

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

KIYA JOHNSON, SUSAN MUTNICK,
NOYIELLE SUTHERLAND, JASMINE
ROGERS, MARCUS ROBINSON, SHAKIRA
JONES, DEWANNA WASHINGTON, and
ANIKA FRANCIS individually and on behalf of
all others similarly situated,

Index No. 512485/2023

Plaintiffs,

v.

ONE BROOKLYN HEALTH SYSTEM, INC.,

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is made and entered into by and among Plaintiffs, for themselves individually and on behalf of the Settlement Class (as defined below), and Defendant One Brooklyn Health System, Inc. (“Defendant” or “OBH”), collectively (the “Parties”). This Settlement Agreement fully and finally resolves and settles all of Plaintiffs’ and the Settlement Class’s Released Claims, upon and subject to the terms and conditions hereof, and subject to the Court’s approval.

RECITALS

WHEREAS, on or around November 19, 2022, OBH identified suspicious activity within its internal computer network. OBH immediately initiated an incident response process. The investigation determined that an unauthorized party accessed OBH’s computer network and allegedly accessed and acquired documents on the system (the “Data Security Incident”).

WHEREAS, the information contained in the files that allegedly were accessed included names, Social Security numbers, driver’s license or state identification numbers, dates of birth, financial account information, medical treatment information, prescription information, medical diagnosis or condition information, and health insurance information (collectively, “Personal Information”).

WHEREAS, OBH began notifying impacted individuals about the Data Security Incident in or around April 2023.

WHEREAS, on April 26, 2023, Plaintiff Kiya Johnson filed the first of several putative class action lawsuits in this Court, captioned *Johnson v. One Brooklyn Health*, Index No. 512485/2023 (“*Johnson*”).

WHEREAS, on November 16, 2023, the Court issued an order consolidating *Johnson* and other related cases in this Court involving the OBH Data Security Incident pursuant to CPLR § 602(a).

WHEREAS, on December 15, 2023, Plaintiffs Kiya Johnson, Susan Mutnick, Noyielle Sutherland, Jasmine Rogers, Marcus Robinson, Shakira Jones, DeWanna Washington, and Anika Francis filed the operative Consolidated Class Action Complaint.

WHEREAS, on April 3, 2024, the Parties participated in mediation with Bennett G. Picker of the Stradley Ronon law firm.

WHEREAS, in preparation for the scheduled mediation, the Parties exchanged certain confidential information and documents. The Parties also prepared for mediation by setting forth their respective positions on the litigation and settlement in written mediation statements.

WHEREAS, the April 3, 2024 mediation was productive but did not result in the Parties reaching agreement.

WHEREAS, the Parties continued to negotiate following the mediation and, on May 14, 2024, Mr. Picker provided both sides with a mediator’s proposal to resolve the case. Each of the Parties accepted the mediator proposal over the ensuing days.

WHEREAS, with the assistance of Mr. Picker and pursuant to the terms set forth below, this Agreement resolves all actual and potential claims, actions, and proceedings as set forth in the release contained herein, by and on behalf of members of the Settlement Class defined herein, but excludes the claims of any Class Members who opt out from the Settlement Class pursuant to the terms and conditions herein.

WHEREAS, Plaintiffs and their counsel have thoroughly examined the law and facts relating to the matters at issue in the Action, to Plaintiffs’ claims, and to OBH’s potential defenses. Based on a thorough analysis of the facts and the law applicable to Plaintiffs’ claims in the Action, and taking into account the burden, expense, and delay of continued litigation, including the risks and uncertainties associated with litigating class certification and other defenses OBH may assert, a protracted trial and appeal(s), as well as the opportunity for a fair, cost-effective, and assured method of resolving the claims of the Settlement Class, Plaintiffs and their counsel believe that resolution is an appropriate and reasonable means of ensuring that the Settlement Class is afforded important benefits expediently. Plaintiffs, Plaintiffs’ Lead Counsel, and other Plaintiffs’ counsel have also taken into account the uncertain outcome and the risk of continued litigation, as well as the difficulties and delays inherent in such litigation, as well as OBH’s status as a safety-net/non-profit healthcare system.

WHEREAS, Plaintiffs and their counsel believe that the terms set forth in this Settlement Agreement confer substantial benefits upon the Settlement Class and have determined that they are fair, reasonable, adequate, and in the best interests of the Settlement Class.

WHEREAS, OBH has similarly concluded that this Agreement is desirable in order to avoid the time, risk, and expense of defending protracted litigation, and to resolve finally and completely the claims of Plaintiffs and the Settlement Class.

WHEREAS, this Agreement, whether or not consummated, and any actions or proceedings taken pursuant to this Agreement, are for settlement purposes only, and Plaintiffs acknowledge that OBH specifically denies any and all wrongdoing and has concluded this matter strictly to avoid protracted litigation. The existence of, terms in, and any action taken under or in connection with this Agreement shall not constitute, be construed as, or be admissible in evidence as, any admission by OBH of (i) the validity of any claim, defense, or fact asserted in the Action or any other pending or future action, or (ii) any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties.

WHEREAS, the foregoing Recitals are true and correct and are hereby fully incorporated in, and made a part of, this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree, as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall be defined as follows:

- 1.1 “Action” means the case captioned *Johnson, et al. v. One Brooklyn Health System, Inc.*, Index No. 512485/2023, pending in the Supreme Court of the State of New York, Kings County before the Honorable Carolyn E. Wade, along with all other cases consolidated therewith.
- 1.2 “Administrative Expenses” means all charges and expenses incurred by the Settlement Administrator as agreed upon by both Parties or by order of the Court in the administration of this Settlement, including, without limitation, all expenses and costs associated with claims administration, the Notice Plan and providing Notice to the Settlement Class. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.
- 1.3 “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement and Release. The terms of the Settlement Agreement are set forth herein including the exhibits hereto.
- 1.4 “Approved Claim(s)” means a claim as evidenced by a Claim Form submitted by a Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is physically signed or electronically verified by the Class Member; (c) satisfies the conditions of eligibility for a Settlement Benefit as set forth herein; and (d) has been approved by the Settlement Administrator.

