

# Exhibit 1

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between Joshua Ham, Rebecca Poehler Eck, and Crystal Browning (collectively, “Plaintiffs”), individually and on behalf of Participating Settlement Class Members (as defined in Paragraph 24), and Cummins Behavioral Health Systems, Inc. (“Defendant” or “Cummins”) (collectively the “Parties”), in the action *Ham, et al. v. Cummins Behavioral Health Systems, Inc.*, Cause No. 49D01-2308-PL-032426 (Marion Cty., Ind.) (the “Action”).

### **RECITALS**

WHEREAS, on October 25, 2023, Plaintiffs filed an Amended Complaint against Cummins in the Indiana Commercial Court, Marion County, Indiana, relating to a data security incident affecting Cummins;

WHEREAS, Cummins denies the allegations and all liability with respect to any and all facts and claims alleged in the Action, that the putative class representatives and the proposed class which he purports to represent have suffered any damage(s), and/or that the Action satisfies the requirements to be tried as a class action under Indiana Rule of Trial Procedure 23; and

WHEREAS, following prolonged and extensive arm’s length negotiations, the Parties reached an agreement of the essential terms of a settlement;

WHEREAS this Agreement is for settlement purposes only, and nothing in this Agreement shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or fact alleged by Plaintiffs in this Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Released Parties or admission of the validity or lack thereof of any claim, allegation, or defense asserted in this Action or any other action.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a full, complete, and final settlement and resolution of the Action and any and all Released Claims (including Unknown Claims), subject to Court approval, on the following terms and conditions:

#### **I. DEFINITIONS**

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. “Action” means the case captioned *Ham, et al. v. Cummins Behavioral Health Systems, Inc.*, Cause No. 49D01-2308-PL-032426 (Marion Cty., Ind.).

2. “Approved Claim” means the timely submission of a Claim Form by a Participating Settlement Member that has been approved by the Settlement Administrator or otherwise through the Claims Review Process.

3. “Cummins’ Counsel” or “Defendant’s Counsel” means Pierson Ferdinand LLP.
4. “Claim Form” or “Claim” means the form(s) Settlement Class Members must submit to be eligible for Unreimbursed Losses, Lost Time, and/or an Alternative Cash Payment under the terms of the Settlement.
5. “Claims Deadline” means the deadline by which Settlement Class Members must submit valid Claim Forms, which will occur ninety (90) days after the Notice Deadline.
6. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms, which will end ninety (90) days after the Notice Deadline.
7. “Claims Review Process” mean the process for reviewing and determining whether claims are valid as set forth in Paragraph 43.
8. “Court” means the Marion County, Indiana Superior Court.
9. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any reconsideration or appeal of the Final Approval Order and Judgment, or entry of the Final Approval Order and Judgment if no person or entity has standing to appeal or seek reconsideration; (ii) if there is an appeal or appeals or reconsideration sought, other than an appeal or appeals or reconsideration solely with respect to attorneys’ fees, costs, and expenses, the date on which the Final Approval Order and Judgment is affirmed without any material modification and is no longer subject to judicial review; or (iii) the date of final dismissal of any appeal or reconsideration or the final dismissal of any proceeding on certiorari with respect to the Final Approval Order and Judgment, and the Final Approval Order and Judgment is no longer subject to judicial review.
10. “Extraordinary Losses” means monetary losses that meet the following conditions: (i) The loss is an actual, documented, and unreimbursed monetary loss stemming from fraud or identity theft; (ii) the loss from fraud or identity theft was more likely than not caused by the Security Incident; (iii) the loss from fraud or identity theft was incurred after the date of the Security Incident; (iv) the loss from fraud or identity theft is not already covered by one or more of the other reimbursement categories; and (v) 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.
11. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Settlement Class Counsel in satisfaction of any request or claim for payment of attorneys’ fees, costs, and litigation expenses in connection with this Action.
12. “Final Approval Order and Judgment” means an order and judgment that the Court enters, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses

the Action with prejudice, and otherwise satisfies the settlement-related provisions of the Federal Rules of Civil Procedure and is consistent with all material provisions of this Agreement.

13. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Indiana Rule of Trial Procedure 23 and whether to issue the Final Approval Order and Judgment.

14. “Litigation Costs and Expenses” means costs and expenses incurred by Settlement Class Counsel in connection with commencing, prosecuting, and settling the Action.

15. “Lost Time” means time Settlement Class Members spent monitoring accounts or otherwise dealing with issues related to the Security Incident, up to a maximum of three (3) hours at \$25.00/hour, supported by an attestation that the activities were related to the Security Incident, as set forth in Paragraph 41.b.

16. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members.

17. “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members, and will occur thirty (30) days after entry of the Preliminary Approval Order.

18. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, determining the eligibility of a person to be a Settlement Class Member, and administering, calculating and distributing payments to Settlement Class Members who submit valid Claim Forms. Notice and Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

19. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement, which will be thirty (30) days after the Notice Deadline.

20. “Opt Out” means a Settlement Class Member (i) who timely submits a properly completed and executed Request for Exclusion, (ii) who does not rescind that Request for Exclusion prior to the Opt-Out Deadline, and (iii) as to which there is not a successful challenge to the Request for Exclusion.

21. “Opt-Out Deadline” is the last day on which a Settlement Class Member may submit a Request for Exclusion, which will be thirty (30) days after the Notice Deadline.

22. “Ordinary Loss” means documented ordinary losses and attested to lost time incurred or spent between February 2, 2023 and seven days after the Court-approved notice of settlement is sent to the Class and includes out of pocket expenses incurred as a result of the Security Incident, fees for credit reports, credit monitoring or other identity theft insurance products purchased as a result of the Security Incident, and Lost Time.

23. “Participating Settlement Class Member” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline, as set forth in Paragraph 52.

24. “Personal Information” means information that identifies an individual or in combination with other information can be used to identify, locate, or contact an individual. The term “Personal Information” is not intended here, nor should it be viewed as, having any bearing on the meaning of this term or similar term in any statute or other source of law beyond this Agreement.

25. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement, and determining that the Court will likely be able to certify the Settlement Class for purposes resolving this Action. Such order will include the forms and procedure for providing notice to the Settlement Class, including notice of the procedure for Settlement Class Members to object to or opt-out of the Settlement, and set a date for the Final Approval Hearing.

26. “Released Claims” means any and all claims, liabilities, rights, demands, suits, actions, causes of action, obligations, damages, penalties, costs, attorneys’ fees, losses, and remedies of every kind or description—whether known or unknown (including Unknown Claims), existing or potential, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that relate to or arise from the Security Incident, the facts alleged in the Complaint or subsequent operative complaint related to the Security Incident, Cummins’s information security policies and practices related to the Security Incident, or Cummins’s maintenance or storage of Personal Information related to the Security Incident, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law.

27. “Released Parties” means Cummins and each and every one of its predecessors, successors, assigns, parents, subsidiaries, divisions, departments, owners, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as any and all of Cummins’s and these entities’ respective predecessors, successors, officers, directors, employees, advisors, vendors, stockholders, partners, servants, agents, attorneys, representatives, insurers, reinsurers, subrogees and assigns. Each of the Released Parties may be referred to individually as a “Released Party.”

28. “Releasing Parties” means the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, predecessors, successors, attorneys, assigns, and any other person purporting to assert a claim on their respective behalves.

29. “Request for Exclusion” is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice and as described below in Paragraph 52.

30. “Security Incident” means the February 2023 cybersecurity incident affecting Cummins.



31. “Service Award Payment” means compensation awarded by the Court and paid to the Class Representatives in recognition of their role in this Action as set forth in Paragraph 65.

32. “Settlement” means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

33. “Settlement Administrator” means Kroll Settlement Administration LLC, subject to Court approval.

