

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement¹ is entered into by and among Plaintiffs Jeremy Hufstetler, Adam Runk, Connie Hatfield, Yashvantsinh Jhala, Dale Stark, Lisa Kenny, A'Tavion Morrisette, Gene Sawyer, Robert Moffa, Leah Harner, and Judy Young (collectively, "Plaintiffs" or "Named Plaintiffs"), for themselves and on behalf of the Settlement Class, and Defendants Upstream Rehabilitation, Inc. and Upstream RollCo LLC d/b/a Upstream Rehabilitation ("Upstream" or "Defendants"), subject to preliminary and final Court approval. As provided herein, Defendants and the Named Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a final order and judgment, all claims of the Settlement Class against the Defendants in connection with the Data Security Incident as alleged in the action titled *Jeremy Hufstetler et al. v. Upstream Rehabilitation Inc., et al.*, Case No. 01-CV-2024-902563.00, pending in the Circuit Court of Jefferson County, Alabama, Tenth Judicial Circuit, shall be settled and compromised upon the terms and conditions contained herein. The Named Plaintiffs and Defendants are collectively referred to herein as the "**Parties.**"

I. RECITALS

A. Upstream is an outpatient physical therapy provider based in Birmingham, Alabama.

B. On September 15, 2023, Upstream notified individuals, including patients, that Upstream discovered suspicious activity related to certain employee email accounts and certain files stored within the impacted email accounts may have been accessed by an unauthorized party between January 24, 2023 and January 31, 2023 as well as between February 3, 2023 and February 9, 2023. Upstream also informed these individuals that their personal identifiable information ("PII") and/or protected health information ("PHI") may have been contained within the impacted files (the "**Data Security Incident**").

C. On February 23, 2024, the Named Plaintiffs filed a Consolidated Class Action Complaint in the United States District Court Northern District of Alabama, Southern Division, captioned *Jeremy Hufstetler, et al. v. Upstream Rehabilitation, Inc., et al.*, Master File No. 2:23-cv-01265-GMB. The Named Plaintiffs asserted claims against Defendants for (1) Negligence; (2) Negligence *Per Se*; (3) Breach of Confidence; (4) Breach of Implied Contract; (5) Breach of the Implied Covenant of Good Faith and Fair Dealing; (6) Breach of Fiduciary Duty; and (7) Unjust Enrichment. Plaintiffs also alleged state-specific causes of action for violations of: (i) Georgia Deceptive Trade Practices and Protection Law ("Georgia UDTPA"), Ga. Code Ann. §§10-1-370, *et seq.*; and (ii) the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat. §§ 201-1 to 201-9.2.

D. On May 13, 2024, counsel for the Parties mediated this matter in Birmingham, Alabama before mediator J. Allen Schrieber of Schrieber ADR. The mediation resulted in a

¹ Unless provided elsewhere, all capitalized terms shall have the meaning set forth in Section II of this Agreement.

tentative agreement with regard to certain material terms of the settlement, which are memorialized in this Agreement.

E. The Parties did not discuss attorneys' fees, costs, and expenses, or Service Awards for the Named Plaintiffs prior to reaching an agreement as to the material terms of the relief for the Settlement Class.

F. Subsequently, the action against Upstream in federal court was voluntarily dismissed without prejudice on June 5, 2024, with the federal court entering the dismissal order on June 6, 2024. Plaintiffs thereafter filed a Complaint in the instant Action on June 26, 2024. In the Complaint, Plaintiffs allege the same claims arising from the Data Security Incident. Specifically, Plaintiffs asserted claims against Defendants for (1) Negligence; (2) Negligence *Per Se*; (3) Breach of Confidence; (4) Breach of Implied Contract; (5) Breach of the Implied Covenant of Good Faith and Fair Dealing; (6) Breach of Fiduciary Duty; and (7) Unjust Enrichment. Plaintiffs also alleged state-specific causes of action for violations of: (i) the Georgia UDTPA, Ga. Code Ann. §§10-1-370, *et seq.*; and (ii) the UTPCPL, 73 Pa. Stat. §§ 201-1 to 201-9.2.

G. Plaintiffs believe that the claims asserted in the Action, as set forth in the Complaint, have merit. Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Action against Upstream through motion practice, trial, and potential appeals. They have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel are experienced in class action litigation and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Action. They have determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

H. Upstream denies each and all of the claims and contentions alleged against it in the Lawsuit. Upstream denies all allegations of wrongdoing or liability as alleged, or which could be alleged, in the Action. Nonetheless, Upstream has concluded that further defense of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Upstream has taken into account the uncertainty and risks inherent in any litigation. Upstream has, therefore, determined that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

I. The Parties now agree to settle this Action in its entirety, without any admission of liability with respect to all Released Claims of the Settlement Class. The Parties intend this Agreement to bind the Named Plaintiffs, Defendants, and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Action be settled, compromised, and dismissed on the merits and with prejudice as to Defendants, subject to Court approval, on the following terms and conditions:

II. DEFINITIONS

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Agreement:

1. “**Action**” means or refers to the matter titled *Jeremy Hufstetler et al. v. Upstream Rehabilitation Inc., et al.*, Case No. 01-CV-2024-902563.00, pending in the Circuit Court of Jefferson County, Alabama, Birmingham Division, Tenth Judicial Circuit.