- 1.5 “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the government of the State of New York.
- 1.6 “Claimant” means a Class Member who submits a Claim Form for a Settlement Payment.
- 1.7 “Claim Form” means the form attached hereto as **Exhibit A**, as approved by the Court, that Settlement Class Members may submit to file a claim to the Settlement Administrator under this Agreement. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the Settlement Website) by each Class Member who wishes to file a claim for their given share of the Settlement Benefits pursuant to the terms and conditions of this Agreement. The Claim Form shall be available for download from the Settlement Website. The Settlement Administrator shall mail a Claim Form, in hardcopy form, to any Class Member who so requests.
- 1.8 “Claims Deadline” means the date by which all Claim Forms must be received to be considered timely and shall be set as the date ninety (90) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Long Form Notice, the Summary Notice, the Claim Form, and the Court’s order granting Preliminary Approval.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Settlement Class.
- 1.10 “Class Representatives” and “Plaintiffs” means Kiya Johnson, Susan Mutnick, Noyielle Sutherland, Jasmine Rogers, Marcus Robinson, Shakira Jones, DeWanna Washington, and Anika Francis.
- 1.11 “Complaint” means the Consolidated Amended Complaint filed on December 15, 2023.
- 1.12 “Court” means the Supreme Court of the State of New York, Kings County.
- 1.13 “Data Security Incident” refers to the unauthorized access that is the subject of the Action which involved an unauthorized party accessing OBH’s computer network between approximately July 9, 2022 and November 19, 2022.
- 1.14 “Documented Loss” refers to monetary losses incurred by a Class Member and supported by Reasonable Documentation for attempting to remedy or remedying issues that are more likely than not a result of Data Security Incident. Documented Loss must be supported by Reasonable Documentation that a Class Member actually incurred unreimbursed losses and consequential expenses that are more likely than not related to the Data Security Incident and incurred between July 9, 2022 and the Claims Deadline.
- 1.15 “Effective Date” means the date upon which the Settlement contemplated by this Agreement shall become effective as set forth below.

- 1.16 “Entity” means any person, corporation, partnership, limited liability company, association, trust, agency, or other organization of any type.
- 1.17 “Escrow Account” means an interest-bearing bank escrow account established and administered by the Settlement Administrator.
- 1.18 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of reasonable litigation costs and expenses awarded by the Court to Plaintiffs’ Counsel, to be paid from the Settlement Fund.
- 1.19 “Final Approval Order and Judgment” means the order to be entered by the Court after the Final Approval Hearing, which approves the Settlement Agreement. A proposed Final Approval Order and Judgment will be submitted contemporaneously with Plaintiffs’ Motion for Final Approval of the Settlement.
- 1.20 “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement and whether to issue the Final Approval Order and Judgment.
- 1.21 “Long Form Notice” means the long form notice of settlement substantially in the form attached hereto as **Exhibit B**.
- 1.22 “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund including interest accrued thereon, after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Administrative Expenses incurred pursuant to this Settlement Agreement; (ii) Service Awards approved by the Court; (iii) any amounts approved by the Court for the Fee Award and Costs; and (iv) Taxes, if any.
- 1.23 “Notice” means notice of the proposed class action settlement to be provided to Class Members pursuant to the Notice Plan approved by the Court in connection with preliminary approval of the Settlement. The Notice shall consist of the Summary Notice, the Long Form Notice, the Settlement Website, and the toll-free telephone line.
- 1.24 “Notice Date” means the date upon which Notice is initially disseminated to the Settlement Class by the Settlement Administrator, which shall be no later than forty-five (45) days after the entry of the Preliminary Approval Order.
- 1.25 “Notice Plan” means the settlement notice program, as approved by the Court, developed by the Settlement Administrator and described in this Agreement for disseminating Notice to the Class Members of the terms of this Agreement and the Final Approval Hearing.
- 1.26 “OBH’s Counsel,” “Defendant’s Counsel”, and references to counsel for OBH mean attorneys Claudia McCarron and Daniel M. Braude at the law firm Mullen Coughlin LLC.

- 1.27 “OBH” or “Defendant” means One Brooklyn Health System, Inc.
- 1.28 “Objection Deadline” means the date by which Class Members must file and postmark required copies of any written objections, pursuant to the terms and conditions herein, to this Settlement Agreement and to any application and motion for (i) the Fee Award and Costs, and (ii) the Service Awards, which shall be forty-five (45) days following the Notice Date. The deadline for filing an objection will be clearly set forth in the Settlement Class Notice.
- 1.29 “Opt-Out Period” means the period in which a Class Member may submit a Request for Exclusion, pursuant to the terms and conditions herein, which shall expire forty-five (45) days following the Notice Date. The deadline for filing a Request for Exclusion will be clearly set forth in the Settlement Class Notice.
- 1.30 “Parties” means the Plaintiffs and Defendant OBH.
- 1.31 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.
- 1.32 “Personal Information” means the personally identifiable information and personal health information involved in the Data Security Incident, including names, dates of birth, Social Security Numbers, driver’s license and state ID numbers, financial account and payment card information, medical information, and health insurance information, as outlined in the Consolidated Amended Complaint.
- 1.33 “Plaintiffs’ Proposed Executive Committee” means Joseph M. Lyon of The Lyon Firm, Brian C. Gudmundson of Zimmerman Reed, A. Brooke Murphy of Murphy Law Firm, Kenneth J. Grunfeld of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, and Gary F. Lynch of Lynch Carpenter LLP.
- 1.34 “Plaintiffs’ Lead Counsel” shall be Benjamin F. Johns of Shub & Johns LLC and Ben Barnow of Barnow and Associates, P.C.
- 1.35 “Plaintiffs’ Proposed Liaison Counsel” means Adam Pollock of Pollock Cohen LLP.
- 1.36 “Preliminary Approval Order” means an order by the Court that preliminarily approves the Settlement (including, but not limited to, the forms and procedure for providing Notice to the Settlement Class), permits Notice to the proposed Settlement Class, establishes a procedure for Class Members to object to or opt out of the Settlement, and sets a date for the Final Approval Hearing, without material change to the Parties’ agreed-upon proposed preliminary approval order attached hereto as **Exhibit C**.
- 1.37 “Qualified Settlement Fund” means an account established by the Settlement Administrator that meets the requirements of 26 C.F.R. § 1.468B-1(c).

