

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

In Re: Medical Informatics Engineering,  
Inc., Customer Data Security Breach  
Litigation  
(MDL 2667)

Case No.: 3:15-MD-2667

This Document Relates to All Cases

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement, as of the date of execution below (the “Settlement Agreement,” “Settlement,” “Agreement,” or “Stipulation”), is made and entered into, subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure, by and among the following settling parties (“Parties”): (i) Settlement Class Representatives on behalf of themselves and the Settlement Class, and (ii) Defendants. In consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a final approval order and judgment, all claims of the Settlement Class against Defendants in the Action shall be settled and compromised upon the terms and conditions contained herein. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all of the Released Claims (defined below), upon and subject to the terms and conditions hereof.

**RECITALS**

WHEREAS, Settlement Class Representatives assert that, between May 7, 2015 and June 2, 2015, an unauthorized third party infiltrated and accessed Defendants’ computer systems and stole the protected personal information and protected health information of over 3 million individuals whose information was stored in Defendants’ computer systems;

WHEREAS, on or about July 17, 2015, Defendants began mailing notification of the Data Breach to affected individuals;

WHEREAS, Defendants offered affected individuals, at no cost to the affected individuals, a two-year membership in identity theft repair and credit monitoring services provided by Experian;

WHEREAS, more than twenty lawsuits were filed against Defendants following the Data Breach;

WHEREAS, on December 10, 2015, the Judicial Panel on Multidistrict Litigation

transferred the cases to the Northern District of Indiana for coordinated or consolidated pretrial proceedings (ECF No. 1);

WHEREAS, on January 20, 2016, an initial status hearing was held before the Honorable Judge Robert L. Miller, Jr. (ECF No. 31);

WHEREAS, on February 4, 2016, Irwin B. Levin of Cohen & Malad, LLP was appointed as sole lead counsel and interim class counsel (ECF No. 55);

WHEREAS, on March 22, 2016, Plaintiffs filed their Consolidated Amended Class Action Complaint asserting claims for breach of contract, negligence, negligence *per se*, breach of the implied covenant of good faith and fair dealing, negligent misrepresentation, unjust enrichment, violation of state consumer laws, violation of state data breach statutes, and violation of state medical and health information privacy statutes (ECF No. 65);

WHEREAS, in light of the financial condition of the Defendants and the eroding insurance coverage available for a possible resolution, on April 13, 2016, the Parties participated in a full day mediation session with the Honorable Sanford M. Brook (Ret.) of Judicial Arbitrator Group, Inc.;

WHEREAS, on May 6, 2016, the Parties participated in a second mediation session with Judge Brook;

WHEREAS, throughout their mediation sessions and for weeks thereafter, the Parties engaged in an extensive evaluation and discussion of the relevant facts and law, and the Parties carefully considered the risk and uncertainties of continued litigation and all other factors bearing on the merits of settlement;

WHEREAS, on June 6, 2016, the Parties attended a telephonic status conference and informed the Court that they had reached an agreement on the essential terms of a settlement (ECF No. 92);

WHEREAS, on June 8, 2016, the Parties filed a joint motion to stay the proceedings to allow the Parties time to satisfy the settlement's contingencies, which, among other things, included the resolution of regulatory inquiries and investigations (ECF No. 94);

WHEREAS, on June 10, 2016, the Court granted the Parties' joint motion to stay (ECF No. 95);

WHEREAS, on April 20, 2017, the Parties attended a scheduling conference to which the regulatory entities investigating Defendants were invited, and some of whom attended, in an effort to move the proposed resolution to the preliminary approval stage;

WHEREAS, on April 3, 2018, having determined that the regulatory inquiries and investigations had not made sufficient progress to satisfy the contingencies necessary to enter

into the proposed settlement, interim lead counsel requested that the Court end the stay (ECF No. 134);

WHEREAS, on June 11, 2018, Defendants filed their Motion to Dismiss Plaintiffs' Consolidated Amended Class Action Complaint (ECF No. 138);

WHEREAS, on July 25, 2018, Plaintiffs filed their Response in Opposition to Defendants' Motion to Dismiss (ECF No. 143);

WHEREAS, on August 8, 2018, Defendants filed their Reply in Support of the Motion to Dismiss (ECF No. 144);

WHEREAS, the Parties negotiated a revised Case Management Order (ECF No. 150), which the Court subsequently entered (ECF No. 152);

WHEREAS, on January 28, 2019, the Parties participated in an all-day mediation with the participation of the Multi-State Attorneys General and under the supervision of Judge Brook (ret.), and made further progress toward moving the proposed resolution to the preliminary approval stage;

WHEREAS, on February 14, 2019, the Parties negotiated and requested a stay to allow the Parties and the Multi-State Attorneys General time to satisfy the class settlement and Multi-State settlement contingencies (ECF No. 159);

WHEREAS, on February 21, 2019, the Court granted the Motion to Stay (ECF No. 161);

WHEREAS, on March 4, 2019, the Parties attended a telephonic status conference, at which the Parties informed the Court of progress toward resolution of this matter (ECF No. 166);

WHEREAS, on April 4, 2019, the Parties attended a telephonic status conference, at which the Parties agreed to a brief extension of the stay;

WHEREAS, on May 2, 2019, the Parties attended a telephonic status conference, at which the stay was lifted (ECF No. 171);

WHEREAS, Settlement Class Counsel have conducted sufficient informal discovery, have fully investigated the facts and law relevant to the subject matter of the Action, and have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens, and costs of further prosecution of the Action, and taking into account the financial condition of Defendants, the eroding insurance coverage available for resolution, and the substantial benefits to be received pursuant to this Agreement as set forth below, and for the purpose of putting to rest all controversies with the Defendants that were alleged in the operative Class Action Complaint, that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, the Parties now agree to settle the Action in its entirety, without any admission of liability by Defendants, with respect to all Released Claims (defined below) of the Settlement Class. The Parties intend this Agreement to bind the Parties and all members of the Settlement Class 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, the Parties agree, subject to approval by the Court, as follows:

## 1. DEFINITIONS

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

1.1. “Action” means all the actions that have been filed in, transferred to, or otherwise assigned to the Court and included in coordinated or consolidated pretrial proceedings as part of *In re Medical Informatics Engineering, Inc.*, No. 3:15-MD-2667 (N.D. Ind.).