2. “**Administration and Notice Costs**” means all reasonable costs and expenses incurred by the Settlement Administrator in carrying out its duties under this Agreement, including all costs and expenses incurred in connection with implementing and executing the Notice Plan.

3. “**Agreement**” or “**Settlement Agreement**” means this Agreement and Release, including its attached Exhibits (which are an integral part of this Settlement Agreement and Release and are incorporated in their entirety herein by reference).

4. “**Approved Claim**” means a valid Settlement Claim in an amount approved by the Claims Administrator or found to be valid through the Dispute Resolution Process, as set forth in this Agreement.

5. “**Claims Deadline**” means the deadline by which a Claim Form must be postmarked or submitted electronically to the Settlement Website, in order for a Settlement Class Member to be entitled to any of the monetary consideration contemplated in this Settlement Agreement. The Claims Deadline shall be ninety (90) days after the Notice Deadline.

6. “**Claim Form**” or “**Claim**” means the form Settlement Class Members must submit to be eligible for relief under the terms of the Settlement, the proposed form of which is attached hereto as **Exhibit A**.

7. “**Class Counsel**” means:

Annesley H. DeGaris
Alexandra J. Calton
DEGARIS LAW, LLC
2 North 20th Street, Suite 1030
Birmingham, AL 35203

Daniel Srourian, Esq.
SROURIAN LAW FIRM, P.C.
3435 Wilshire Blvd. Suite 1710
Los Angeles, California 90010

Hirlye R. "Ryan" Lutz, III
F. Jerome Tapley
Hunter Phares
CORY WATSON, P.C.
2131 Magnolia Avenue South
Birmingham, AL 35205

Nicholas A. Migliaccio
Jason S. Rathod
MIGLIACCIO & RATHOD LLP
412 H St. NE, Suite 302
Washington, D.C. 20002

Taylor Bartlett
HENINGER GARRISON DAVIS, LLC
2224 1st Avenue N.
Birmingham, AL 35203

A. Brooke Murphy
MURPHY LAW FIRM
4116 Wills Rogers Pkwy, Suite 700
Oklahoma City, OK 73108

Jonathan S. Mann
Austin B. Whitten
**PITTMAN, DUTTON, HELLUMS,
BRADLEY & MANN P.C.**
2001 Park Place North, Suite 1100
Birmingham, AL 35203

Tyler J. Bean
SIRI & GLIMSTAD LLP
745 Fifth Avenue, Suite 500
New York, New York 10151

Gary M. Klinger
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
227 W. Monroe Street, Suite 2100
Chicago, IL 60606

8. "**Class List**" shall mean a list compiled by the Settlement Administrator that shall include all persons identified by Defendants to be Settlement Class Members, and whose full name and current or last known address is provided to the Settlement Administrator by Defendants. Defendants shall provide to the Settlement Administrator within seven (7) days after the Court's entry of the Preliminary Approval Order.

9. “**Class Representative(s)**” means Jeremy Hufstetler, Adam Runk, Connie Hatfield, Yashvantsinh Jhala, Dale Stark, Lisa Kenny, A’Tavion Morrissette, Gene Sawyer, Robert Moffa, Leah Harner, and Judy Young.

10. “**Complaint**” means the Class Action Complaint filed by Plaintiffs in the Action.

11. “**Court**” means the Circuit Court of Jefferson County, Alabama, Birmingham Division, Tenth Judicial Circuit.

12. “**Data Security Incident**” means the data security incident affecting Upstream between January 24, 2023 and January 31, 2023 and between February 3, 2023 and February 9, 2023.

13. “**Defendants’ Counsel**” means:

James F. Monagle
MULLEN COUGHLIN LLC
426 W. Lancaster Avenue, Suite 200
Devon, PA 19333

Scott S. Brown
MIXON BROWN, LLC
44 Inverness Center Parkway, Suite 140
Birmingham, AL 35242

14. “**Effective Date**” means the date when this Agreement becomes final, which is the latest of (i) twenty (20) days after the Final Judgment and Order is entered if no notice of appeal or motion tolling the time for appeal is filed, or, (ii) if any appeal is filed, fifteen (15) days after an order by the highest appealable court affirming the Final Approval Order and Judgment without material change or dismissing or otherwise disposing of the appeal with prejudice.

15. “**Fee Requests**” means Class Counsel’s application for the payment of attorneys’ fees, costs, and expenses from the Settlement Fund.

16. “**Final Approval**” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Awards. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

17. “**Final Approval Order**” means the order and judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

18. “**Long Form Notice**” means the content of the notice substantially in the form as **Exhibit B** is the detailed, long form notice that will be posted on the Settlement Website that will include robust details about the Settlement.

19. “**Named Plaintiffs**” means Jeremy Hufstetler, Adam Runk, Connie Hatfield, Yashvantsinh Jhala, Dale Stark, Lisa Kenny, A’Tavion Morrissette, Gene Sawyer, Robert Moffa, Leah Harner, and Judy Young.

20. “**Net Settlement Fund**” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses, (iii) Service Awards Payments approved by the Court, and (iv) Fee Award and Costs approved by the Court.

21. “**Non-Profit Residual Recipient**” means a third-party cy pres recipient agreed upon by the Parties and approved by the Court to accept remaining funds in the Net Settlement Fund after completion of the claims administration process set forth herein.

22. “**Notice**” means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement and **Exhibit B** (Long Form) and **Exhibit D** (Short Form), and is consistent with the requirements of Due Process.