- 1.38 “Reasonable Documentation” means third-party documentation supporting a claim for Documented Loss including, but not limited to, credit card statements, bank statements, invoices, police reports, contemporaneous correspondence, telephone records, and receipts.
- 1.39 “Related Entities” means Defendant’s past or present parents, subsidiaries, divisions, and related or affiliated entities, each of their respective predecessors, successors, directors, trustees, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Security Incident or who pleads *nolo contendere* to any such charge, and includes any entity with whom Defendant contracted that, on behalf of Defendant, held data involved in the Data Security Incident who is, was or could have been named as a defendant in any of the lawsuits in the Action.
- 1.40 “Released Claims” means any and all past, present, and future claim, liability, right, demand, suit, obligation, damage, including consequential damage, loss or cost, punitive damage, attorneys’ fees, costs, and expenses, action or cause of action, of every kind or description arising from, concerning, or related to the Data Security Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Action —whether known or Unknown (as the term “Unknown Claims” is defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that was or could have been asserted against a Released Party on behalf of the Settlement Class regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, and regardless of whether they are foreseen or unforeseen, suspected or unsuspected, fixed or contingent, or arising out of the claims or causes of action of every kind and description that were brought, alleged, argued, raised or asserted in any pleading or court filing in the Action. Released Claims do not include any claim of personal injury from any alleged medical negligence.
- 1.41 “Released Parties” means Defendant and its Related Entities and each of their past and present affiliates, predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and any and all of their past, present and future officers, managers, directors, trustees, employees, equity holders, stockholders, partners, servants, agents, successors, heirs, executors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing. Each of the Released Parties may be referred to individually as a “Released Party.”
- 1.42 “Service Awards” means the amount awarded by the Court and paid to the Class Representatives in recognition of their role in this litigation, as set forth below.
- 1.43 “Settlement” means this settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

- 1.44 “Settlement Administrator” means Epiq, the third-party class action settlement administrator selected by the Parties subject to the approval of the Court. Under the supervision of Plaintiffs’ Lead Counsel, the Settlement Administrator shall establish and implement the Notice Plan and receive any requests for exclusion from the Class. Plaintiffs’ Lead Counsel and OBH may, by agreement, substitute a different Settlement Administrator, subject to Court approval.
- 1.45 “Settlement Benefit(s)” means any Settlement Payment, the Credit Monitoring and Insurance Services, the Documented Loss Payments, the Cash Fund Payments, the Prospective Relief set forth in Section 3 herein, and any other benefits Class Members receive pursuant to this Agreement, including non-monetary benefits and relief, the Fee Award and Costs, and Administrative Expenses.
- 1.46 “Settlement Class” and “Class” means all natural persons who are U.S. residents whose Personal Information may have been compromised, accessed or involved in the Data Security Incident. Excluded from the Settlement Class are: (1) the judges presiding over the Action and members of their immediate families and their staff; (2) OBH, its affiliates, subsidiaries, parent companies, successors, predecessors, and any entity in which OBH or its parents, have a controlling interest, and its current or former officers, directors and trustees; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person. Based upon representations by OBH, the estimated size of the Settlement Class is 235,251.
- 1.47 “Settlement Fund” means the sum of \$1,500,000.00 to be paid by or on behalf of OBH, as specified in Section 3.1 of this Agreement.
- 1.48 “Settlement Payment” means a payment in the amount of \$1,500,000.00 to be made by or on behalf of OBH to create the Settlement Fund pursuant to Section 3 herein.
- 1.49 “Settlement Website” means the Internet website to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of Claim Forms, and provides access to relevant case documents including the Settlement Class Notice, information about the submission of Claim Forms, and other relevant documents, including downloadable Claim Forms.
- 1.50 “Summary Notice” means the summary notice of the proposed Settlement herein, substantially in the form attached hereto as **Exhibit D**.
- 1.51 “Taxes” means all federal, state, or local taxes of any kind on any income earned by the Settlement Fund and the expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants). All (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as

a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the operation and implementation of this Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Agreement (“Tax Expenses”), shall be paid out of the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, an Administration Expense and shall be timely paid by the Settlement Administrator, out of the Settlement Fund, without prior order from the Court and the Settlement Administrator shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Class Members with Approved Claims any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(l)(2)). The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Agreement. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the Settlement Administrator shall be the “administrator.” The Settlement Administrator shall timely and properly file or cause to be filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund and the escrow account (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this Agreement) shall be consistent with this Section and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in this Agreement.

- 1.52 “Unknown Claims” means any and all Released Claims that OBH or any Class Representative or Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date including but not limited to any which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to the Settlement. Plaintiffs expressly shall have, and each other Class Member shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims, including Unknown Claims, other than personal injury resulting from medical negligence. Class Representatives and Plaintiffs’ Counsel acknowledge, and each Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement. Furthermore, subject to the above exception regarding personal injury claims, to the extent applicable and with respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment 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, 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 RELEASED PARTY.

- 1.53 “Unique Identifier” means the individualized numerical code that the Settlement Administrator will provide to all Settlement Class Members to whom Direct Mail will be sent pursuant to the Notice Plan below. In order to be eligible to submit a claim, Settlement Class Members must provide their Unique Identifier or otherwise satisfactorily demonstrate to the Settlement Administrator that they are eligible to participate in the Settlement.

2. DATA SECURITY IMPROVEMENTS

2.1 Defendant has agreed to provide a confidential declaration to Class Counsel indicating data security-related measures that it has implemented or will be implementing. Costs associated with these information security improvements will be paid by Defendant separate and apart from other settlement benefits. The Parties agree that this is a material term of the Settlement and may be disclosed to the Court in camera.