34. “Settlement Class” means all individuals residing in the United States to whom Defendant sent a notice concerning the Security Incident.

35. “Settlement Class Counsel” means Cohen & Malad, LLP.

36. “Settlement Class List” means the list of the names and current or last known address information for Settlement Class Members based on Cummins’ records, to the extent reasonably available, which Cummins shall provide to the Settlement Administrator within seven (7) days of entry of the Preliminary Approval Order.

37. “Settlement Class Member” means an individual who falls within the definition of the Settlement Class.

38. “Settlement Class Representatives” means Joshua Ham, Rebecca Poehler Eck, and Crystal Browning.

39. “Settlement Payment” or “Settlement Check” mean the payment to be made via mailed check or via electronic means (agreed to by the Parties) to a Participating Settlement Class Member pursuant to the claims process set forth in Paragraph 44.

## **II. SETTLEMENT BENEFITS AND REIMBURSEMENT**

40. **Maximum Settlement Cap.** The maximum amount to be paid by Defendant is capped at no more than \$2,100,000. In the unlikely event that the total cost of this settlement would otherwise exceed that cap, Settlement Administration Fees and attorneys’ fees and costs and Plaintiff’s service award will be paid as a first priority; other costs and expenses will be pro-rated as needed to stay within the maximum cap.

41. **Cash Benefits.** Cummins will pay Approved Claims for Ordinary Losses and Lost Time as well as Extraordinary Losses as described below. Settlement Class Members who submit a valid and timely Claim Form may choose one of the applicable claim categories below.

a. **Claims for Compensation for Ordinary Losses** up to a total of \$500.00 per claimant, upon submission of a valid claim with supporting documentation for out-of-pocket losses incurred or spent between February 2, 2023 and seven days after the Court approved notice of settlement is sent to the Class:

- i. *Out of pocket expenses incurred* as a result of the Security Incident, including unreimbursed bank fees, long distance phone and 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;
- ii. *Fees for credit reports, credit monitoring or other identity theft insurance products* purchased as a result of the Security Incident;

b. **Claims for Compensation for Lost Time.** Settlement Class Members who spent time monitoring accounts or otherwise dealing with issues related to the Security Incident can submit a claim for reimbursement of \$25.00 per hour up to 3 hours (for a total of \$75) provided they provide an attestation on the Claim Form that the activities they performed were related to the Security Incident.

c. **Claims for Extraordinary Losses** up to a total of \$5,000.00 per Settlement Class Member in compensation on submission of a valid and timely claim form for monetary losses that meet the following conditions:

- i. The loss is an actual, documented and unreimbursed monetary loss caused by (A) misuse of the Settlement Class Member's Personal Information or (B) fraud or identity theft associated with the Settlement Class Member's Personal Information;
- ii. The loss noted in i.(A) or i.(B) was more likely than not caused by the Data Incident;
- iii. The loss occurred between February 2, 2023 and seven days after the Court approved notice of settlement is sent to the Class;
- iv. The loss is not already covered by the Ordinary Loss or Lost Time 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 of the Settlement Class Member's credit monitoring insurance and identity theft insurance.

d. **Alternative Cash Payment** of \$65 or a free trauma screening provided by Cummins.

## **VI. CLAIMS PROCESS AND PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS**

42. **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement Administrator will maintain records of all Claim Forms submitted until the later of (a) one hundred and eighty (180) Days after the Effective Date or (b) the date all Claim Forms have been fully processed in accordance with the

terms of this Agreement. Information submitted by Settlement Class Members in connection with Claim Forms shall be deemed confidential and protected as such by the Settlement Administrator, Settlement Class Counsel, and Cummins's Counsel.

43. **Claims Review Process.** The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent a claim for Ordinary Losses, Lost Time, Extraordinary Losses, or Alternative Cash Payment is valid.