23. “**Notice Date**” and “**Notice Deadline**” mean thirty (30) days after the Court has entered the Preliminary Approval Order.

24. “**Notice Program**” means the notice methods provided for in this Agreement and consists of (1) Notice to all Settlement Class Members via one or more summary postcard notice(s) via United States Postal Service and (2) Notice posted on the Settlement Website. The forms of Notice shall be substantially in the forms attached as **Exhibit B** (Long Form) and **Exhibit D** (Short Form) to this Agreement and approved by the Court, and the Notice Program shall be affected in substantially the manner provided in Section VIII.

25. “**Objection Deadline**” means sixty (60) days after the Notice Deadline.

26. “**Opt-Out Deadline**” means sixty (60) days after the Notice Deadline.

27. “**Participating Settlement Class Member**” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline.

28. “**Personally Identifying Information**” or “**PII**” means an individual’s name, date of birth, and/or demographic information as referred to in the notices of Data Security Incident sent by Upstream on September 15, 2023.

29. “**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 of judgment, attached as **Exhibit C**. 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.

30. **“Protected Health Information”** or **“PHI”** means an individual’s diagnosis information, health insurance subscriber number, medical billing/claims information, medical record number, other health insurance information, patient account number, and/or treatment information as referred to in the notice of Data Security Incident sent by Upstream on September 15, 2023.

31. **“Released Claims”** means any and all past, present, and future claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters, and issues of any kind or nature, whether known or unknown, contingent or absolute, existing or potential, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, liquidated or unliquidated, legal, statutory, or equitable, in the Action, or in any court, tribunal, or proceeding by or on behalf of the Named Plaintiffs or any members of the Settlement Class, arising out of, or relating to the Data Security Incident, and which have been asserted or could have been asserted based on the facts alleged in this Action against any of the Released Parties (defined below) whether based on federal, state, local, statutory, common law, or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against any or all of the Released Parties, which the Named Plaintiffs or any member of the Settlement Class ever had, now has, or hereinafter may have, prior to entry of the final order and judgment in this Action. Released Claims shall not include the right of Named Plaintiffs, Settlement Class Members, or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Action.

32. **“Released Party”** means Upstream Rehabilitation, Inc., Upstream RollCo LLC d/b/a Upstream Rehabilitation, and any and all of their present or past direct or indirect heirs, executors, estates, affiliates, divisions, predecessors, successors, assigns, parents, or subsidiaries (**“Released Entities”**), and the owners, associates, employers, employees, agents, consultants, contractors, independent contractors, vendors, insurers, directors, managers, managing directors, officers, partners, principals, members, attorneys, accountants, administrators, bankruptcy trustee(s), financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, sellers, distributors, legal representatives, successors in interest, assigns and persons, firms, trustees, trusts, corporations, officers, directors, general or limited partners of the Released Entities, any Upstream managed entities, and any and all other individuals or entities in which Defendants have a controlling interest or that are affiliated with them, or any other representatives of any of these persons and entities.

33. **“Releasing Parties”** means the Named Plaintiffs, any Settlement Class Member who does not timely and properly opt out from the Settlement, and any person claiming or receiving a benefit under this Settlement.

34. **“Remainder Funds”** means the funds, if any, that remain in the Settlement Fund after payment of costs of Financial Account Monitoring, Administration and Notice Costs, Fee Award and Expenses, claims for Reimbursement of Documented Monetary Losses, and Pro Rata

Cash Payments, as described below. The funds remaining in the Settlement Fund after the above payments have been made and the time for Settlement Class Members to cash and/or deposit checks has expired will be Remainder Funds. The Remainder Funds will be sent to one or more court-approved charitable organizations as a cy pres distribution. The Parties will jointly recommend the entity or entities to the Court that will be the recipients of the cy pres distribution.

35. “**Service Award**” means an amount to be awarded by the Court that is intended to compensate the Class Representatives for their efforts in the litigation and commitment on behalf of the Settlement Class.

36. “**Settlement**” means this settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement, including the exhibits hereto.

37. “**Settlement Administrator**” presumptively means AB Data as selected by the Parties to serve as the Settlement Administrator. In the absence of agreement, either Class Counsel or Defendants may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the Settlement Administrator.

38. “**Settlement Class**” means all individuals within the United States of America whose PHI/PII was exposed to unauthorized third parties as a result of Defendants’ data breach that occurred between January 24, 2023 and January 31, 2023, and between February 3, 2023 and February 9, 2023. The Settlement Class contains approximately 748,678 individuals. Excluded from the Settlement Class are the Court, the officers and directors of Defendants, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Security Incident, and persons who timely and validly request exclusion from the Settlement Class.

39. “**Settlement Class Member**” shall mean an individual who falls within the definition of the Settlement Class.

40. “**Settlement Fund**” shall mean the sum of four million three hundred and four thousand eight hundred and ninety-eight dollars and 50/100 cents (\$4,304,898.50) which Defendants agree to pay to resolve the claims of the Settlement Class, and to fund all relief to the Settlement Class as described herein, including the costs of notice and claims administration, Service Awards, and the Fee and Expense Request of Class Counsel, this being the full and complete limit and extent of Defendants’ obligations with respect to the Settlement.

41. “**Settlement Payment**” means the payment to be made via mailed check and/or electronic payment from the Settlement Fund to Class Members who submitted valid Claim Forms from the Settlement Administrator.

