controlling interest in him, her, or it, (iv) any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of a Plaintiff and/or any other Settlement Class Member, and all those who claim through them or on their behalf, and (v) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above persons or entities identified in (i)-(iv).

45. "Service Awards" shall mean the payment the Court may award the Plaintiffs for serving as Class Representatives. The Service Awards shall be paid out of the Settlement Fund.

46. "Settlement Administrator" means Epiq Class Action & Claims Solutions, Inc.

(“Epiq”), which must execute any requested Business Associate Agreement of TGH.

47. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding Notice and settlement administration.

48. “Settlement Class” means all persons in the United States who were sent notification from TGH that their Private Information was potentially compromised as a result of the Data Security Incident that occurred between May 12, 2023, and May 30, 2023, and discovered by TGH on or about May 31, 2023. Excluded from the Settlement Class are (a) all persons who are governing board members of Defendant; (b) governmental entities; and (c) the Court, the Court’s immediate family, and Court staff.

49. “Settlement Class Member” means any member of the Settlement Class who has not opted-out of the Settlement.

50. “Settlement Class Member Benefit” means the Cash Payment and, if applicable, Credit Monitoring, elected by Settlement Class Members.

51. “Settlement Fund” means the non-reversionary \$6,800,000.00 cash fund that TGH has agreed to pay under the terms of the Settlement.

52. “Settlement Website” means the website the Settlement Administrator will establish as a means for the Settlement Class members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, Application for Attorneys’ Fees, Costs, and Service Awards, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for six months after Final Approval.

53. “TGH” means Defendant, Florida Health Sciences Center, Inc. d/b/a Tampa

General Hospital.

54. “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Eastern time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator’s Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

### **III. Settlement Fund**

55. The Settlement Fund shall be used to pay: (1) Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim; (2) Service Awards; (3) attorneys’ fees and costs awarded by the Court to Class Counsel; and (4) all Settlement Administration Costs.

56. Defendant agrees to make a payment of and deposit that payment into the Settlement Fund as follows: (i) Defendant shall pay one million, two hundred thousand dollars (\$1,200,000.00) into the Settlement Fund within 21 days of the Court’s entry of the order granting Preliminary Approval to pay for Settlement Administration Costs; and (ii) Defendant shall pay the remaining five million, six hundred thousand dollars (\$5,600,000.00) into the Settlement Fund within 21 days after the Effective Date. Prior to the initial payment for Settlement Administration Costs, the Settlement Administrator will provide payment instructions, a W-9, and contact

information for an employee of the Settlement Administrator to voice-verify the payment instructions to Defendant. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability shall not exceed \$6,800,000.00.

57. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed on TGH, TGH's Counsel, Plaintiffs, and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. TGH, TGH's Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold TGH, TGH's Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

#### **IV. Certification of the Settlement Class**

58. Plaintiffs shall propose and recommend to the Court that the Settlement Class be certified for Settlement purposes. TGH agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this Action shall proceed as a class action; provided however, that if a Final Approval Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, TGH shall retain all rights to object to any future requests to certify a class. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

V. **Settlement Consideration**

59. **Settlement Class Member Benefits**

When submitting a Claim, Settlement Class Members must choose either Cash Payment A or Cash Payment B. Additionally, Settlement Class Members may elect to receive Credit Monitoring. If a Settlement Class Member does not submit a Valid Claim or opt out, the Settlement Class Member will release his or her claims against TGH without receiving a Settlement Class Member Benefit.