3. SETTLEMENT FUND / MONETARY PAYMENT / BENEFITS DETAILS

3.1

- (a) Within thirty (30) days of the Court granting preliminary approval of this Settlement Agreement, Defendant shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement in an amount estimated by the Claims Administrator (said amount being part of and not in addition to the Settlement Fund);
- (b) Within thirty (30) days of the Effective Date, Defendant shall pay into a Qualified Settlement Fund to be established and maintained by the Settlement Administrator the remaining portion of the Settlement Fund; and,
- (c) Within forty (40) days of the Effective Date, the Settlement Administrator shall pay to Class Counsel any attorneys’ fees, costs, expenses, and service award pursuant.
- (d) The Qualified Settlement Fund shall be maintained in an interest-bearing bank account deposits with commercial banks with excess capital exceeding One Billion USD 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 Qualified Settlement Fund will be used to

pay Approved Claims, any remaining Administrative Expenses (to be agreed upon by both parties), the Fee Award and Costs, and Service Awards.

- (e) 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.
- (f) The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1 at all times after the creation of the Escrow Account. All Taxes shall be paid out of the Escrow Account. Defendant, Defendant’s Counsel, Plaintiffs, and Plaintiffs’ Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold Defendant, Defendant’s Counsel, Plaintiffs, and Plaintiffs’ Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification). For the purpose of the Internal Revenue Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the “administrator” of the Settlement Fund. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in the previous Section) shall be consistent with this Section and in all events shall reflect that all taxes (including the Taxes, any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.
- (g) The Settlement Administrator shall maintain control over the Settlement Fund and shall be responsible for all disbursements. The Settlement Administrator shall not disburse any portion of the Settlement Fund except as provided in this Agreement and with the written agreement of Plaintiffs’ Lead Counsel and Defendant’s Counsel or by order of the Court. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement or further order of the Court.
- (h) For the avoidance of doubt, and for purposes of this Settlement Agreement only, OBH’s liability under this Settlement Agreement shall not exceed \$1,500,000.00.

3.2 Allocation of Net Settlement Fund: The Settlement Fund, net of costs for notice, applicable Taxes, and administration, Plaintiffs’ Fee Award and Costs, and class representative Service Awards (the “Net Settlement Fund”), will be allocated among

class members pursuant to a plan of allocation set forth below. Settlement Class Members will have the option to file claims for either (i) Credit Monitoring and Documented Loss Payments, or in the alternative to those benefits, (ii) an Alternative Cash Payment, as described below:

- (a) Credit Monitoring. Settlement Class Members will be entitled to claim two years of three-bureau credit monitoring. Settlement Class Members who submit a claim for Credit Monitoring will receive an enrollment code, and will have a full year from the receipt of the code to activate the monitoring from the Effective Date.
- (b) Reimbursement for Actual Out-of-Pocket Losses and Attested Time (“Documented Loss Payment”). Class Members may submit a claim for actual out-of-pocket losses that are more likely than not related to the Data Security Incident and time spent dealing with it (in accordance with the schedule below), cumulatively up to \$2,500.00 per individual. Class Members must provide Reasonable Documentation for the following losses (aside from reasonable lost time, which shall not be subject to a documentary proof requirement), and affirm under penalty of perjury their belief that the claimed losses are due to the Data Incident:
 - i. Long distance telephone charges.
 - ii. Cell phone minutes (if charged by the minute).
 - iii. Internet usage charges (if either charged by the minute or incurred solely as a result of the Data Security Incident).
 - iv. Costs of credit reports purchased between July 9, 2022 and the Claims Deadline.
 - v. Documented costs paid for credit monitoring services and/or fraud resolution services purchased between July 9, 2022 and the Claims Deadline, provided claimant provides sworn statement that the monitoring or service was purchased primarily because of the Data Security Incident and not for other purposes.
 - vi. Documented expenses directly associated with dealing with identity theft or identity fraud related to the Data Security Incident.
 - vii. Other documented losses incurred by Class Members that are more likely than not related to the Data Security Incident as reasonably determined by the Settlement Administrator.
 - viii. Hours of lost time dealing with the Data Security Incident at \$25/hour, up to four (4) hours maximum per Settlement Class Member, who must provide a sworn check-box attestation that time

claimed was spent dealing with the aftermath of the Data Security Incident, and a brief description of the time spent.

- (c) Alternative Cash Payment. In the alternative to seeking a Documented Loss Payment and Credit Monitoring, Settlement Class Members may submit a claim to receive a flat-fee Alternative Cash Payment. The amount of the Alternative Cash Payment will be determined in accordance with the Plan of Allocation in Section 3.7 after amounts sufficient to pay reasonable Administrative Expenses incurred pursuant to this Settlement Agreement, Service Awards approved by the Court, any amounts approved by the Court for the Fee Award and Costs, Taxes, and Approved Claims for benefits in Sections 3.2(a) and 3.2(b) have been deducted from the Settlement Fund.
- 3.3 Settlement Payment Methods. Class Members will be provided the option to receive any Settlement Payment due to them pursuant to the terms of this Agreement via various payment methods. In the event that Class Members do not exercise this option with the Settlement Administrator, they will receive their Settlement Payment via a physical check sent to them by U.S. Mail.
- 3.4 Deadline to File Claims. Claim Forms must be postmarked, if mailed, or received electronically, if submitted electronically, within ninety (90) days after the Notice Date.
- 3.5 The Settlement Administrator. The Settlement Administrator shall have the authority to determine whether a Claim Form is valid, timely, and complete. To the extent the Settlement Administrator determines a claim filed by a Class Member is deficient for a reason other than late posting, within a reasonable amount of time, the Settlement Administrator shall notify the Claimant (with a copy to Plaintiffs' Lead Counsel) of the deficiencies and notify the Claimant that he or she shall have twenty-one (21) days to cure the deficiencies and re-submit the claim. No notification is required for late-posted claims. The Settlement Administrator shall exercise reasonable discretion to determine whether a Claimant is an eligible class member, and whether the Claimant has cured the deficient claim. If the Claimant fails to cure the deficiency, the claim shall stand as denied, and the Class Member shall be so notified if practicable. Any Class Member who makes a claim for Documented Loss Payment that is denied (and cannot be cured after a reasonable period of time) will have their claim deemed one for an Alternative Cash Payment, rather than have it be denied outright.
- 3.6 Timing of Settlement Benefits. Within forty-five (45) days after: (i) the Effective Date; or (ii) all Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever date is later, the Settlement Administrator shall cause funds to be distributed to each Class Member with an Approved Claim.
- 3.7 Plan of Allocation. The Settlement Fund shall be used to make payments in the following order: (i) all Administrative Expenses, (ii) Fee Award and Costs and Plaintiff Service Awards, as approved by the Court, (iii) the costs of providing the Credit Monitoring pursuant to Section 3.2.(a); (iv) Reimbursement for Actual Out-of-

Pocket Losses and Attested Time pursuant to Section 3.2(b); and then (v) approved Alternative Cash Benefit payments pursuant to Section 3.2(c) on a *pro rata* basis to exhaust the balance of the Net Settlement Fund.