42. “**Settlement Website**” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the commencement of the Notice Program, as a means for Settlement Class Members to obtain notice

of and information about the Settlement, through and including hyperlinked access to **Exhibits A-D**, this Agreement, the Notice, Preliminary Approval Order, the Claim Forms, the Consolidated Complaint filed in the Action and such other documents as Class Counsel and Defendants agree to post or that the Court orders posted on the website. The URL of the Settlement Website shall be agreed upon by Class Counsel and Defendants. Settlement Class Members shall be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least five (5) business days after the last payment or credit under this Settlement is made or the Settlement is terminated.

43. “**Short Form Notice**” means the postcard notice that will be mailed to each available Class Member attached as **Exhibit D**.

44. “**Taxes and Tax-Related Expenses**” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Upstream with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

45. “**Unknown Claims**” means any of the Released Claims that either Plaintiffs do not know or suspect to exist in their favor at the time of the release of the Released Entities that, if known by them, might have affected their settlement with, and release of, the Released Entities, or might have affected their decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

Plaintiffs may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Parties acknowledge that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

46. “**United States**” as used in this Settlement Agreement includes the District of Columbia and all territories.

47. “**Valid Claims**” means Settlement Claims Form submitted by a Settlement Class Member that indicates the Settlement Class Member’s Settlement benefit election and provides the Settlement Administrator with correct information for disbursement of a Documented Monetary Loss Payment or Cash Award, and that are sent to the Settlement Administrator prior to the Claims Deadline.

III. SETTLEMENT CLASS

48. For Settlement purposes only, the Parties agree that the Court should certify the following Class defined as:

All individuals within the United States of America whose PHI/PII was exposed to unauthorized third parties as a result of Defendants’ data breach that occurred between January 24, 2023 and January 31, 2023, and between February 3, 2023 and February 9, 2023.

For the purposes of determining membership in the Settlement Class, Defendants have identified approximately 748,678 individuals who had their PII and/or PHI impacted in the Data Security Incident. It is intended that these approximately 748,678 individuals shall constitute the members of the Class.

49. Excluded from the Settlement Class are the Court, the officers and directors of Defendants, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Security Incident, and persons who timely and validly request exclusion from the Settlement Class. Named Plaintiffs will move for certification of the Class contemporaneously with their motion for Preliminary Approval of the Settlement. For purposes of this Settlement only, Defendants agree not to contest certification of the Class. Should the Settlement not be approved, Defendants reserve all rights and defenses on the merits and as to class certification.

IV. SETTLEMENT FUND

50. **Establishment of Settlement Fund.** Within thirty (30) days of the Effective Date, Defendants will pay to the Claims Administrator to fund the relief provided under the Settlement Agreement; the Settlement Fund, the sum of four million three hundred and four thousand eight hundred and ninety-eight dollars and 50/100 cents (\$4,304,898.50), minus the amounts advanced for notice and claims administration costs as described in the next sentence. Within thirty (30) days of the entry of the order preliminarily approving the Settlement and approving the Claims Administrator, Defendants will pay five hundred thousand dollars and no /100 cents (\$500,000.00) from the Settlement Fund (the “Settlement Payment”) to the Escrow Account to defray the actual expenses of notice and claims administration. To the extent this Settlement Agreement is not finally approved, Defendants will be entitled to the return of any amounts not already incurred by the Claims Administrator in connection with Settlement Administration.

51. **Escrow Account.** The Settlement Payment is to be deposited in an interest-bearing bank escrow account established at Huntington Bank (the “Escrow Agent”) and administered by the Settlement Administrator (the “Escrow Account”). The Escrow Account shall be held in a Qualified Settlement Fund (defined below) in interest-bearing bank account deposits with commercial banks with excess capital exceeding One Billion United States Dollars and Zero Cents (\$1,000,000,000.00), with a rating of “A” or higher by S&P and in an account that is fully insured by the United States Government or the FDIC. The Settlement Fund will be used to pay Approved Claims, Administrative Expenses (to be agreed upon by both parties), the Fee Award and Expenses, and Service Awards.

52. **Interest.** All interest on the funds in the Escrow Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Administrator is responsible for the payment of all Taxes.

53. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Defendants in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph 88.

54. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund (QSF) from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a QSF from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account and must be insured by the Federal Deposit Insurance Corporation. The Settlement Administrator shall select the financial institution at which the QSF is to be created and held, subject to approval of the Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

55. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraph 88.

56. **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Service Award Payments approved by the Court; (iv) Fee Award and Costs; (v) Reimbursement for Documented Monetary

Losses; (vi) Financial Account Monitoring, and (vii) Cash Payments to the Settlement Class Members. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

57. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Participating Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement. However, where a Settlement Class Member who is entitled to more than five hundred and ninety-nine dollars and no/100 cents (\$599.00) fails to submit an IRS Form W-9 (or equivalent tax document), the Settlement Administrator shall consult with counsel to determine how to remit payment to the Settlement Class Member (*i.e.*, capped at five hundred and ninety-nine dollars and no/100 cents (\$599.00) or withholding necessary taxes and sending the remainder to the Settlement Class Member).

V. BENEFITS TO SETTLEMENT CLASS MEMBERS

58. The Settlement Administrator will agree to make the following compensation available to Class Members who submit valid and timely claim forms from the Settlement Fund. Claims will be subject to review for completeness and plausibility by a Settlement Administrator.