1.2. “Administrative Costs” means all costs and expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, determining the eligibility of any person to be a Settlement Class Member, administering, calculating and distributing the approved Claims from the Settlement Fund to Settlement Class Members, and administering and approving Election Forms for Identity Theft Protection Services, and distributing activation codes for those services.

1.3. “Attorneys’ Fees and Expense Award” means such funds as may be awarded by the Court to Settlement Class Counsel to compensate Settlement Class Counsel for their fees and expenses in connection with the Action.

1.4. “Claim” or “Reimbursement Claim” means a written request, in electronic or paper form, by a Settlement Class Member, consistent with the provisions of this Agreement, seeking reimbursement for Economic Losses.

1.5. “Claimant” means a Settlement Class Member who submits a Claim.

1.6. “Claims Period” means the period for submitting Claims ending ninety (90) days after the Notice Date.

1.7. “Court” refers to the United States District Court Judge for the Northern District of Indiana, Robert L. Miller, Jr.

1.8. “Data Breach” means the infiltration and access by an unauthorized third party of Defendants’ computer systems between May 7, 2015 and June 2, 2015 that allowed the exfiltration of the personal and health information of the Settlement Class Members.

1.9. “Defendants” refers to (a) Medical Informatics Engineering, Inc., (b) NoMoreClipboard, LLC, (c) Enterprise Health, LLC and (d) K&L Holdings, LLC.

1.10. “Economic Losses” means out-of-pocket costs that a Settlement Class Member actually incurred that are fairly traceable to the Data Breach and not attributable to bodily injury or harm (including mental suffering). Economic Losses may include, without limitation, the following: unreimbursed fraud losses or charges; professional fees incurred in connection with identity theft or falsified tax returns; credit freezes; credit monitoring that was ordered after May 2015 through the date on which Identity Theft Protection Services become available through this Settlement Agreement; miscellaneous expenses such as notary, tax, postage, copying, mileage, and long-distance telephone charges; and time spent remedying issues related to the Data Breach at \$15 per hour or unpaid time off work at the actual hourly rate of that Settlement Class Member, whichever is greater. Settlement Class Members shall not be compensated for more than two (2) hours of time spent remedying issues related to the Data Breach without a detailed showing how this time was expended and why it was necessary.

1.11. “Effective Date” means the date on which the Judgment entered pursuant to this Settlement Agreement becomes Final.

1.12. “Election Deadline” means the last day for Settlement Class Members to submit the Election Form to enroll in the ID Experts credit monitoring services offered under the Agreement, which shall be ninety (90) days after the Notice Date.

1.13. “Escrow Agent” means, subject to approval by the Court, KCC Class Action Services, LLC.

1.14. “Execution Date” means the last date on which all parties have executed this Agreement.

1.15. “Fee and Expense Application” means any application by Settlement Class Counsel for an award of attorneys’ fees and reimbursements of expenses, as set forth in Paragraph 10.

1.16. “Final” means, with respect to any judicial ruling or order, that: (1) if no appeal, motion for reargument, motion for rehearing, petition for *writ of certiorari*, or other writ has been filed, the time has expired to file such an appeal, motion for reargument, motion for rehearing, petition for writ of certiorari, or other writ; or (2) if an appeal, motion for reargument, motion for rehearing, petition for a writ of certiorari, or other writ has been filed, the judicial ruling or order has been affirmed with no further right of review, or such appeal, motion, petition, or writ has been denied or dismissed with no further right of review. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any application for attorneys’ fees or expenses will not in any way delay or preclude the Judgment from becoming Final.

1.17. “Final Approval Order” and “Judgment” means the order finally approving the terms of this Agreement and a separate judgment to be entered by the Court, pursuant to Federal Rule of Civil Procedure 58(a), dismissing the Action with prejudice. If the Court enters separate

orders addressing the matters constituting final approval, then “Final Approval Order” includes all such orders.

1.18. “Identity Theft Protection Services” means the services described in Section 5.2.

1.19. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with preliminary approval of the Settlement.

1.20. “Notice Date” means the deadline to disseminate Notice to the Settlement Class, which is 30 days after the Court issues the preliminary approval order.

1.21. “Notice Program” means the methods for providing Notice of this Settlement to the Settlement Class Members, including (1) a Summary Notice sent by electronic mail (“Email Notice”) to each Settlement Class Member for whom Defendants or the Settlement Administrator can ascertain an email address; (2) a Summary Notice sent by mail (“Postcard Notice”) to each Settlement Class Member whose email notice was undeliverable or who did not open the email notice and for whom Defendants or the Settlement Administrator can ascertain a mailing address with reasonable effort or by implementing a standard skip trace; and (3) by posting a long-form notice on the Settlement Website (“Long-Form Notice”). The forms of Notice shall be substantially in the forms attached as Exhibits A-B to this Agreement and approved by the Court. The Notice Program shall be effected in substantially the manner provided in Paragraph 8.

1.22. “Objection Period” means the period during which a Settlement Class Member may file an objection to the Settlement, which period shall expire sixty (60) days following the Notice Date, subject to Court approval. The deadline for filing an objection to the Settlement or the Fee Application shall be set forth clearly in the Notice.

1.23. “Opt-Out Period” means the period during which a Settlement Class Member may file a request to be excluded from the Settlement Class, which period shall expire sixty (60) days following the Notice Date, subject to Court approval. The deadline for filing a request for exclusion shall be set forth clearly in the Notice.

1.24. “Plaintiff” means a person who was named as a plaintiff in any complaint filed in one of the Actions or in *In re Medical Informatics Engineering, Inc.*, No. 3:15-MD-2667 (N.D. Ind.).