60. **Cash Payment A**

a. **Compensation for Ordinary Losses**: Compensation for unreimbursed ordinary losses fairly traceable to the Data Security Incident, up to a total of \$1,500.00 per person. Settlement Class Members must submit documentation supporting their Claims for ordinary losses. This documentation may include receipts or other documentation not “self-prepared” by the claimant that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. Settlement Class Members shall not be reimbursed for expenses if they have been reimbursed for the same expenses by another source, including compensation provided in connection with the credit monitoring and identity theft protection product offered as part of the notification letter provided by TGH or otherwise. These ordinary losses may include the following:

i. ***Out-of-pocket expenses incurred*** as a result of the Data Security Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel; and



ii. ***Fees for credit reports, Credit Monitoring, or other identity theft insurance product*** purchased between the date of the Data Security Incident and the date of the Claim Form Deadline.

b. **Compensation for Extraordinary Losses**: Compensation for extraordinary losses, up to a total of \$7,500.00, per Settlement Class Member, if the extraordinary loss is:

i. An actual, documented and unreimbursed monetary loss;

ii. More likely than not caused by the Data Security Incident;

iii. Occurred on or after May 12, 2023, and before the Claim Form Deadline;

iv. Not already covered by one or more of the ordinary loss categories, and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

c. **Compensation for Lost Time**: Settlement Class Members with time spent remedying issues related to the Data Security Incident may receive reimbursement of \$25.00 per hour up to 4 hours (for a total of \$100.00) with an attestation including a brief description of the action(s) take in response to the Data Security Incident. Claims made for lost time may be combined with reimbursement for ordinary losses subject to the \$1,500.00 aggregate individual cap referenced above.

#### 61. **Cash Payment B**

Instead of selecting Cash Payment A, a Settlement Class Member may elect to receive Cash Payment B, which is a flat payment in the amount of \$125.00.

#### 62. **Pro Rata Adjustments**

Settlement Class Cash Payments will be subject to a *pro rata* increase from the Settlement Fund in the event the amount of Valid Claims is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of the Cash Payments may be reduced *pro rata* accordingly. For purposes of calculating the *pro rata* increase or decrease, the Settlement Administrator must distribute the funds in the Settlement Fund first for payment of Credit Monitoring and then for Cash Payments. Any *pro rata* increases or decreases to Cash Payments will be on an equal percentage basis. In the unexpected event the value of Credit Monitoring on its own exhausts the amount of the Settlement Fund, the length of the Credit Monitoring provided will be reduced as necessary to bring the cost within the Settlement Fund.

**63. Credit Monitoring**

In addition to electing a Cash Payment, Settlement Class Members may also make a Claim for Credit Monitoring for one year with three bureaus: Experian, Equifax, and TransUnion. Settlement Class Credit Monitoring has a value of \$90.00 per year per Settlement Class Member.

**64. Business Practice Changes & Confirmatory Discovery**

Plaintiffs have received assurances that Defendant either has undertaken or will undertake reasonable steps to further secure its systems and environments. Defendant has provided confidential discovery regarding the number of individuals in the Settlement Class broken down by state of residence, the facts and circumstances of the Data Security Incident and Defendant's response thereto, and the changes and improvements that have been made or are being made to protect class members' Private Information. Defendant will provide a declaration attesting to the undertaken or planned data security enhancements at Plaintiffs' request.

## **VI. Settlement Approval**

65. Upon execution of this Agreement by all Parties and Class Counsel, Class Counsel shall file a Motion for Preliminary Approval. The proposed Preliminary Approval Order shall be attached to the motion as an exhibit and shall be in a form agreed to by Class Counsel and TGH.

66. The Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form and Claim submission process; (5) approve the procedures for individuals in the Settlement Class to opt-out of or object to the Settlement; (6) stay the Action and Related Actions pending Final Approval of the Settlement; and (7) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and TGH's Counsel.

## **VII. Settlement Administrator**

67. The Parties agree that, subject to Court approval, Epiq shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution and the Business Associate Agreement of TGH.

68. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims process, administering the Settlement Fund, and distributing the

Cash Payments to Settlement Class Members who submit Valid Claims.