- a. **Reimbursement of Documented Monetary Losses:** The Parties will create a claims process through which all Settlement Class Members may submit a claim form for reimbursement of documented monetary losses, fairly traceable to the Data Security Incident up to \$5,000 per individual (“Monetary Losses”). Monetary Losses may include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Data Security Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Settlement Class Members with Monetary Losses must submit documentation supporting their claims. This can 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.
- b. **Financial Account Monitoring:** All Settlement Class Members may submit a claim for three (3) years of single-bureau financial account monitoring and at least

\$1,000,000 of fraud/identity theft insurance. Settlement Class Members may use their code to enroll for a period of 12 months (meaning that a Class Member could enroll up to the end of the first year and have coverage for the full three (3) years). Such coverage and flexibility in enrollment will provide protection for Class Members against future identity theft. The three-year period will commence when Settlement Class Members use their codes to activate the Financial Account Monitoring.

- c. **Pro Rata Cash Payment**: All Settlement Class Members may submit a claim for a Pro Rata Cash Payment. The amount of this benefit shall be determined pro rata based on the amount remaining in the Settlement Fund following payment of the Fee Award and Expenses, Service Awards, Administration and Notice Costs, costs of Financial Account Monitoring, and claims for Reimbursement of Documented Monetary Losses. There will be no maximum payment amount for Pro Rata Cash Payments.
- d. **Business Practices Changes**: Plaintiffs have received assurances that Defendants either have undertaken or will undertake certain reasonable steps to further secure its systems and environments and Defendants will prepare a confidential declaration detailing same. None of the past or future costs associated with the development and implementation of these enhanced security procedures has been or will be paid by Plaintiffs and no portion of the Settlement Fund is to be used for this purpose.

59. **Assessing Claims for Documented Monetary Losses.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Documented Monetary Losses reflects valid losses actually incurred that are fairly traceable to the Data Security Incident but may consult with Class Counsel in making individual determinations. In assessing what qualifies as “fairly traceable,” the Parties agree to instruct the Settlement Administrator to consider (i) whether the timing of the loss occurred on or after; and (ii) whether the Personal Information used to commit identity theft or fraud consisted of the same type of personal information that was stored on Upstream’s systems. Costs expended after January 24, 2023, for mitigation measures like credit monitoring services, fraud resolution services, and professional services incurred to address identity theft or fraud on or after shall be presumed “reasonably incurred.” The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

60. **Disputes.** To the extent the Settlement Administrator determines a claim Documented Monetary Losses is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations.

61. **Settlement Administration Fees.** The Settlement Fund amount provided by Defendants, or on behalf of Defendants, will pay the entirety of the Notice and Administrative Expenses, including the cost of Notice. The Parties agree to review competitive bids for the settlement administration fees, all in order to contain the administration costs while still providing effective notice to the Class. Notice and Administrative Expenses shall be paid through the Settlement Fund and are limited to the Settlement Fund amount.

62. Defendants will reasonably cooperate on establishing the appropriateness of the settlement, including, but not limited to, a full class list that identifies each class member and their address.

63. Upon the Effective Date, and receipt of payee instructions and a Form W-9 for the payee, Defendants or its insurer shall pay to the Settlement Administrator the Settlement Fund to satisfy the payments in Paragraphs 65, 93, and 98. Provided that Final Approval of this Settlement Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy Approved Claims for Class Members in exchange for a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Action with prejudice.

64. The Settlement Fund represents the total extent of Defendants' monetary obligations under the Settlement Agreement. Defendants shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund, except insofar as such obligations are explicitly provided for in this Settlement Agreement.

VI. PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS

65. **Payment Timing.** Payments for Approved Claims for reimbursement for Documented Monetary Losses, and Cash Payments, shall be issued in the form of an electronic payment, or upon request, a check mailed, within thirty (30) days after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date. Activation codes for the Financial Account Monitoring shall be emailed or mailed within the same thirty (30) days.

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

67. **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. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to 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 Settlement Class Members within that time.

68. **Uncashed Checks.** To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing a check or mailing the Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Any reissued Settlement Checks issued to 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 Settlement Class Members within that time.

69. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to Defendants after the Effective Date. To the extent any monies remain in the Net Settlement Fund more than one hundred and fifty (150) days after the distribution of Settlement payments to the Settlement Class Members, or thirty (30) days after all reissued Settlement Checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, any remaining monies shall be divided pro rata and disbursed in a secondary distribution to the Class Members who submitted valid Claims, except that if the remaining monies (after covering additional costs of administration) are insufficient to provide a secondary distribution of at least five dollars and no/100 cents (\$5.00) per eligible recipient, then the remaining monies shall be distributed as required by state law or to the Non-Profit Residual Recipient as approved by the Court.

70. **Deceased Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator shall 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 Class Counsel.

VII. CLAIMS, CAPS, AND DISTRIBUTION OF SETTLEMENT FUNDS

71. **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator via return postcard, electronically via a claims' website or otherwise 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.

72. **Individual Caps.** Participating Settlement Class Members are subject to an individual aggregate cap of five thousand dollars and no/100 cents (\$5,000.00) for Documented Monetary Loss payments made under the Settlement. Participating Settlement Class Members may submit claims for both Documented Monetary Loss Payments and for Pro Rata Cash Payments.