1.25. “Preliminary Approval” means an order, providing for, among other things, preliminary approval of the Settlement;

1.26. “Released Claims” means all claims to be released as specified in Paragraph 9.

1.27. “Released Parties” means those persons or entities released as specified in Paragraph 9.

1.28. “Releases” means all of the releases specified in Paragraph 9.

1.29. “Releasing Parties” means Plaintiffs, Settlement Class Representatives, and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns.

1.30. “Service Awards” means payments, subject to Court approval and not to exceed \$1,000 each and \$22,000 in the aggregate, to compensate the Settlement Class Representatives for their efforts in the Action on behalf of the Settlement Class.

1.31. “Settlement” means the settlement of the Action, between and among the Settlement Class Representatives, on behalf of themselves and the Settlement Class, and Defendants, as set forth and reflected in this Agreement.

1.32. “Settlement Administrator” means, subject to approval by the Court, KCC Class Action Services, LLC, a nationally recognized and experienced class-action settlement and claims administrator.

1.33. “Settlement Class” means all persons who fall into the Settlement Class to be certified pursuant to section 4.1, who did not opt out of the Settlement.

1.34. “Settlement Class Members” means members of the Settlement Class who did not opt out of the Settlement.

1.35. “Settlement Class Counsel” refers to Irwin B. Levin of Cohen & Malad, LLP.

1.36. “Settlement Class Representative” means all Plaintiffs named in the Consolidated Amended Class Action Complaint in *In re Medical Informatics Engineering, Inc.* No. 3:15-MD-2667 (N.D. Ind.) including Antoinette Ann Franklin, Ira Kushner, Steve Walker, Allan Lewis, David Wayne Perry, James Young, Cynthia Weinman, Patricia Justice, Thomas Jones, Herbert L. Schuttler, Jeremy Brann, Cynthia Benoit, Floyd Harris, Lauren Fern Rainess, Anita Colter, Richard Larson, Michael Osbourn, Mark Guth, Richard DiGovine, Brandon Warrick, James Mueller, and Michelle Moore.

1.37. “Settlement Consideration” means that consideration set forth in Paragraph 5.

1.38. “Settlement Fund” means two million seven hundred fifty thousand United States dollars (\$2,750,000) and any interest or other income or gains earned which such amount is held in the Escrow Account.

1.39. “Settlement Website” means the website that the Settlement Administrator will establish, as provided for in Paragraph 7.2.4.

## **2. DENIAL OF WRONGDOING AND LIABILITY**

2.1. Defendants deny the material factual allegations and legal claims asserted in the Action, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Similarly, this Agreement provides for no admission of wrongdoing or liability by any of the Released Parties. This Agreement is entered into solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

### 3. THE BENEFITS OF THE SETTLEMENT

3.1. Settlement Class Counsel believes that the proposed settlement set forth in this Settlement Agreement confers substantial benefits upon the Settlement Class.

3.2. Settlement Class Counsel recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeal.

3.3. Settlement Class Counsel also has taken into account the Defendants' financial condition, the amount of eroding insurance coverage available for resolution, as well as the uncertain outcome and the risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation. Settlement Class Counsel is mindful of possible defenses related to the claims asserted in the Action and under Rule 23 of the Federal Rules of Civil Procedure. Based on Settlement Class Counsel's evaluation of all of these factors, Settlement Class Counsel has determined that the Settlement is in the best interests of the Settlement Class.

### 4. SETTLEMENT CLASS CERTIFICATION

4.1. For purposes of settlement only, Settlement Class Counsel shall seek, and Defendants shall not oppose, certification of the Settlement Class, pursuant to Federal Rule of Civil Procedure 23(b)(3), defined as follows:

**Settlement Class.** All persons whose personal or medical information was compromised by the Medical Informatics Engineering, Inc. Data Breach.

4.2. For settlement purposes only, Settlement Class Counsel shall also seek, and Defendants shall not oppose, appointment of Settlement Class Counsel, and appointment of Settlement Class Representatives to represent the Settlement Class.

4.3. Defendants do not consent to certification of the Settlement Class (or to the propriety of class treatment) for any purpose other than to effectuate the settlement of this Action. Defendants' agreement to provisional certification does not constitute an admission of wrongdoing, fault, liability, or damage of any kind. Defendants reserve the right to contest any motion to certify a class for any purpose other than settlement of the Action.

4.4. If this Settlement Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective



Date for any reason does not occur, the order certifying the Settlement Class for purposes of effectuating the Settlement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and the Action shall return to the procedural posture on June 1, 2019, in accordance with this paragraph. Neither party nor counsel shall refer to or invoke the vacated findings and/or order relating to class settlement or Rule 23 of the Federal Rules of Civil Procedure if this Settlement Agreement is not consummated and the Action is later litigated and contested by Defendants under Rule 23 of the Federal Rules of Civil Procedure.

## **5. SETTLEMENT CONSIDERATION**

In consideration for the releases provided in this Settlement Agreement, Defendants will provide the following relief to the Settlement Class:

### **5.1. Settlement Fund**

5.1.1 Defendants agree to make a settlement payment of two million seven hundred fifty thousand United States dollars (\$2,750,000) ten (10) days after the Court enters the Preliminary Approval Order. Defendants shall cause the settlement payment to be paid to the Settlement Administrator who will deposit the settlement payment into an interest-bearing escrow account (the “Escrow Account”) with the Escrow Agent.

5.1.2 The Settlement Fund shall bear interest and shall be invested only in United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury, repurchase agreements collateralized by such securities, and mutual funds or money market accounts that invest exclusively in the foregoing securities or bank account(s) insured by the FDIC. The Settlement Fund shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder and shall make tax filings and provide reports to Settlement Class Counsel for tax purposes. The Parties shall not take a position in any filing or before any tax authority inconsistent with such treatment. The Settlement Fund will pay any federal, state, and local taxes that may apply to the income of the Settlement Fund. The Escrow Agent or the Settlement Administrator shall arrange for the preparation and filing of all tax reports, forms, and returns required to be filed, prepared or disseminated by the Settlement Fund and for the payment from the Settlement Fund of any taxes owed, and will send Settlement Class Counsel copies of all such filings and receipts of payment in a timely manner. Neither the Parties nor their respective counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Settlement Fund, as such filings shall be the sole responsibility of the Escrow Agent or the Settlement Administrator.