- a. The Settlement Administrator will verify that each person who submits a Claim Form is a member of the Settlement Class.
- b. The Settlement Administrator will determine that each Claim Form submitted by a Settlement Class Member was submitted during the Claims Period and is timely.
- c. In determining whether claimed Ordinary Losses and Extraordinary Losses are more likely than not caused by the Security Incident, the Settlement Administrator will consider (i) the timing of the alleged loss and whether it occurred on or after February 2, 2023; (ii) whether the alleged loss involved the types of information that may have been affected in the Security Incident; (iii) the explanation of the Settlement Class Member as to why the alleged loss was caused by the Security Incident; and (iv) other factors the Settlement Administrator reasonably finds to be relevant.
- d. No decision of the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Cummins as to any matter of fact, law, or evidence having any collateral effect on any proceedings in any forum or before any authority.

#### 44. **Payment.**

- a. After the Effective Date, and after final determinations have been made with respect to all claims submitted during the Claims Period pursuant to the Claims Review Process, the Settlement Administrator shall provide the Parties an accounting of all Approved Claims for Ordinary Losses, Lost Time, Extraordinary Losses, and Alternative Cash Payments and also provide payment instructions to Cummins and its insurer(s). Within thirty (30) days of receiving this accounting, Cummins and its insurer(s) shall transmit the funds needed to pay Approved Claims for Ordinary Losses, Lost Time, Extraordinary Losses, and Alternative Cash Payments in accordance with the terms of this Agreement.
- b. Payments for Approved Claims for Ordinary Losses, Lost Time, Extraordinary Losses, or Alternative Cash Payments shall be issued in the form of a check, or via electronic means (agreed to by the Parties) and sent as soon as practicable after the Settlement Administrator receives the funds described in



Paragraph 44.a. No payments will be issued without authorization from the Parties.

c. All Settlement Class Members who fail to submit a valid Claim Form for any benefits under this Agreement within the time frames set forth herein, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments or benefits pursuant to the Settlement, but will in all other respects be subject to and bound by the provisions of this Agreement, including but not limited to the releases contained herein, and the Final Approval Order and Judgment.

45. **Timing.** Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue.

46. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

47. **Voided Checks.** In the event a Settlement Check becomes void, the Settlement Class Member to whom that Settlement Check was made payable will forfeit the right to payment and will not be entitled to payment under the Settlement, and the Agreement will in all other respects be fully enforceable against the Settlement Class Member. No later than one hundred and twenty (120) days after the issuance of the last Settlement Check, the Settlement Administrator shall take all steps necessary to stop payment on any Settlement Checks that remain uncashed.

48. **Deceased Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Participating Settlement Class Member's estate upon receiving proof the Participating Settlement Class Member is deceased and after consultation with Settlement Class Counsel and Cummins's Counsel.

## **IX. SETTLEMENT CLASS NOTICE**

49. **Timing of Notice.** Within seven (7) days after entry of the Preliminary Approval Order, Cummins shall provide the Settlement Class List to the Settlement Administrator. Within thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice to Settlement Class Members for whom it has a valid mailing address.

50. **Form of Notice.** Notice shall be disseminated via postcard through First Class U.S. mail to Settlement Class Members on the Settlement Class List. The Settlement Administrator

shall have discretion to format the Short Form Notice in a reasonable manner to minimize mailing and administrative costs. Before Notices are mailed, Settlement Class Counsel and Cummins' Counsel shall first be provided with a proof copy (reflecting what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and any orders of the Court. For Notices sent via postcard that are returned as undeliverable, the Settlement Administrator shall use reasonable efforts to identify an updated mailing address and resend the postcard notice if an updated mailing address is identified.

51. **Cost of Notice and Administration.** Cummins will pay for all costs of the Settlement Administrator providing notice of the Settlement to Settlement Class Members and administering the Settlement, up to a maximum of \$125,000. Any costs above this maximum will be paid by Class Counsel.