73. **Order of Distribution of Funds.** The Settlement Administrator must first use the funds available in the Net Settlement Fund to make payments for Approved Claims for

Documented Monetary Losses, and then to fund valid claims for Financial Account Monitoring. The Settlement Administrator shall then utilize the remaining funds to make pro rata distributions for Cash Payments.

74. **Pro-Rata Contingencies.** In the event that the aggregate amount of all claims for settlement benefits exceeds the total amount of the Net Settlement Fund, then the value of such payments shall be reduced on a pro rata basis, such that the aggregate value of all payments for benefits do not exceed the Net Settlement Fund. In the event that the aggregate amount of Approved Claims for all benefits does not total the Net Settlement Fund, then the value of each Participating Settlement Class Members' Cash Payment shall be increased on a pro rata basis such that the aggregate value of all Approved Claims to the greatest extent feasible, exhaust the Net Settlement Fund. All pro rata determinations required by this Paragraph shall be performed by the Settlement Administrator.

VIII. CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

75. **Notice.** Within seven (7) days after the date of the Preliminary Approval Order, Upstream shall provide the Settlement Class List to the Settlement Administrator. Within twenty-three (23) days after receipt of Settlement Class List, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class. Notice shall be disseminated via summary postcard to Settlement Class members identified on the Settlement Class List via U.S. mail.

76. **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 sixty (60) days after the Notice Deadline. 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. The Notice 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.

77. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement by submitting written objections to the Settlement Administrator postmarked no later than sixty (60) days after the Notice 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 class, or to the entire 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; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that 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.

IX. DUTIES OF THE SETTLEMENT ADMINISTRATOR

78. **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. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the settlement class list for the purpose of disseminating Notice to Settlement Class Members;
- c. Providing Notice to Settlement Class Members via U.S. mail;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call and obtain pre-recorded answers to frequently asked questions, and leave a message to which AB Data will respond within one (1) business day;
- f. Responding to any mailed or emailed Settlement Class Member inquiries within one (1) business day;
- g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members (including processing payments in excess of five hundred and ninety-nine dollars and no/100 cents (\$599.00) consistent with Paragraph 57 above);
- h. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. 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 Class Counsel;
- i. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- j. Providing weekly or other periodic reports to Class Counsel and Defendants' Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Defendants' Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;

- k. 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
- l. Performing any function related to Settlement administration at the agreed-upon instruction of Class Counsel or Defendants' Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

79. **Limitation of Liability.** The Parties, Class Counsel, and Defendants' Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

80. **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Defendants' Counsel for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Program and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

X. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

81. **Certification of the Settlement Class.** For purposes of this Settlement 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. Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Upstream 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.

82. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval, to permit issuance of class notice of the Settlement and for certification of the Settlement Class with the Court within ten (10) business days.

83. **Final Approval.** After entry by the Court of a Preliminary Approval Order, and no later than fourteen (14) days before the Final Approval Hearing, the Settlement Class Representatives shall file a motion seeking final approval of the Settlement and entry of a Final

Approval Order and Judgment, including a request that the preliminary certification of the Settlement Class for settlement purposes be made final.

84. **Final Approval Hearing.** The Parties will recommend the Final Approval Hearing be scheduled no earlier than one hundred and fifty (150) days after the entry of the Preliminary Approval Order.

85. **Appearances at Final Approval Hearing.** Any Settlement Class Member who wishes to appear at the Final Approval hearing must mail to the Court or file a notice of appearance in the Action by the Objection Deadline, as well as take actions required in the Long Notice or as otherwise required by the Court.

86. **Request for Final Approval Order and Judgment.** The Parties shall ask the Court to enter a Final Approval Order and Judgment including the following provisions:

- a. A finding that the Notice Plan fully and accurately informs all Settlement Class Members entitled to notice of the material elements of the Settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with Ala. R. Civ. P. 23, the Alabama Constitution and any other applicable law;
- b. A finding that after proper notice to the class, and after sufficient opportunity to object, no timely objections to this Settlement have been made, or a finding that all timely objections have been considered and denied;
- c. Approval of the Settlement, as set forth in this Agreement, as fair, reasonable, adequate, and in the best interests of the class, in all respects, finding that the Settlement is in good faith and ordering the parties to perform the Settlement in accordance with the terms of this Agreement;
- d. A finding that neither the Final Judgment, the Settlement, or the Agreement constitutes an admission of liability by the Parties;
- e. A finding that Plaintiffs shall have been deemed to fully and finally release, relinquish, and discharge the Released Parties from the Released Claims;
- f. A finding that all Settlement Class Members who have not properly opted out of the Settlement Class are, following entry of Final Judgment, deemed to have fully and finally released, relinquished, or discharged the Released Parties from the Released Claims; and
- g. If and when the Final Approval Order and Judgment is entered, the claims against Defendants in the Action shall be dismissed with prejudice.

87. **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 shall consent to the jurisdiction of the Court for this purpose.

88. **Termination.** Class Counsel (on behalf of the Settlement Class Members) and Defendants shall have the right to terminate this Agreement by providing written notice of their or its election to do so (“Termination Notice”) within seven (7) days of: (1) the Court’s refusal to grant preliminary approval of the Settlement in any material respect; or (2) within fourteen (14) days of any of the following: (i) the Court’s refusal to enter the Judgment in any material respect, or (ii) the date upon which the Judgment is modified or reversed in any material respect by any appellate or other court.