5.1.3 As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for:

- (a) Identity Theft Protection Services;
- (b) Economic Losses;

- (c) Administrative Costs; and
- (d) Service Awards.

## 5.2. **Identity Theft Protection Services.**

5.2.1 Identity Theft Protection Services shall be provided by ID Experts. ID Experts will provide “MyIDCare™ Identity Protection Services” to Settlement Class Members who elect Identity Theft Protection Services and enroll with ID Experts, including:

- (a) Single bureau credit monitoring and alerts. Monitoring of one credit bureau for changes to the Settlement Class Members’ credit file such as new credit inquiries, new accounts opened, delinquent payments, improvements in the Settlement Class Members’ credit report, bankruptcies, court judgments and tax liens, new addresses, new employers, and other activities that affect the Settlement Class Members’ credit record. Alerts provide notification of inquiries against the credit record.
- (b) Cyberscan™. Dark web monitoring of underground websites, chat rooms, and malware to identify trading or selling of personal information like Social Security Numbers, bank accounts, email addresses, medical ID numbers, driver’s license numbers, passport numbers, credit and debit cards, phone numbers, and other unique identifiers.
- (c) Identity theft insurance. Identity theft insurance will reimburse Settlement Class Members for expenses associated with restoring their identity should they become a victim of identity theft. If a Settlement Class Member’s identity is compromised, the policy provides coverage up to \$1,000,000, with no deductible, from an A.M. Best “A-rated” carrier. Coverage is subject to the terms, limits, and/or exclusions of the policy.
- (d) Fully managed identity recovery. Provides recovery and restoration for identity theft issues, including triage process for those who report suspicious activity, a personally assigned IDCare Specialist to fully manage recovery and restoration of each identity theft case and, expert guidance for those with questions about identity theft and protective measures.
- (e) Member advisory services.
- (f) Lost wallet assistance.

5.2.2 Settlement Class Members who do not submit a timely request for exclusion from the Settlement Class shall have the option to sign-up for the Identity Theft Protection

Services. If a Settlement Class Member elects to utilize the Identity Theft Protection Services, he or she can make that election by the Election Deadline. Settlement Class Members shall make their Identity Theft Protection Services election pursuant to the Election Form, which is attached hereto as Exhibit C. To the extent there is any ambiguity with respect to the election to receive Identity Theft Protection Services, and the Settlement Administrator cannot resolve the ambiguity, the ambiguous Election Form shall default to an election of Identity Theft Protection Services.

5.2.3 The Settlement Administrator shall collect and process all Election Forms and shall submit the necessary information to ID Experts. The Settlement Administrator shall send to each valid Identity Theft Protection Services claimant, via email, or for claimants with no email address by U.S. Mail, an activation code to be used to activate Identity Theft Protection Services via the website of ID Experts. Valid Identity Theft Protection Services claimants may activate Identity Theft Protection Services for a period of one (1) year from the date the Settlement Administrator sends the activation code. ID Experts shall provide Identity Theft Protection Services to all those that validly elect to enroll in Identity Theft Protection Services who timely activate those services.

5.2.4 Identity Theft Protection Services shall be provided for a period of at least three (3) years starting from the date the Identity Theft Protection Services are activated by the Settlement Class Member.

5.2.5 The Settlement Administrator shall within five (5) days of the Effective Date pay ID Experts \$1,368,527.25 from the Settlement Fund for providing Identity Theft Protection Services.

5.2.6 If there are funds remaining in the Settlement Fund after all valid claims, expenses, and costs have been paid or reserved for, the Settlement Administrator shall use the remaining funds to pay ID Experts to extend Identity Theft Protection Services in one-year increments. In that event, ID Experts shall notify Settlement Class Members by email who have submitted valid Election Forms for Identity Theft Protection Services that the services period has been extended and for how long those services will be provided.

### **5.3. Reimbursement of Economic Losses.**

5.3.1 Any Settlement Class Member may submit one or more Claims for reimbursement for Economic Losses. Claims may be submitted electronically or in paper format. Reimbursement Claims must be submitted pursuant to Reimbursement Form attached as Exhibit D and in accordance with the reimbursement terms under the provisions of this Agreement. All Reimbursement Claims must be submitted to the Settlement Administrator on or before the expiration of the Claims Period.

5.3.2 Settlement Class Members who wish to make a timely and properly supported Claim for reimbursement of Economic Losses actually incurred that are fairly traceable to the Data Breach must provide to the Settlement Administrator the information required to evaluate the claim, including: (a) the Claimant's name and current address; (b) any bills or invoices documenting the amount of the Claim and proof that the bills or invoices were paid; and (c) a

statement signed under penalty of perjury indicating that: (i) the Economic Losses claimed are actually incurred and fairly traceable to the Data Breach; and (ii) the total amount claimed has not been reimbursed by any other person or entity.

**5.3.3 Adjudication of Reimbursement Claims.** The Settlement Administrator shall verify that each person who submits a Claim for reimbursement is a Settlement Class Member and shall determine whether and to what extent the Claim reflects valid Economic Losses that are actually incurred and fairly traceable to the Data Breach. The Settlement Administrator shall determine whether a Claimant's supporting materials are sufficient to support a Claim and the amount of such a Claim and shall use reasonable procedures to screen claims for abuse, fraud, duplication, or ineligibility. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent an Economic Loss Claim Form reflects valid Economic Losses actually incurred that are fairly traceable to the Data Breach.