## **X. OPT-OUTS AND OBJECTIONS**

52. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The Notice also must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

a. The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication.

b. No person shall purport to exercise any exclusion rights of any other person, or purport (a) to opt-out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt-out more than one Settlement Class Member on a single paper, or as an agent or representative. Any such purported Requests for Exclusion shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Requests for Exclusion shall be treated as a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and judgment entered thereon, unless he or she submits a valid and timely Request for Exclusion.

c. Within seven (7) days after the Opt-Out Deadline, the Settlement Administrator shall provide the Parties with a complete and final list of all Opt Outs who have submitted a Request for Exclusion and have timely and validity excluded themselves from the Settlement Class and, upon request, copies of all Requests for Exclusion received.

d. All persons who Opt Out shall not receive any benefits or be bound by the terms of this Agreement. All persons falling within the definition of the

Settlement Class who do not Opt Out shall be bound by the terms of this Agreement and the Final Approval Order and Judgment.

53. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement by filing written objections with the Court no later than the Objection Deadline. The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. Any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement and shall be bound by the terms of the Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to the Agreement shall be through the provisions of this Paragraph. Within seven (7) days after the Objection Deadline, the Claims Administrator shall provide the Parties with all objections submitted.

#### **XI. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

54. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- b. Causing the Notice Program to be effectuated in accordance with the terms of this Settlement Agreement and any orders of the Court;
- c. Performing National Change of Address searches and/or skip tracing on the Settlement Class List;
- d. Providing Notice to Settlement Class Members via U.S. mail;
- e. Responding to any Settlement Class Member inquiries;
- f. Reviewing, determining the validity of, and processing all claims submitted consistent with the terms of this Agreement;
- g. Receiving and reviewing Requests for Exclusion and objections from Settlement Class Members. If the Settlement Administrator receives any

Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Settlement Class Counsel and Cummins's Counsel;

- h. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- i. Providing weekly or other periodic reports to Settlement Class Counsel and Cummins' Counsel that include information regarding the number of Settlement Checks mailed and delivered or checks sent via electronic means, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments or Notice;
- j. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and
- k. Performing any function related to settlement administration as provided for in this Agreement or at the agreed-upon instruction of Settlement Class Counsel or Cummins's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

## **XII. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

55. **Certification of the Settlement Class.** For purposes of this Settlement only, and in the context of this Agreement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Excluded from the Settlement Class are (i) Cummins' officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (iii) any judges assigned to this case and their staff and family. Should: (1) the Settlement not receive final approval from the Court, (2) the Effective Date not occur, or (3) the Agreement is otherwise terminated, the certification of the Settlement Class shall be void, and neither the Agreement nor any order or other action relating to the agreement shall be offered by any person as evidence or cited in support of a motion to certify a class for any purpose other than this Settlement. Cummins reserves the right to contest class certification for all other purposes. The Parties further stipulate to designate the Class Representatives as the representatives for the Settlement Class.

56. **Preliminary Approval.** Following execution of this Agreement, Settlement Class Counsel shall file a motion for preliminary approval of this Settlement with the Court within 7 days after this agreement has been fully executed. Settlement Class Counsel shall provide Cummins's counsel with a draft of the motion for preliminary approval within a reasonable time frame prior to filing same to ensure that any requested revisions from Cummins are addressed.

57. **Final Approval.** Settlement Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing. Counsel for the Parties shall request that the Court set a date for the Final Approval Hearing that is approximately 80 days after entry of the Preliminary Approval Order. Settlement Class Counsel shall provide Cummins's counsel with a draft of the motion for final approval within a reasonable time frame prior to filing same to ensure that any requested revisions from Cummins are addressed.

58. **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 retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator consents to the jurisdiction of the Court for this purpose.

### **XIII. MODIFICATION AND TERMINATION**

59. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

60. **Termination.** Settlement Class Counsel (on behalf of the Settlement Class Members) and Defendant shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice"): (1) within seven (7) days of the Court's refusal to grant preliminary approval of the Settlement in any material respect; or (2) within fourteen (14) days of either of the following: (a) the Court's refusal to enter the Final Approval Order and Judgment in any material respect, or (b) the date upon which the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court.