89. **Effect of Termination.** In the event of a termination as provided in Paragraph 88, 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.

XII. RELEASES

90. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Releasing Parties shall be deemed to have released, acquitted, and forever discharged Defendants and each of the Released Parties from any and all Released Claims.

91. **Unknown Claims.** The Released Claims include the release of Unknown Claims (as defined in Section II). Upon the Effective Date, Plaintiffs, 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 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 OR HER SETTLEMENT WITH THE DEBTOR.

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. 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.

92. **Release of Class Representatives and Class Counsel.** As of the Effective Date, Upstream and its representatives, officers, agents, directors, affiliates, employees, insurers, and attorneys absolutely and unconditionally release and discharge the Class Representatives and Class Counsel from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to prosecution of the Action, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement).

XII. SERVICE AWARD PAYMENTS

93. **Service Award Payments.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion seeking a service award payment for the Class Representatives in recognition for their contributions to this Action. Upstream agrees not to oppose Class Counsel's request for a service award not to exceed two thousand five hundred dollars and no/100 cents (\$2,500.00) per representative. The Settlement Administrator shall make the Service Award Payments to the Class Representatives from the Settlement Fund. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than twenty-one (21) days after the Effective Date.

94. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. 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.

XIV. ATTORNEYS' FEES, COSTS, EXPENSES

95. **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion for an award of attorneys' fees and litigation costs and expenses to be paid from the Settlement Fund. Upstream agrees not to oppose Class Counsel's request for an award of attorneys' fees not to exceed one-third (33.33%) of the Settlement Fund plus reimbursement of litigation costs and expenses which Class Counsel expects not to exceed fifty thousand dollars and 00/100 cents (\$50,000.00). Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class Counsel shall provide Upstream and the Settlement Administrator a properly completed and duly executed IRS Form W-9. Fee Award and Costs (plus any interest accrued thereon) shall be paid by the Settlement

Administrator, in the amount approved by the Court, no later than three (3) days after the Effective Date.

96. **Allocation.** Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Class Counsel and any other attorneys for Plaintiffs. Upstream shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

97. **No Effect on Agreement.** The Parties agree that the Court's approval or denial of any request for a Fee Award and Expenses are not conditions to this Settlement Agreement and are to be considered by the Court separately from the final approval, reasonableness, and adequacy of the settlement. Any reduction to the Fee Award and Expenses shall not operate to terminate or cancel this Settlement Agreement.

98. **Payment.** The Fee Award and Expenses awarded by the Court shall be paid by the Settlement Administrator from the Settlement Fund no later than twenty-one (21) days after the Effective Date.

XV. NO ADMISSION OF LIABILITY

99. **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 an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

100. **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 (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Upstream in the Action or in any proceeding in any court, administrative agency or other tribunal.

XVI. MISCELLANEOUS

101. **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.

102. **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, subject to Court approval. 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 Settlement Class Notice to the Settlement Class.

103. **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.

104. **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.

105. **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.

106. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and Upstream.

107. **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.

108. **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.

109. **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.

110. **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.

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

112. **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.

113. **Notices.** All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Hirlye R. "Ryan" Lutz, III
F. Jerome Tapley
Hunter Phares
CORY WATSON, P.C.
2131 Magnolia Avenue South
Birmingham, AL 35205

Jonathan S. Mann
Austin B. Whitten
**PITTMAN, DUTTON, HELLUMS,
BRADLEY & MANN P.C.**
2001 Park Place North, Suite 1100
Birmingham, AL 35203

All notices to Upstream provided for herein, shall be sent by overnight mail and email to:

James F. Monagle
MULLEN COUGHLIN LLC
426 W. Lancaster Avenue, Suite 200
Devon, PA 19333

Scott S. Brown
MIXON BROWN, LLC
44 Inverness Center Parkway, Suite 140
Birmingham, AL 35242

The notice recipients and addresses designated above may be changed by written notice.

114. **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 ON FOLLOWING PAGE]

By: Nick C. Whitehead
Nick C. Whitehead
Deputy General Counsel
**UPSTREAM ROLLCO LLC D/B/A
UPSTREAM REHABILITATION**

Date: 08/21/24

By: James F. Monagle
James F. Monagle
MULLEN COUGHLIN LLC

Date: 8/21/24

By: _____ Scott
S. Brown
MIXON BROWN, LLC

Date: _____

Counsel for Defendants

By: _____
Annesley H. DeGaris
Alexandra J. Calton
DEGARIS LAW, LLC

Date: _____

By: _____
Daniel Srourian
SROURIAN LAW FIRM, P.C.

Date: _____

By: _____
Hirlye R. "Ryan" Lutz, III
F. Jerome Tapley
Hunter Phares
CORY WATSON, P.C.

Date: _____

By: _____
Nicholas A. Migliaccio
Jason S. Rathod
MIGLIACCIO & RATHOD LLP

Date: _____

By: Taylor Bartlett
Taylor Bartlett
HENINGER GARRISON DAVIS, LLC

Date: _____

By: _____
A. Brooke Murphy
MURPHY LAW FIRM


Date: _____

By: _____
Hugh Middlebrook
General Counsel & Chief Legal Officer
**UPSTREAM ROLLCO LLC D/B/A
UPSTREAM REHABILITATION**

Date: _____

By: _____
James F. Monagle
MULLEN COUGHLIN LLC

Date: _____

By:  _____
Scott S. Brown
MIXON BROWN, LLC

Date: 8/21/24

Counsel for Defendants

By: _____
Annesley H. DeGaris
Alexandra J. Calton
DEGARIS LAW, LLC

Date: _____

By: _____
Daniel Srourian
SROURIAN LAW FIRM, P.C.