69. The Settlement Administrator's duties include to:
  - a. Complete the Court-approved Notice Program by noticing the Settlement Class by Postcard Notice, sending Long Form Notices and paper Claim Forms on request from individuals in the Settlement Class, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;
  - b. Establish and maintain the Settlement Fund in the Escrow Account approved by the Parties;
  - c. Establish and maintain a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class Members, and Claim Forms;
  - d. Establish and maintain the Settlement Website to provide important information about the Settlement and to receive electronic Claim Forms;
  - e. Establish and maintain an automated toll-free telephone line for the Settlement Class to call with Settlement-related inquiries, and answer the frequently asked questions of individuals in the Settlement Class who call with or otherwise communicate such inquiries;
  - f. Respond to any mailed Settlement Class member inquiries;
  - g. Process all opt-out requests from the Settlement Class;
  - h. Provide weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;

i. In advance of the Final Approval Hearing, prepare a declaration to submit to the Court confirming that the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, providing the names of each individual in the Settlement Class who timely and properly requested to opt out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

j. Distribute, out of the Settlement Fund, Cash Payments by electronic means, unless a specific request is made for an alternate form of payment;

k. Pay Court-approved attorneys' fees and costs, and Service Awards out of the Settlement Fund;

l. Pay Settlement Administration Costs out of the Settlement Fund following approval by Class Counsel;

m. Any other Settlement Administration function at the instruction of Class Counsel and TGH, including, but not limited to, verifying that the Settlement Fund has been properly administered and that the Cash Payments have been properly distributed.

70. At TGH's discretion, the Settlement Administrator must agree to execute Defendant's Business Associate Agreement.

71. The Notice Program, including the Long Form Notice, Postcard Notice, and Claim Form, will be reviewed and approved by the Settlement Administrator, but may be revised as agreed upon by the Parties prior to submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of Notice.

### **VIII. Notice to the Settlement Class**

72. TGH will make available to Class Counsel and the Settlement Administrator the Class List no later than 7 days after entry of the Preliminary Approval Order.

73. Within 21 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice approved by the Court. Postcard Notice shall be disseminated via U.S. Mail to the Settlement Class's mailing addresses, to the extent known. Notice shall also be published on the Settlement Website.

74. The Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the last day of the Opt-Out Period for individuals in the Settlement Class to opt out of the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Defendant's Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

75. The Settlement Administrator shall establish the Settlement Website no later than the day before Postcard Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claims Form that can be submitted

directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

76. The Long Form Notice also shall include a procedure for individuals in the Settlement Class to opt out of the Settlement; and the Postcard Notice shall direct individuals in the Settlement Class to review the Long Form Notice to obtain the opt-out instructions. Individuals in the Settlement Class may opt out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-out request must be personally signed by the Settlement Class member and contain the name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any individual in the Settlement Class who does not timely and validly request to opt out shall be bound by the terms of this Agreement even if he or she does not submit a Valid Claim.

77. The Long Form Notice also shall include a procedure for the Settlement Class to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards, and the Postcard Notice shall direct the Settlement Class to review the Long Form Notice to obtain the objection instructions. Objections must be mailed to the Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

78. For an objection to be considered by the Court, the objection must also set forth:
- a. the objector's full name, mailing address, telephone number, and email address (if any);
  - b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
  - c. the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
  - d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
  - e. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
  - f. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
  - g. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;



h. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

i. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

j. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

79. The Settlement Administrator shall perform reasonable address traces for Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 45 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces.

80. The Notice Program shall be completed no later than 45 days before the original date set for the Final Approval Hearing.

#### **IX. Claim Form Process and Disbursement of Cash Payments**

81. The Notice will explain to the Settlement Class that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

82. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

83. The Settlement Administrator shall collect, review, and address each Claim Form

received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

84. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of claims, and if there is, contact the Settlement Class Member in an effort to determine which Claim Form is the appropriate one for consideration.

85. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

86. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise

the Claimant or Settlement Class Member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless TGH and Class Counsel otherwise agree.

87. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a timely and valid request to opt out of the

Settlement Class.