**5.3.4** At an appropriate time, the Settlement Administrator shall send a written notice to Settlement Class Members whose Reimbursement Forms were rejected as deficient. Settlement Class Members shall have twenty-one (21) days from the date of the Settlement Administrator's notice to correct all deficiencies in their Reimbursement Claims. If a Settlement Class Member fails to correct all deficiencies within twenty-one (21) days from receiving the written notice, the Settlement Administrator shall deny the Settlement Class Member's Claim. The Settlement Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has corrected the deficient claim such that it reflects a valid Economic Loss actually incurred that is fairly traceable to the Data Breach;

**5.3.5** Economic Losses shall be deemed fairly traceable to the Data Breach if (i) the alleged wrongdoing occurred on June 2, 2015 or thereafter, (ii) the Settlement Class Member executes a statement signed under penalty of perjury indicating that the Economic Losses claimed are fairly traceable to the Data Breach, (iii) the alleged wrongdoing involved misuse of the type of personal information inadvertently disclosed in the Data Breach, and (iv) the Settlement Administrator determines by a preponderance of evidence that it is fairly traceable to the Data Breach.

**5.3.6** No decisions by the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendants as to any matter of fact, law, or evidence having any collateral effect on any Claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

**5.3.7 Payment on Claims.** The Settlement Administrator shall reserve \$500,000 from the Settlement Fund to pay valid Economic Losses and shall not pay more than that amount in the aggregate for valid Economic Losses. Valid Economic Losses shall be determined and paid as soon as practicable after the Effective Date. Each Settlement Class Member who submits an Economic Loss Claim for valid Economic Losses shall receive a payment equal to the lesser of (i) the amount of the Settlement Class Member's valid Economic Losses or (ii) \$4,000; provided, however, that if the amount of valid claims submitted exceeds \$500,000, all such claims shall be subject to a pro rata reduction.

#### 5.4. **Residue of Settlement Fund**

5.4.1 No portion of the Settlement Fund shall revert to Defendants. Any residual funds remaining in the Settlement Fund after all the payments, expenses and costs identified in this Agreement have been paid, or reserved for, shall be used to extend the Identity Theft Protection Services beyond the original termination date for as long as possible. To the extent the residual funds are insufficient to extend the Identity Theft Protection Services or there are residual funds remaining once the Identity Theft Protection Services have been extended, such remaining funds shall be subject to a cy pres distribution to the Center for Education and Research in Information Assurance Security at Purdue University.

5.5. **Non-Monetary Relief.** Defendants shall comply with: (a) the “Injunctive Provisions,” located in Article VII of the Consent Order and Judgment entered on May 28, 2019 in *Arizona et al. v. Medical Informatics Engineering, Inc. d/b/a Enterprise Health, LLC and K&L Holdings, and NoMoreClipboard, LLC*, Case No. 18-0969 in the United States District Court for the Northern District of Indiana, South Bend Division and (b) the “Corrective Action Obligations” described in Article V of the April 23, 2019 Resolution Agreement between MIE and the United States Department of Health and Human Services, Office for Civil Rights.

### 6. **SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW AND PRELIMINARY AND FINAL APPROVAL**

6.1. **Preliminary Approval.** As soon as practicable following the full execution of this Agreement by all Parties, Settlement Class Counsel shall promptly move the Court for entry of a Preliminary Approval Order. A proposed Preliminary Approval Order shall be attached to the motion and shall be substantially in the form set forth in Exhibit E. The motion for Preliminary Approval shall request that the Court, among other things:

6.1.1 Approve the terms of the Settlement as within the range of fair, adequate, and reasonable;

6.1.2 Provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3), appoint the Settlement Class Representatives of the Settlement Class and appoint Settlement Class Counsel as counsel for the Settlement Class;

6.1.3 Approve the Notice Program set forth in Paragraph 8 and provide that, following the Preliminary Approval Order, the Settlement Administrator shall cause the Notice to be provided in accordance with the procedures set forth in Paragraph 8.1 within thirty (30) days of preliminary approval;

6.1.4 Approve the procedures set forth in Paragraph 8.3 and Paragraph 8.9 for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement or Fee Application;

6.1.5 Find that the Court will retain jurisdiction over all claims relating to this Agreement;

6.1.6 Maintain the stay of the Action pending Final Approval of the Settlement;

6.1.7 Stay, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning Released Claims;

6.1.8 Schedule the Final Approval Hearing at which time the Court will conduct an inquiry into the fairness of the Settlement, whether it was made in good faith and should be finally approved, and whether to approve Settlement Class Counsel's application for attorneys' fees and expenses, and for Service Awards ("Final Approval Hearing" or "Fairness Hearing");

6.1.9 Provide that all Settlement Class Members will be bound by the Final Approval Order and Judgment dismissing the Action with prejudice;

6.1.10 Establish dates by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement and Settlement Class Counsel's Fee and Expense Application and the Service Award; and

6.1.11 Within ten (10) days of the filing of the motion for Preliminary Approval, Defendants shall, at their own cost, serve or cause to be served a notice of the proposed Settlement in accordance with the requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

6.2. **Final Approval.** The Final Approval Hearing shall be scheduled no earlier than ninety (90) days after the CAFA notices are mailed to ensure compliance with 28 U.S.C. § 1715. By no later than fourteen (14) days prior to the Final Approval Hearing, the Parties shall file any responses to any objections and any briefs in support of final approval of the Settlement. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fees and expenses, or Service Award application, provided the objectors filed timely objections that met the requirements listed in Paragraph 8.10.

6.2.1 At the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and whether to approve Settlement Class Counsel's request for attorneys' fees and expenses, and the Service Awards. The proposed Final Approval Order that will be filed with the motion for Final Approval shall, among other things;

- (a) Determine that the Settlement is fair, adequate, and reasonable and approve the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- (b) Finally certify the Settlement Class for settlement purposes only;
- (c) Determine that the Notice provided satisfied due process requirements;

- (d) Dismiss the Action with prejudice;
- (e) Bar and enjoin the Releasing Parties from asserting any of the Released Claims, as set forth in Paragraph 9, including during the pendency of any appeal from the Final Approval Order;
- (f) Release Defendants and the Released Parties from the Released Claims, as set forth in Paragraph 9; and
- (g) Reserve the Court's continuing and exclusive jurisdiction over Defendants and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

## **7. SETTLEMENT ADMINISTRATOR**

7.1. The Settlement Administrator shall administer various aspects of the Settlement as described in this Agreement and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing the Notice to Settlement Class Members as described in Paragraph 8; establishing and operating the Settlement Website and toll-free number; administering the provision of identity theft protection services and the Claims process as described in Paragraph 5.