- 3.8 Deadline to Deposit or Cash Physical Checks. Class Members with Approved Claims who receive a Documented Loss Payment or an Alternative Cash Fund Payment, by physical check, shall have one hundred twenty (120) days following distribution to deposit or cash their physical check.
- 3.9 Distribution of Remainder Funds. To the extent any monies remain in the Net Settlement Fund more than one hundred twenty (120) days after the distribution of all Settlement Payments to the Class Members, a subsequent Settlement Payment will be evenly made to all Class Members with Approved Claims for monetary payments under either Sections 3.2(b) or 3.2(c) above and who cashed or deposited the initial payment they received, provided that the average check amount is equal to or greater than Three USD and zero cents (\$3.00). The distribution of this remaining Net Settlement Fund shall continue until the average check or digital payment amount in a distribution is less than \$3.00, whereupon the amount remaining in the Net Settlement Fund, if any, shall be distributed by mutual agreement of the Parties to a Court-approved non-profit recipient. Should it become necessary to distribute any remaining amount of the Net Settlement Fund to a Court-approved non-profit recipient, the Parties shall petition the Court for permission to do so, providing the Court with details of the proposed non-profit recipient.
- 3.10 Returned Payments. For any Settlement Payment 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 one additional effort to make any digital payments and engage in reasonable efforts to find a valid address (in the case of physical checks) and resend the Settlement Payment within thirty (30) days after the physical check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to repay or resend a Settlement Payment.
- 3.11 Residue of Settlement Fund. No portion of the Settlement Fund shall revert or be repaid to OBH after the Effective Date.
- 3.12 Custody of Settlement Fund. The Settlement Fund shall be deposited into the Escrow Account but 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 returned to Defendant in the event this Settlement Agreement is voided, terminated, or cancelled. In the event this Settlement Agreement is voided, terminated, or cancelled due to lack of final approval from the Court or any other reason, any amounts remaining in the Settlement Fund after payment of all Administrative Expenses incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any Taxes, shall be returned to Defendant OBH, and no other person or entity shall have any further claim whatsoever to such amounts.

- 3.13 Non-Reversionary. This is a non-reversionary settlement. As of the Effective Date, all rights of OBH in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as set forth herein. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to OBH.
- 3.14 Payment / Withdrawal Authorization. No amounts from the Settlement Fund may be withdrawn unless (i) expressly authorized by the Court's order granting approval to the Settlement Agreement or (ii) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable Administrative Expenses from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Plaintiffs' Lead Counsel and OBH's Counsel with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) Business Days prior to making such withdrawal or payment.
- 3.15 Payments to Class Members. The Settlement Administrator, subject to such supervision and direction of the Court and/or Plaintiffs' Lead Counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund to Class Members pursuant to this Agreement.
- 3.16 Taxes. All Taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes (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 Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Taxes do not include any federal, state, and local tax owed by any Claimant, Class Representative, or Class Member as a result of any benefit or payment received as a result of the Settlement. Each Claimant, Class Representative, and 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.
- 3.17 Limitation of Liability.
- (a) OBH and its Counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Plaintiffs' Counsel, the Settlement Administrator, or any of their 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, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.
- (b) Class Representatives and Plaintiffs' Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their 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, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.
- (c) The Settlement Administrator shall indemnify and hold Plaintiffs' Counsel, the Settlement Class, Class Representatives, OBH, and OBH's Counsel harmless 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 Plan 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, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

4. RELEASE

- 4.1 Upon the Effective Date, and in consideration of the Settlement Benefits described herein, the Class Representatives and all Class Members on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, release and discharge all Released Claims, including Unknown Claims, against each of the Released Parties and agree to refrain from, and to the fullest extent permitted by law shall be permanently barred and enjoined from, instituting, directing or maintaining any lawsuit, contested matter, adversary proceeding, or miscellaneous proceeding against any of the Released Parties that arises out of the same facts and circumstances set forth in the class action complaint in this Action. This Settlement releases claims against only the Released Parties. This Settlement does not release, and it is not the intention of the Parties to this Settlement to release, any claims against any third party, nor any actual claim or potential claim for medical negligence. Nor does this Release apply to any Class Member who timely excludes himself or herself from the Settlement.

- 4.2 The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes that risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

5. REQUIRED EVENTS AND COOPERATION BY PARTIES

- 5.1 Preliminary Approval. Plaintiffs' Lead Counsel shall submit this Agreement to the Court and shall promptly move the Court to enter the Preliminary Approval Order, in the form attached as **Exhibit C**.
- 5.2 Cooperation. The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish all requirements of this Agreement on the schedule set by the Court, subject to the terms of this Agreement. If, for any reason, the Parties determine that the schedule set by the Court is no longer feasible, the Parties shall use their best judgment to amend the schedule to accomplish the goals of this Agreement.
- 5.3 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. OBH reserves the right to contest class certification for any and all other purposes. The Parties further stipulate to designate the Class Representatives as the representatives for the Settlement Class.
- 5.4 Final Approval. The Parties shall request that the Court schedule the Final Approval Hearing for a date that is no earlier than one hundred twenty (120) days after the entry of the Preliminary Approval Order.

6. CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

- 6.1 Notice shall be disseminated pursuant to the Court's Preliminary Approval Order.
- 6.2 The Settlement Administrator shall oversee and implement the Notice Plan approved by the Court. All costs associated with the Notice Plan shall be paid from the Settlement Fund.
- 6.3 Direct Notice. No later than the Notice Date, or such other time as may be ordered by the Court, the Settlement Administrator shall disseminate Notice to the Class Members via direct mail and other means as appropriate. It is intended that the Settlement Administrator will provide notice to the same list of persons who were initially notified by OBH of the Data Security Incident.

- 6.4 Publication or Social Media Notice. The Settlement Administrator shall also issue a press release announcing the Settlement on or around the Notice Date. Plaintiffs' Lead Counsel also reserve the right to implement targeted social media advertisements to inform Class Members of the Settlement. Any expenses for the Press Release or Social Media Advertisements will be paid from the Settlement Fund.
- 6.5 Settlement Class List. Within twenty-one (21) days after the issuance of the Preliminary Approval Order, OBH will provide to the Settlement Administrator a list of the names and any mail or email contact information of the Class Members that it has in its possession, custody, or control, which shall not include individuals known to be deceased. Every person on the Settlement Class List will be provided with a Unique Identifier by the Settlement Administrator that they will be asked for when they submit claims. Anyone who believes they are a Settlement Class Member but are not on the Settlement Class List (and therefore did not receive a Unique Identifier) may contact the Settlement Administrator and, upon providing reasonable proof, will be provided with a Unique Identifier and allowed to participate in the Settlement.
- 6.6 Confidentiality. Any information relating to Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to the Class Members (as set forth herein) and allowing them to recover under this Agreement; shall be kept in strict confidence by the Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall be destroyed after all distributions to Class Members have been made; and shall not be used for any other purpose. Moreover, because the Class Member list and information contained therein will be provided to the Settlement Administrator solely for purposes of providing the Class Notice and Settlement Benefits and processing opt-out requests, the Settlement Administrator will execute a confidentiality and non-disclosure agreement with Plaintiffs' Lead Counsel and OBH's Counsel, and will ensure that any information provided to it by Class Members, Plaintiffs' Lead Counsel, OBH, or OBH's Counsel, will be secure and used solely for the purpose of effecting this Settlement.
- 6.7 Fraud Prevention. The Settlement Administrator shall use reasonable and customary fraud-prevention mechanisms to prevent (i) submission of Claim Forms by persons other than potential Class Members, (ii) submission of more than one Claim Form per person, and (iii) submission of Claim Forms seeking amounts to which the Claimant is not entitled. In the event a Claim Form is submitted without a unique Class Member identifier, the Settlement Administrator shall employ reasonable efforts to ensure that the Claim is valid.
- 6.8 Settlement Website. Prior to any dissemination of the Summary Notice and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the Internet in accordance with this Agreement. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement,

the Preliminary Approval Order entered by the Court, the operative Consolidated Class Action Complaint in the Action, and will (on its URL landing page) notify the Settlement Class of the date, time, and place of the Final Approval Hearing. The Settlement Website shall also contain the Final Approval Order and Judgment, once entered by the Court. The Settlement Website shall also provide a toll-free telephone number and mailing address through which Class Members may contact the Settlement Administrator directly.

- 6.9 Opt-Out/Request for Exclusion. The Notice shall explain that the procedure for Class Members to opt out and exclude themselves from the Settlement Class is by notifying the Settlement Administrator in writing, postmarked no later than forty-five (45) days after the Notice Date. Any Class Member may submit a Request for Exclusion from the Settlement at any time during the Opt-Out Period. To be valid, the Request for Exclusion must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. In the event a Class Member submits a Request for Exclusion to the Settlement Administrator via U.S. Mail, such Request for Exclusion must be in writing and must identify the case name; state the name, address, telephone number and Unique Identifier of the Class Member seeking exclusion; identify any lawyer representing the Class Member seeking to opt out; be physically signed by the person(s) seeking exclusion; and must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Johnson et al. v. One Brooklyn Health System, Inc.*” Any person who elects to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. Requests for Exclusion may only be made on an individual basis, and no person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.
- 6.10 Objections. The Notice shall explain that the procedure for Class Members to object to the Settlement is by submitting written objections to the Court no later than forty-five (45) days after the Notice Date (the “Objection Deadline”). Any Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Class Member who wishes to object to the Settlement, the Settlement Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Final Approval Hearing and show cause, if any, for why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement Benefits should not be approved, or why the Service Awards and/or the Fee Award and Costs should not be granted, may do so, but must proceed as set forth in this Section. No Class Member or other person will be heard on such matters unless they have filed in this Action the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider, within forty-five (45) days following the Notice Date. All written objections and supporting papers must clearly (a) state the Class Member’s full name, current mailing address, and telephone number; (b) include proof that the Class Member is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Data Security

Incident); (c) identify the specific factual and legal grounds for the objection; (d) identify all counsel representing the Class Member, if any; (e) include a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past five (5) years; and (f) contain a statement regarding whether the Class Member (or counsel of his or her choosing) intends to appear at the Final Approval Hearing. All objections must be submitted to the Settlement Administrator, Plaintiffs' Lead Counsel identified below, and to the Court either by mailing them to: Supreme Court of the State of New York, Kings County, 360 Adams St., Brooklyn, NY 11201 or by filing them in person at the Courthouse. All objections must be filed or postmarked on or before the Objection Deadline, as set forth above. Any Class Member who does not make their objections in the manner and by the date set forth in this Section shall be deemed to have waived any objections and shall be forever barred from raising such objections.

7. SETTLEMENT ADMINISTRATION

7.1 Submission of Claims.

- (a) Submission of Electronic and Hard Copy Claims. Class Members may submit electronically verified Claim Forms to the Settlement Administrator through the Settlement Website or may download Claim Forms to be filled out, signed, and submitted 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 shall reject any Claim Forms that are incomplete, inaccurate, or not timely received and will provide Claimants notice and the ability to cure defective claims, unless otherwise noted in this Agreement.
- (b) Review of Claim Forms. The Settlement Administrator will review Claim Forms submitted by Class Members to determine whether they are eligible for a Settlement Payment.