61. **Effect of Termination.** In the event of a termination as provided in Paragraph 60, this Agreement shall be considered null and void, all of the Parties' obligations under the Agreement 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 claims and defenses will be preserved. Any Court orders preliminarily or finally approving certification of the Settlement Class and any other orders entered pursuant to the Agreement shall be deemed null and void and vacated.

If either party voids the Settlement Agreement, that party will be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of the other party.

#### **XIV. RELEASES**

62. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have completely and unconditionally released, acquitted, and forever discharged Defendant and each of the Released Parties from any and all Released Claims, including Unknown Claims.

63. **Unknown Claims.** The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Action that were related to the Security Incident and that Plaintiff, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiff, the Settlement Class, and any Releasing Party shall be deemed to have, and 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, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE PLAINTIFFS 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 OR HER SETTLEMENT WITH THE DEFENDANT.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights, and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Settlement Class Representatives, the Settlement Class, and the Releasing Parties acknowledge that they may 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 Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Agreement to have acknowledged, that the foregoing waiver is a material term of the Agreement.

64. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Class Representatives and other Settlement Class Members shall be enjoined from initiating, asserting, or prosecuting any and all Released Claims, including Unknown Claims, in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order and Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this Section.



## **XV. SERVICE AWARD PAYMENTS**

65. **Service Award Payments.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Settlement Class Counsel will file a motion seeking a service award payment for the Class Representatives in recognition for their contributions to this Action. Cummins agrees not to oppose Settlement Class Counsel's request for service awards not to exceed Four Thousand Dollars and Zero Cents (\$4,000.00) for each of the three Plaintiffs. To the extent more than \$4,000.00 in service awards is sought for the Class Representative, Cummins reserves all rights to object and oppose such a request. Cummins shall pay the Court-approved service award to an account established by Settlement Class Counsel within thirty (30) days after the Effective Date and the receipt of payment instructions and a form W-9 by Cummins and its insurers. Settlement Class Counsel will then distribute the service award. Cummins's obligations with respect to the Court-approved service award shall be fully satisfied upon receipt of the funds into the account established by Settlement Class Counsel. Cummins shall have no responsibility for, interest in, or liability whatsoever with respect to any distribution or allocation of service awards. Nor shall Cummins be responsible for any tax obligations or payments associated with the amount paid into the account established by Settlement Class Counsel. To the extent the Effective Date does not occur, Cummins shall have no obligation to pay any service awards. This amount was negotiated after the primary terms of the settlement were negotiated.

66. **No Effect on Agreement.** The finality or effectiveness of the Settlement shall not depend on the amount or timing of service awards approved and awarded by the Court or any appeal thereof. The amount and timing of service awards is intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

## **XVI. ATTORNEYS' FEES, COSTS, EXPENSES**

67. **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Settlement Class Counsel will file a motion for an award of attorneys' fees and litigation costs and expenses to be paid by Cummins. Cummins agrees not to oppose Settlement Class Counsel's request for an award of attorneys' fees and litigation costs not to exceed Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00). If Settlement Class Counsel seek more than \$700,000.00 in attorneys' fees, Cummins reserves all rights to object and oppose such requests. Cummins shall pay the Court-approved attorneys' fees and expenses to an account established by Settlement Class Counsel within seven (7) days after entry of the Final Approval Order. The attorneys' fees and expenses will be allocated by Settlement Class Counsel. Cummins's obligations with respect to the Court-approved attorneys' fees and expenses shall be fully satisfied upon receipt of the funds into the account established by Settlement Class Counsel. Cummins shall have no responsibility for, interest in, or liability whatsoever with respect to any distribution or allocation of attorneys' fees or expenses. Nor shall Cummins be responsible for any tax obligations or payments associated with the amount paid into the account established by Settlement Class Counsel. To the extent the Effective Date does not occur, Cummins shall have

no obligation to pay any attorneys' fees or expenses. The amount of attorneys' fees and expenses was negotiated after the primary terms of the Settlement were negotiated.