7.2. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include the following:

7.2.1 Obtaining from Defendants the name, last known email address, and last known mailing or other address information for Settlement Class Members (to the extent it is reasonably available) and updating the mailing addresses received, through the National Change of Address database or other similar data source, for the purpose of sending the Summary Notice to Settlement Class Members;

7.2.2 Establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;

7.2.3 Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;

7.2.4 Establishing and maintaining a Settlement Website as an additional means for Settlement Class Members to obtain notice of and information about the Settlement through and including hyperlinked access to this Agreement; the Notice; the order preliminarily approving the Settlement; the Final Approval Order; Election Forms; Reimbursement Forms; and such other documents as Settlement Class Counsel and Defendants agree to post or that the Court orders posted. These documents shall remain on the Settlement Website at least until expiration of the Election Deadline and the Reimbursement Deadline. The URL of the Settlement Website will be

agreed upon in writing by Defendants and Settlement Class Counsel. The Settlement Website shall not include any advertising and shall not bear or include the Defendants' logo or trademarks.

7.2.5 Responding to any mailed or emailed Settlement Class Member inquiries;

7.2.6 Processing all written notifications of exclusion from the Settlement Class;

7.2.7 Providing reports and, no later than ten (10) days after the Opt-Out Deadline, a final report to Settlement Class Counsel and Defendants, that summarize the total number of written notifications of exclusion received;

7.2.8 Providing reports to Settlement Class Counsel and Defendants that set forth the number of Election Forms received since the prior reporting period, and the total number of Election Forms received to date;

7.2.9 Providing reports to Settlement Class Counsel and Defendants that set forth the number and amount of Reimbursement Forms received since the prior reporting period, the total number and amount of Reimbursement Forms received to date, and Reimbursement Forms permitted, and the number rejected;

7.2.10 In advance of the Final Approval Hearing, preparing a declaration to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class; and (iii) provides information on the number of Settlement Class Members who requested Identity Theft Protection, and the total number of Settlement Class Members who submitted Reimbursement Claims;

7.2.11 Receiving and processing all Election Forms submitted by Settlement Class Members pursuant to the criteria set forth in Paragraph 5, as well as distributing activation codes to Settlement Class Members for identity theft protection based on Election Forms pursuant to the criteria set forth in Paragraph 5;

7.2.12 Reviewing, determining the validity of, and responding to Reimbursement Forms submitted by Settlement Class Members pursuant to the criteria set forth in Paragraph 5;

7.2.13 After the close of the Claims Period, processing and transmitting distributions to Settlement Class Members in accordance with Paragraph 5; and

7.2.14 Performing any other function related to Settlement administration at the instruction of Settlement Class Counsel.

7.3. The Parties, the Released Parties, and their respective counsel shall have no responsibility or liability whatsoever for the Settlement Administrator's conduct, omissions, or actions.



7.4. All costs incurred by the Settlement Administrator shall be borne by and paid from the Settlement Fund.

## **8. NOTICE, OPT OUTS, AND OBJECTIONS**

8.1. Within thirty (30) days of the Preliminary Approval Order, the Settlement Administrator shall distribute the Summary Notice, activate the Settlement Website and otherwise implement the Notice Program provided herein, using the forms of Notice substantially in the form attached as Exhibits A-B, as approved by the Court in the Preliminary Approval Order. Settlement Class Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include the Defendants' logo or trademarks or the return address of Defendants, or otherwise be styled to appear to originate from Defendants.

8.2. The Notice shall include information about the benefits of the Settlement and the following information:

8.2.1 Election Forms are available at the Settlement Website, providing the URL for the Settlement Website and, in the Email Notice, a hyperlink to the Settlement Website; and

8.2.2 Elections to receive ID Experts' services must be received no later than the Election Deadline.

8.2.3 Reimbursement Forms are available on the Settlement Website, providing the URL for the Settlement Website and, in the Email Notice, a hyperlink to Settlement Website.

8.3. The Notice shall include the procedure for Settlement Class Members to exclude themselves from the Settlement Class by providing written notice to the Settlement Administrator in accordance with Paragraph 8.9. Such written notification must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all Settlement Class Members who have timely and validly excluded themselves from the Settlement Class. Any Settlement Class Member who does not timely and validly exclude himself or herself shall be bound by the terms of this Agreement.

8.4. The Notice shall include the procedure for Settlement Class Members to object to the Settlement and/or the Fee and Expense Application. Objections to the Settlement and/or Fee and Expense Application must comply with the procedures set forth in Paragraph 8.10.

8.4.1 For an objection to be considered by the Court, the objection must conform to the specifications set forth in Paragraph 8.10.

8.5. Notice shall be provided to the Settlement Class by Email Notice to each Settlement Class Member for whom Defendants or the Settlement Administrator can ascertain an email address, by Postcard Notice to each Settlement Class Member whose Email Notice was

undeliverable and for whom Defendants or the Settlement Administrator can ascertain a mailing address with reasonable effort or by implementing a standard skip trace, and by posting the Long-Form Notice on the Settlement Website, pursuant to the terms of Paragraph 8. Notice shall be provided substantially in the forms attached as Exhibits A-B to this Agreement.

8.6. Defendants have already provided the Settlement Administrator with data files containing the identity, last known mailing, last known email address, or other addresses of the Settlement Class Members (to the extent reasonably available). The Settlement Administrator shall perform an email append to ascertain the email address for any other Settlement Class Member for which an email address was not provided. The Settlement Administrator shall also run the mailing addresses through the National Change of Address Database or other similar data source and shall send the Summary Notice to Settlement Class Members at the identified U.S. mail and email addresses under the provisions of this Agreement.