7.2 Settlement Administrator's Duties.

- (a) Cost Effective Claims Processing. The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner, and calculate Settlement Payments in accordance with this Agreement.
- (b) Dissemination of Notices. The Settlement Administrator shall disseminate the Notice Plan as provided for in this Agreement.
- (c) Maintenance of Records. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as required by

applicable law in accordance with its business practices and such records will be made available to Plaintiffs' Lead Counsel and OBH's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Plaintiffs' Lead Counsel and OBH's Counsel with information concerning Notice, administration, and implementation of the Settlement. Without limiting the foregoing, the Settlement Administrator also shall:

- (i) Receive Requests for Exclusion from Class Members and provide Plaintiffs' Lead Counsel and OBH's Counsel a copy thereof no later than five (5) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion or other requests from Class Members after expiration of the Opt-Out Period, the Settlement Administrator shall promptly provide copies thereof to Plaintiffs' Lead Counsel and OBH's Counsel;
- (ii) Provide weekly reports to Plaintiffs' Lead Counsel and OBH's Counsel that include, without limitation, reports regarding the number of Claim Forms received, the number of Claim Forms approved by the Settlement Administrator, the amount of Claims Forms received (including a breakdown of what types of claims were received and approved), and the categorization and description of Claim Forms rejected by the Settlement Administrator. The Settlement Administrator shall also, as requested by Plaintiffs' Lead Counsel or OBH's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- (iii) Make available for inspection by Plaintiffs' Lead Counsel and OBH's Counsel the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice;
- (iv) Cooperate with any audit by Plaintiffs' Lead Counsel or OBH's Counsel, who shall have the right but not the obligation to review, audit, and evaluate all Claim Forms for accuracy, veracity, completeness, and compliance with the terms and conditions of this Agreement.

7.3 Requests For Additional Information: In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Class Member who submits a Claim Form.

8. SERVICE AWARDS

- 8.1 Class Representatives and Plaintiffs' Lead Counsel may seek Service Awards to the Class Representatives of up to \$1,000.00 for each. Plaintiffs' Lead Counsel will file a motion seeking Court approval of the requested Service Awards at least fourteen (14) days prior to the Objection Deadline.
- 8.2 The Settlement Administrator shall pay any Service Awards approved by the Court to the Class Representatives from the Settlement Fund. Such Service Awards shall be paid by the Settlement Administrator, in the amount approved by the Court, within forty (40) business days after the Effective Date.
- 8.3 In the event the Court declines to approve, in whole or in part, the payment of the Service Award in the amounts 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 Award shall constitute grounds for cancellation or termination of this Agreement.
- 8.4 The Parties did not discuss or agree upon the amount of Service Awards for which Class Representatives can apply for until after the substantive terms of the Settlement had been agreed upon.

9. ATTORNEYS' FEES, COSTS, AND EXPENSES

- 9.1 Plaintiffs' Lead Counsel may file a motion, at least fourteen (14) days prior to the Objection Deadline, seeking an award of attorneys' fees of up to 1/3 (one-third) of the Settlement Fund, and, additionally, reasonably incurred litigation expenses and costs (not to exceed \$50,000.00) (the "Fee Award and Costs" motion). The Fee Award and Cost motion shall be posted on the Settlement Website promptly after it is filed, and before the deadline for filing objections or opt-outs.
- 9.2 The Settlement Administrator shall pay any attorneys' fees, costs, and expenses awarded by the Court to Plaintiffs' Lead Counsel in the amount approved by the Court, from the Settlement Fund, within forty (40) days after the Effective Date.
- 9.3 Unless otherwise ordered by the Court, Plaintiffs' Lead Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst themselves and other Plaintiffs' firms that have filed a case and worked on this matter.
- 9.4 The Settlement is not conditioned upon the Court's approval of an award of Plaintiffs' Lead Counsel's Fee Award and Costs or Service Awards.

10. EFFECTIVE DATE, MODIFICATION, AND TERMINATION

- 10.1 The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:
- (a) OBH and Plaintiffs' Lead Counsel execute this Agreement;

- (b) The Court enters the Preliminary Approval Order attached hereto as **Exhibit C**, without material change;
 - (c) Notice is provided to the Settlement Class consistent with the Preliminary Approval Order;
 - (d) The Court enters the Final Approval Order and Judgment without material change; and
 - (e) The Final Approval Order and Judgment have become “Final” because: (i) the time for appeal, petition, rehearing or other review has expired; or (ii) if any appeal, petition, request for rehearing or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, such dismissal or affirmance has become no longer subject to further appeal or review, no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, requests for rehearing or other review has expired.
- 10.2 In the event that (1) the Court does not issue the Preliminary Approval Order or Final Approval Order; (2) the Effective Date does not occur; or (3) the Final Approval Order is modified or reversed in any material respect by any appellate or other court, the Parties shall have 60 days from the date of such non-occurrence during which the Parties shall work together in good faith in considering, drafting, and submitting reasonable modifications to this Agreement to address any issues identified by the Court or that otherwise caused the Preliminary Approval Order or Final Approval Order not to issue or the Effective Date not to occur. If such efforts are unsuccessful, either Party may at their sole discretion terminate this Agreement on seven days written notice to the other Party. For avoidance of any doubt, neither Party may terminate the Agreement while an appeal from an order granting approval of the Settlement is pending.
- 10.3 Notwithstanding anything else herein, in the event the terms or conditions of this Settlement Agreement are materially modified by any court, any Party in its sole discretion to be exercised within fourteen (14) days after such modification may declare this Settlement Agreement null and void. In the event of a material modification by any court, and in the event the Parties do not exercise their unilateral options to withdraw from this Settlement Agreement pursuant to this Section, the Parties shall meet and confer within fourteen (14) days of such ruling to attempt to reach an agreement as to how best to effectuate the court-ordered modification. For the avoidance of doubt, a “material modification” shall not include any reduction by the Court of the Fee Award and Costs and/or Service Awards.
- 10.4 Within seven (7) days of receipt from the Settlement Administrator of a list of all timely opt-outs, Defendant shall, in its sole discretion, have the right to terminate this Settlement if the number of timely opt-outs exceeds 1,000 Settlement Class Members.