68. **No Effect on Agreement.** The finality or effectiveness of the Parties' Settlement shall not depend on the amount or timing of attorneys' fees and expenses approved and awarded by the Court or any appeal thereof. The amount and timing of attorneys' fees and expenses are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount or timing of attorneys' fees or expenses shall constitute grounds for termination of this Agreement.

## **XVII. NO ADMISSION OF LIABILITY**

69. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or that could have been made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

70. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) 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 Plaintiffs or any Settlement Class Member, including any Settlement Class Member who opts out of the Settlement; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by the Released Parties in the Action, or any Settlement Class Member who opts out of the Settlement, or in any proceeding in any court, administrative agency or other tribunal.

## **XVIII. MISCELLANEOUS**

71. **Public Statements Regarding The Action.** Plaintiffs' attorneys may not make any public statement regarding the Action, whether to any media or otherwise, except to say on their respective websites that they "obtained a settlement agreement with a regional behavioral health services provider, as a result of a data security incident."

72. **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

73. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties or their successors in interest. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by

subsequent Agreement of counsel for the Parties prior to dissemination of the Notice to the Settlement Class.

74. **Resolution.** The Parties intend this Agreement to be a final and complete resolution of all disputes between them respect to the Action. The Parties each agree that the Settlement and this Agreement were negotiated in good faith and at arm's-length and reflects a Settlement that was reached voluntarily after consultation with legal counsel of their choice.

75. **Other Litigation.** Plaintiffs and Settlement Class Counsel will not cooperate with or encourage any action or filing of claims against Cummins or any Released Parties related to any of the allegations or claims alleged in the Action.

76. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to "days" in this agreement shall refer to calendar days unless otherwise specified.

77. **Singular and Plurals.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

78. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

79. **Construction.** For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

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

81. **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 consulted in good faith.

82. **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.

83. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Indiana, without regard to the principles thereof regarding choice of law.

84. **Jurisdiction.** The Parties and each Settlement Class Member submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or

relating to this Agreement or the applicability of the Agreement and its exhibits, but for no other purpose whatsoever.

85. **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 signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically, by facsimile, or through e-mail of an Adobe PDF shall be deemed an original.

86. **Notices.** All notices to Settlement Class Counsel provided for herein, shall be sent by email to:

Lynn A. Toops, Esq., [ltoops@cohenandmalad.com](mailto:ltoops@cohenandmalad.com)


All notices to Cummins provided for herein, shall be sent by email to:

Daniel L. Messeloff, Esq., [daniel.messeloff@pierferd.com](mailto:daniel.messeloff@pierferd.com)

87. **Authority.** 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.

**SIGNATURES**

*Plaintiff Joshua Ham*

By:  \_\_\_\_\_  
DocuSigned by:  
10448F488FEC8410

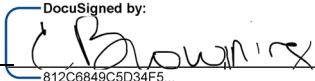
Date: 7/12/2024

*Plaintiff Rebecca Poehler Eck*

By: Rebecca Eck

Date: 07 / 12 / 2024

*Plaintiff Crystal Browning*

By:  \_\_\_\_\_  
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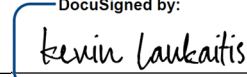
Date: 7/17/2024

*Defendant Cummins Behavioral Health Systems, Inc.*

By: Amy Mace

Date: Jul 22, 2024

*Counsel for Plaintiffs and the Settlement Class*

By:  \_\_\_\_\_  
DocuSigned by:  
D8741D9E50FD4DB...

Date: 7/17/2024

*Counsel for Defendant*

By: Daniel L. Messeloff

Date: 7/22/24

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$2.1 Million Settlement Reached in Cummins Behavioral Health Systems Data Breach Lawsuit](#)

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