8.7. The Settlement Administrator shall perform reasonable address traces, such as a standard skip trace, for all Summary Notices sent by U.S. mail that are returned as undeliverable. The Settlement Administrator shall promptly complete the re-mailing of Summary Notices by U.S. mail to those Settlement Class Members for whom an updated address can be located through address traces.

8.8. The Settlement Administrator shall establish a dedicated post office box address and the toll-free telephone number contemplated in Paragraphs 7.2.2-7.2.3.

#### 8.9. Opt-Out Procedures

8.9.1 Each Settlement Class Member desiring to exclude himself or herself from the Settlement and Settlement Class shall timely submit, by U.S. Mail, written notice of such intent to the designated post office box established for said purpose as set forth in the Notice. The written notice must clearly manifest the intent to be excluded from the Settlement Class and must be signed by the Settlement Class Member. A request for exclusion may not request exclusion of more than one member of the Settlement Class. Mass opt-outs are not permitted. To be effective, the written notice must be postmarked by the last date of the Opt-Out Period.

8.9.2 All Settlement Class Members who submit valid and timely notices of their intent to be excluded from the Settlement shall not receive any benefits of the Settlement, including, but not limited to the identity theft protection services or reimbursement for any Economic Losses (as described in Paragraph 5), nor be bound by the terms of this Agreement. Settlement Class Members who do not request to be excluded from the Settlement in the manner set forth in Paragraph 8.9.1 above, except as otherwise ordered by the Court, shall be bound by the terms of this Agreement and Judgment entered thereon.

8.9.3 Any Settlement Class Member who opts out of the Settlement shall not have standing to object to the Settlement.

#### 8.10. Objection Procedures

8.10.1 Any Settlement Class Member who does not elect to opt-out of the Settlement and who desires to object to the Settlement or the Fee and Expense Application shall file with the Court and serve such objections on or before the expiration of the Objection Period. Such objections must set forth:

- whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class;
- with specificity, the grounds for the objection;
- the name of the Action;
- the objector's full name, address, telephone number, and email address;
- a statement of the basis on which the objector claims to be a Settlement Class Member; and
- the identity of all counsel, if any, representing the objector, including any former or current counsel who may claim entitlement to compensation for any reason related to the objection.

8.10.2 Except as otherwise ordered by the Court, any Settlement Class Member who fails to comply with the provisions of Paragraph 8.10.1 shall waive and forfeit any and all rights the Settlement Class Member may have to appear separately and/or to object to the Settlement or Fee and Expense Application, and shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments in the Action.

## **9. RELEASES AND DISMISSAL OF ACTION**

9.1. As of the Effective Date, the Releasing Parties, each on behalf of himself, herself or itself and on behalf of his, her or its respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged (a) Defendants; (b) all customers of Medical Informatics Engineering, Inc.'s WEBCHART and NoMoreClipboard services; (c) all other entities and individuals with PII or PHI of patients or other individuals stored on Medical Informatics Engineering, Inc.'s computer network and (d) each of Defendants' present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, and the predecessors, successors, and assigns of each of them (collectively, the "Released Parties"), of and 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 the Data Breach, and conduct that was alleged or could have been alleged in the Action, including, without limitation, any claims, actions, causes of action, demands,

damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (1) the disclosure of Settlement Class Members personal information; (2) Defendants' maintenance of Settlement Class Members' personal information; (3) Defendants' information security policies or practices; (4) Defendants' provision of notice to Settlement Class Members following the Data Breach; and (5) any event, matter, dispute, or thing that in whole or in part, directly or indirectly, relates to or arises out of the Data breach and (1) through (4) above (the "Released Claims"), provided that nothing in this Release is intended to, does or shall be deemed to release any claims not arising out of, based upon, resulting from, or related to the Data Breach.

9.1.1 For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under any data breach statutes in effect in the United States or in any states in the United States, including but not limited to causes of action under the common or civil laws of any state in the United States, including but not limited to unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of express contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; and also including, but not limited to, any and all claims in any state or federal court of the United States, for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, identity theft insurance, statutory penalties, restitution, the appointment of a receiver, and any other form of relief). The Released Claims do not include any claims by the Parties hereto to enforce the terms of the Settlement or any claims not arising out of the Data Breach.

9.2. Upon the Effective Date, and to the fullest extent permitted by law, each Releasing Party, including Settlement Class Representatives, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than the participation in the Settlement as provided herein) in which any of the Released Claims is asserted.

9.3. As of the Effective Date, Defendants and all Released Parties agree to fully, completely, finally, and forever release, relinquish, and discharge Settlement Class Representatives and Settlement Class Counsel from all claims, known or unknown, arising out of or relating to the institution, prosecution, settlement, or resolution of the Action (provided, however, that this release, relinquishment, and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement).

9.4. Settlement Class Representatives and/or any Releasing Party may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of Paragraphs 9.1-9.3, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly

agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Paragraph and Paragraphs 9.1-9.3.

## **10. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARDS**

10.1. Settlement Class Counsel may file a Fee and Expense Application seeking an Attorneys' Fees and Expense Award to be paid by Defendants separate, apart from, and in addition to the Settlement Fund, in an amount not to exceed \$1,000,000 total. Defendants shall pay the Attorneys' Fees and Expense Award ordered by the Court up to the amount of \$1,000,000. In no event shall Defendants be liable to pay an Attorneys' Fees and Expense Award that exceeds \$1,000,000.

10.2. After Defendants make payment of the Attorneys' Fees and Expense Award to Settlement Class Counsel, Defendants shall have no responsibility for, interest in, or liability whatsoever with respect to any payment, division, or allocation of the Attorneys' Fees and Expense Award by Settlement Class Counsel.

10.3. Defendants agree not to oppose a request for an award of attorneys' fees and expenses that does not exceed \$1,000,000. Defendants reserve the right to object to a fee request that exceeds the terms outlined in this paragraph.