- 10.5 Except as otherwise provided herein, in the event the Settlement is terminated, the Parties to this Agreement, including Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. In addition, the Parties agree that in the event the Settlement is terminated, any orders entered pursuant to the Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses.
- 10.6 In the event this Agreement is terminated pursuant to any provision herein, then the Settlement proposed herein shall become null and void and shall have no legal effect, and the Parties will return to their respective positions existing immediately before the execution of this Agreement.
- 10.7 Notwithstanding any provision of this Agreement, in the event this Agreement is terminated or otherwise does not become Final (e.g., disapproval by the Court or any appellate court), OBH shall have no obligation to pay attorneys' fees and litigation costs or expenses or service awards and shall only be required to pay costs and expenses related to notice and administration that were already incurred. Under no circumstances will Proposed Class Counsel or any Settlement Class Member be liable for any costs or expenses related to notice or administration.

11. NO ADMISSION OF WRONGDOING OR LIABILITY

- 11.1 This Agreement, whether or not consummated, any communications and negotiations relating to this Agreement or the Settlement, and any proceedings taken pursuant to the Agreement:
- (a) shall not be offered or received against Defendant OBH or any Related Entities as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Defendant OBH or any Related Entities with respect to the truth of any fact alleged by any Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of OBH or Related Entities;
 - (b) shall not be offered or received against OBH as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by OBH;
 - (c) shall not be offered or received against OBH as evidence of a presumption, concession or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against OBH, in any other civil, criminal, or administrative or

governmental action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Parties may refer to it to effectuate the liability protection granted them hereunder;

- (d) shall not be construed against OBH as an admission or concession that the consideration to be given hereunder represents the relief that could be or would have been awarded after trial; and
- (e) shall not be construed as or received in evidence as an admission, concession or presumption against the Class Representatives or any Class Member that any of their claims are without merit, or that any defenses asserted by OBH have any merit.

12. REPRESENTATIONS

- 12.1 Each Party represents that: (i) such Party has full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval; (ii) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party; (iii) this Agreement constitutes a valid, binding, and enforceable agreement; and (iv) no consent or approval of any person or entity is necessary for such Party to enter into this Agreement.

13. NOTICE

- 13.1 All notices to Plaintiffs or Plaintiffs' Counsel provided for in this Agreement shall be sent by email (to all email addresses set forth below) and by First-Class mail to all of the following:

Benjamin F. Johns
SHUB & JOHNS LLC
Four Tower Bridge
200 Barr Harbor Drive, Ste 400
Conshohocken, PA 19428
bjohns@shublwyers.com

Ben Barnow
BARNOW AND ASSOCIATES, P.C.
205 West Randolph Street, Suite 1630
Chicago, IL 60606
b.barnow@barnowlaw.com

Lead Counsel for Plaintiffs and the Putative Class

- 13.2 All notices to OBH or OBH's Counsel provided for in this Agreement shall be sent by email and First-Class Mail to the following:

Claudia McCarron
Daniel M. Braude
MULLEN COUGHLIN LLC
426 W. Lancaster Avenue, Suite 200
Devon, PA 19333
cmccarron@mullen.law
dbraude@mullen.law

Counsel for Defendant One Brooklyn Health System, Inc

- 13.3 All notices to the Settlement Administrator provided for in this Agreement shall be sent by email and First Class mail to the following address:

One Brooklyn Health System Data Security Incident Litigation
[address]

- 13.4 The notice recipients and addresses designated in this Section may be changed by written notice agreed to by the Parties and posted on the Settlement Website.

14. MISCELLANEOUS PROVISIONS

- 14.1 Representation by Counsel. The Class Representatives and OBH represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.
- 14.2 Best Efforts. The Parties agree that they will make all reasonable efforts needed to reach the Effective Date and fulfill their obligations under this Agreement.
- 14.3 Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the Exhibits thereto, are contractual and are not a mere recital, and each signatory warrants that he, she, or it is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that they or it represents.
- 14.4 Integration. This Agreement constitutes the entire agreement among the Parties and no representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.
- 14.5 Drafting. The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof. This Settlement Agreement is a collaborative effort of the Parties and their attorneys that was negotiated on an arm's-length basis between parties of equal bargaining power. Accordingly, this Agreement shall be neutral, and no ambiguity shall be construed in favor of or against any of the Parties. The Parties

expressly waive any otherwise applicable presumption(s) that uncertainties in a contract are interpreted against the party who caused the uncertainty to exist.

- 14.6 Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the persons who executed this Agreement or their successors-in-interest.
- 14.7 Waiver. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 14.8 Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, except as provided in Section 10.4, such provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.
- 14.9 Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties thereto.
- 14.10 Survival. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.
- 14.11 Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of New York, without reference to its conflict of law provisions.
- 14.12 Interpretation.
- (a) Definitions apply to the singular and plural forms of each term defined.
 - (b) Definitions apply to the masculine, feminine, and neuter genders of each term defined.
 - (c) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."
- 14.13 No Precedential Value. The Parties agree and acknowledge that this Agreement carries no precedential value.
- 14.14 Fair and Reasonable. The Parties and their counsel believe this Agreement is a fair and reasonable compromise of the disputed claims, in the best interest of the Parties,

and have arrived at this Agreement as a result of arm's-length negotiations with the assistance of an experienced mediator.

- 14.15 Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement.
- 14.16 Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.
- 14.17 Exhibits. The exhibits to this Agreement and any exhibits thereto are an integral and material part of the Settlement. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.
- 14.18 Counterparts and Signatures. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts. Digital signatures shall have the same force and effect as the original.
- 14.19 Facsimile and Electronic Mail. Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.
- 14.20 No Assignment. Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.
- 14.21 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. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.
- 14.22 Dollar Amounts. All dollar amounts are in United States dollars.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized counsel:

SHUB & JOHNS LLC



Dated: August 2, 2024

Benjamin F. Johns
On behalf of Plaintiffs

BARNOW AND ASSOCIATES, P.C.



Dated: August __, 2024

Ben Barnow
On behalf of Plaintiffs

MULLEN COUGHLIN LLC



Dated: August 16, 2024

Daniel M. Braude
On behalf of Defendant,
One Brooklyn Health System, Inc.