- g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;
- h. Failure to submit a Claim Form by the Claim Form Deadline; and/or
- i. The Claim Form otherwise does not comply with the requirements of this Settlement.

88. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

- a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication.
- b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this Paragraph.
- c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants.
- d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

89. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or TGH's Counsel. Additionally, Class Counsel and TGH's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

90. No person or entity shall have any claim against TGH, Defendant's Counsel,

Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

91. No later than 75 days after Final Approval or 75 days after the Effective Date, whichever is later, the Settlement Administrator shall distribute the Settlement Class Member Benefits.

92. Cash Payments to Settlement Class Members will be made electronically (Venmo, Zelle, or CashApp) or by paper check. Settlement Class Members with Valid Claims shall receive an email instructing them to select the type of payment they wish to receive. Upon issuance of the email, Settlement Class Members shall have 30 days to select their method of payment. Settlement Class Members who do not open their email or provide incorrect or incomplete electronic payment information shall receive a paper check in the mail. Settlement Class Members receiving payment by check shall have 180 days to negotiate the check.

93. The Settlement Administrator will send an email to Settlement Class Members with Valid Claims that elected Credit Monitoring with information on how to enroll in the Credit Monitoring, including the activation code.

#### **X. Final Approval Order and Final Judgment**

94. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service

Awards, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

95. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Application for Attorneys' Fees, Costs, and Service Awards. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released

Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; bar and enjoin all Releasing Parties from pursuing any Released Claims against Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;

- e. Release TGH and the other Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties

to this Agreement, including TGH, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

#### **XI. Service Awards, Attorneys' Fees and Costs**

96. *Service Awards* – In recognition of the time and effort the Class Representatives expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class Representatives, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel shall request Service Awards for the Class Representatives in the amount not to

exceed \$2,500.00 each. If approved, the Service Awards shall be paid by the Settlement Administrator out of the Settlement Fund within 30 days of the Effective Date. The Service Award payments to the Class Representatives shall be separate and apart from their entitlement to benefits from the Settlement Fund.

97. *Attorneys' Fees and Costs* – Class Counsel shall apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs. The attorneys' fees and cost awards approved by the Court shall be paid by the Settlement Administrator out of the Settlement Fund by wire transfer to an account designated by Class Counsel, within 25 days of the Effective Date.

98. This Settlement is not contingent on approval of the request for attorneys' fees and costs or Service Awards, and if the Court denies the request or grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force. The provisions for attorneys' fees and costs and the Service Awards were not negotiated until after all material terms of the Settlement.

## **XII. Disposition of Residual Funds**

99. In the event there are funds remaining from uncashed checks in the Settlement Fund 20 days following the 180-day check negotiation period, all remaining funds shall be distributed to an appropriate mutually agreeable *cy pres* recipient to be approved by the Court.

## **XIII. Releases**

100. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully, finally, and irrevocably released and forever discharged the Released Parties of, and shall be forever barred from instituting, maintaining, or prosecuting, any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies,

whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based upon, or relate to (a) the Data Security Incident; or (b) any of the alleged violations of laws or regulations cited in the Complaint.

101. Plaintiffs and Settlement Class Members covenant and agree they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, whether on behalf of themselves or others, against any of the Released Parties in any jurisdiction.

102. Individuals in the Settlement Class who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims and will not obtain any benefits under the Settlement.

103. With respect to the Released Claims, Plaintiffs and Settlement Class Members, expressly understand and acknowledge it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs and Settlement Class Members explicitly took that into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained herein, having been bargained for between Plaintiffs and TGH with the knowledge of the possibility of such unknown claims for economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims. Consequently, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:



A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

104. Plaintiffs or Settlement Class Members may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those individuals agrees and acknowledges that he or she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a Cash Payment from the Settlement.

105. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

#### **XIV. Termination of Settlement**

106. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

- a. Court approval of the Settlement consideration set forth in Section V and the Releases set forth in Section XIII of this Agreement;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and
- d. The Effective Date has occurred.

107. If any of the conditions specified in the preceding paragraph are not met, then this Agreement shall be cancelled and terminated.

108. TGH shall have the option to terminate this Agreement if more than 500 individuals in the Settlement Class opt out of the Settlement. TGH shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this paragraph within 10 days after the end of the Opt-Out Period, or the option to terminate shall be considered waived.

109. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the parties shall jointly file a status report in the Court seeking to reopen the Action and all papers filed. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

110. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to TGH. However, TGH shall have no right to seek from Plaintiffs, Class Counsel, or the Settlement Administrator the Settlement Administration Costs paid by TGH. After payment of any Settlement Administration Costs that have been incurred and are due to be paid from the Settlement Fund, the Settlement Administrator shall return the balance of the Settlement Fund to TGH within 21 days of termination.

**XV. Effect of Termination**

111. The grounds upon which this Agreement may be terminated are set forth in Section XIV. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, TGH's, and TGH's Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

112. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

**XVI. No Admission of Liability**

113. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. TGH has denied and continues to deny each of the claims and

contentions alleged in the Complaint. TGH specifically denies that a class could or should be certified in the Action for litigation purposes. TGH does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. TGH has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

114. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

115. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

116. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or the Settlement Class, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be

used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

117. In addition to any other defenses TGH may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

## **XVII. Miscellaneous Provisions**

118. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

119. Binding Effect. This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

120. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

121. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

122. Integration and No Reliance. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this

Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

123. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

124. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the state of Florida, without regard to the principles thereof regarding choice of law.

125. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

126. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

127. Notices. All notices provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

If to Plaintiffs or Class Counsel:

Jeff Ostrow  
Kopelowitz Ostrow P.A.  
1 West Las Olas Blvd., Ste. 500  
Fort Lauderdale, FL 33301  
ostrow@kolawyers.com

If to Defendant or Defendant's Counsel:

Casie D. Collignon  
Baker & Hostetler LLP  
1801 California Street, Ste. 4400  
Denver, CO 80202  
ccollignon@bakerlaw.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

128. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and TGH's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

129. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

130. Authority. Class Counsel (for Plaintiffs and the Settlement Class), and TGH's Counsel (for TGH), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and TGH to all terms of this Agreement. Any person executing

this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

131. Agreement Mutually Prepared. Neither Plaintiffs nor TGH shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

132. Independent Investigation and Decision to Settle. The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

133. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically



warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

*Signature Page to Follow*

**PLAINTIFFS**

  
Angelica DiPierro (Aug 22, 2024 19:09 CDT)  
ANGELICA DIPIERRO  
*Plaintiff*

*Stacey Graham*  
STACEY GRAHAM  
*Plaintiff*

  
Deborah Ivey (Aug 22, 2024 20:25 EDT)  
DEBORAH IVEY  
*Plaintiff*


  
Keon Critchlow (Aug 23, 2024 01:23 EDT)  
KEON CRITCHLOW  
*Plaintiff*

  
Aubrey Rassel (Aug 23, 2024 10:04 EDT)  
AUBREY RASSEL  
*Plaintiff*

**CLASS COUNSEL**

  
Jeff Ostrow (Aug 22, 2024 18:28 EDT)  
JEFF OSTROW  
KOPELOWITZ OSTROW P.A.

**DEFENDANT**

  
Nicole Justice (Aug 23, 2024 16:20 EDT)  
NICOLE JUSTICE, SENIOR DIRECTOR  
FLORIDA HEALTH SCIENCES CENTER, INC.  
d/b/a TAMPA GENERAL HOSPITAL

**DEFENDANT'S COUNSEL**

  
Casie Collignon (Aug 23, 2024 08:53 MDT)  
CASIE D. COLLIGNON  
BAKER & HOSTETLER LLP