Date: _____

By: _____
Hirlye R. "Ryan" Lutz, III
F. Jerome Tapley
Hunter Phares
CORY WATSON, P.C.

Date: _____

By: _____
Nicholas A. Migliaccio
Jason S. Rathod
MIGLIACCIO & RATHOD LLP

Date: _____

By: _____
Taylor Bartlett
HENINGER GARRISON DAVIS, LLC

Date: _____

By: _____
A. Brooke Murphy
MURPHY LAW FIRM

Date: _____

By: _____
Hugh Middlebrook
General Counsel & Chief Legal Officer
**UPSTREAM ROLLCO LLC D/B/A
UPSTREAM REHABILITATION**

Date: _____

By: _____
James F. Monagle
MULLEN COUGHLIN LLC

Date: _____

By: _____
Scott S. Brown
MIXON BROWN, LLC

Date: _____

Counsel for Defendants

By: 
Annesley H. DeGaris
Alexandra J. Calton
DEGARIS LAW, LLC

Date: 8/19/24

By: 
Daniel Srourian
SROURIAN LAW FIRM, P.C.


Date: 08/20/24

By: _____
Hirlye R. "Ryan" Lutz, III
F. Jerome Tapley
Hunter Phares
CORY WATSON, P.C.

Date: _____

By: _____
Nicholas A. Migliaccio
Jason S. Rathod
MIGLIACCIO & RATHOD LLP

Date: _____

By: 
Taylor Bartlett
HENINGER GARRISON DAVIS, LLC

Date: _____

By: _____
A. Brooke Murphy
MURPHY LAW FIRM

Date: _____

By: _____
Hugh Middlebrook
General Counsel & Chief Legal Officer
**UPSTREAM ROLLCO LLC D/B/A
UPSTREAM REHABILITATION**

Date: _____

By: _____
James F. Monagle
MULLEN COUGHLIN LLC

Date: _____

By: _____
Scott S. Brown
MIXON BROWN, LLC

Date: _____

Counsel for Defendants

By: _____
Annesley H. DeGaris
Alexandra J. Calton
DEGARIS LAW, LLC

Date: _____

By: _____
Daniel Srourian
SROURIAN LAW FIRM, P.C.

Date: _____

By: _____
Hirlye R. "Ryan" Lutz, III
F. Jerome Tapley
Hunter Phares
CORY WATSON, P.C.

Date: 8/19/2024

By: _____
Nicholas A. Migliaccio
Jason S. Rathod
MIGLIACCIO & RATHOD LLP

Date: _____

By: _____
Taylor Bartlett
HENINGER GARRISON DAVIS, LLC

Date: _____

By: _____
A. Brooke Murphy
MURPHY LAW FIRM

Date: _____

By: _____
Hugh Middlebrook
General Counsel & Chief Legal Officer
**UPSTREAM ROLLCO LLC D/B/A
UPSTREAM REHABILITATION**

Date: _____

By: _____
James F. Monagle
MULLEN COUGHLIN LLC

Date: _____

By: _____
Scott S. Brown
MIXON BROWN, LLC

Date: _____

Counsel for Defendants

By: _____
Annesley H. DeGaris
Alexandra J. Calton
DEGARIS LAW, LLC

Date: _____

By: _____
Daniel Srourian
SROURIAN LAW FIRM, P.C.

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By: _____
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F. Jerome Tapley
Hunter Phares
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Date: 8/20/2024

By:  _____

Jonathan S. Mann
Austin B. Whitten
**PITTMAN, DUTTON, HELLUMS,
BRADLEY & MANN P.C.**

Date: 08/19/2024

By:  _____

Tyler J. Bean
SIRI & GLIMSTAD LLP

Date: 08 / 19 / 2024

By: _____

Gary M. Klinger
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**

Date: _____

Class Counsel

By: _____

Jeremy Hufstetler

Date: _____

By: _____

Adam Runk

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By: _____

Connie Hatfield

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By: _____

Yashvantsinh Jhala

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Dale Stark

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Lisa Kenny

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A'Tavion Morrissette

Date: _____

By: _____

Gene Sawyer

Date: _____

By:  _____

Robert Moffa

Date: 08 / 19 / 2024

By:  _____

Leah Harner

Date: 08 / 20 / 2024

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**MILBERG COLEMAN BRYSON
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Date: 8/22/2024

Class Counsel

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By: *Gene Sawyer*
Gene Sawyer (Aug 28, 2024 11:18 EDT)
Gene Sawyer

Date: 08/28/2024

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Jeremy Hufstetler

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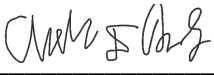
By: _____
Gary M. Klinger
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By: Dale Stark
Dale Stark

Date: 8/22/24

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By: *A'Tavion Morrissette*
A'Tavion Morrissette

Date: 8/20/2024

By: _____
Gene Sawyer

Date: _____

By: _____
Robert Moffa

Date: _____

By: _____
Leah Harner

Date: _____

By: Judy Young
Judy Young

Date: 08/20/2024

Class Representatives