10.4. Settlement Class Counsel must file the Fee and Expenses Application at least fourteen (14) days prior to the Objection Deadline.

10.5. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Settlement Class Counsel any particular amount of attorneys' fees and/or expenses. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees and/or expenses 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 attorneys' fees and/or expenses shall constitute grounds for cancellation or termination of this Agreement.

10.6. Settlement Class Representatives and Settlement Class Counsel may seek awards of Service Awards to the Settlement Class Representatives. Any requests for such awards must be filed at least fourteen (14) days before the deadline for filing objections to the Settlement. Defendants agree not to oppose requests for such Service Awards to the extent they do not exceed \$1,000 per Settlement Class Representative.

10.7. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Settlement Class Representatives any particular amount in Service Awards. In the event the Court declines to approve, in whole or in part, the payment of Service Awards 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 Service Awards shall constitute grounds for cancellation or termination of this Agreement.

10.8. Within fifteen (15) days of the Effective Date, Defendants will pay the attorneys' fees, expenses, and incentive awards approved by the Court separate and apart from any other amounts or relief provided herein.

## **11. TERMINATION OF SETTLEMENT**

11.1. This Settlement may be terminated by either Settlement Class Counsel or Defendants by serving on counsel for the opposing Party and filing with the Court a written notice of termination within fourteen (14) days (or such longer time as may be agreed between Settlement Class Counsel and Defendants) after any of the following occurrences:

11.1.1 Settlement Class Counsel and Defendants agree to termination before the Effective Date;

11.1.2 The Court refuses to grant Preliminary Approval of this Agreement in any material respect;

11.1.3 The Court refuses to grant final approval of this Agreement in any material respect;

11.1.4 Any appellate court modifies the Final Judgment or reverses it in any material respect; or

11.1.5 The Effective Date does not occur.

11.2. Defendants shall also have the right to terminate the Settlement by serving on Settlement Class Counsel and filing with the Court a notice of termination within fourteen (14) days of its receipt from the Settlement Administrator of the final report specified in Paragraph 7.2.7, if more than 5% of Settlement Class Members submit valid written notifications to exclude themselves from the Settlement Class.

## **12. CONDITIONS OF SETTLEMENT**

12.1. This Settlement Agreement is expressly conditioned on and subject to each of the following conditions and, except as provided in Paragraph 11, shall be null and void and of no force and effect, cancelled and terminated unless:

12.1.1 The Court enters a Final Approval Order and Judgment; and

12.1.2 The Final Approval Order and Judgment becomes Final.

### 13. EFFECT OF A TERMINATION

13.1. The grounds upon which this Agreement may be terminated are set forth in Paragraph 11. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of Defendants' obligations under the Agreement shall cease to be of any force and effect, the amounts in the Settlement Fund, if any, shall be returned to Defendants; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. Either party may, at any time after the termination of this Agreement, move the Court to lift the stay of proceedings. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Settlement Class Representatives' right to seek class certification and Defendants' right to oppose class certification.

13.1.1 In the event of a termination as provided in Paragraph 11, the Settlement Administrator shall return the balance, if any, of the Settlement Fund to Defendants within seven (7) days of receiving notice of the termination.

13.1.2 In the event the Settlement is terminated in accordance with the provisions of Paragraph 11, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

13.1.3 The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of Paragraph 11.

13.2. Neither Settlement Class Counsel nor any other person shall have an obligation to reimburse the Settlement Fund or Defendants for the costs of Notice or any other costs and expenses that have been charged to the Settlement Fund.

### 14. MISCELLANEOUS PROVISIONS

14.1. **Entire Agreement.** This Stipulation and the Exhibits constitute the entire agreement among the Parties and supersede any prior agreements among the Parties with respect to the subject matter hereof. All of the Exhibits referred to herein shall be incorporated by reference as though fully set forth herein. No representations, warranties, or inducements have been made to or relied upon by any Party concerning this Stipulation or its Exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.

14.2. **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.

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

14.4. **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 Program 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.

14.5. **Amendment.** This Stipulation may be amended, modified, or waived only by a written instrument signed by counsel for all Parties hereto or their successors in interest or their duly authorized representatives.

14.6. **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.

14.7. **Deadlines.** If any deadline set forth in this Stipulation or the Exhibits thereto falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

14.8. **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.

14.9. **Confidentiality.** To the extent permitted by law and any applicable Court rules, all agreements made, and orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Stipulation and the Effective Date.

14.10. **Destruction of Confidential Information.**

14.10.1 Within three (3) days of the end of the Claims Period, Settlement Class Counsel shall return or destroy all confidential, non-public information obtained in connection with the Action and Agreement, and certify the same.

14.10.2 Within a year of the end of the Claims Period, the Settlement Administrator shall destroy the Class List and all information obtained or compiled from the Action or the settlement and provide written verification to Defendants' Counsel.

14.11. **Waiver.** The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of that or any other prior or subsequent breach of any provision of this Stipulation by any other Party.

14.12. **Notices.** Notices in relation to this Agreement shall be provided as follows:



14.12.1 All notices to Settlement Class Counsel provided for herein, shall be sent by email and overnight mail to:

Irwin B. Levin  
COHEN & MALAD, LLP  
One Indiana Square, Suite 1400  
Indianapolis, IN 46204  
[ilevin@cohenandmalad.com](mailto:ilevin@cohenandmalad.com)

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

Claudia C. McCarron  
Mullen Coughlin LLC  
1275 Drummers Lane, Suite 302  
Wayne, PA 19087  
[cmccarron@mullen.law](mailto:cmccarron@mullen.law)

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

## 15. REPRESENTATIONS AND WARRANTIES

15.1. **No Additional Persons with Financial Interest.** Defendants shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Agreement. Settlement Class Counsel agree to hold Defendants harmless from any claim that the term "Settlement Class Counsel" (as defined in section 1.35 of this Agreement) fails to include any counsel, person, or firm who claims that they are entitled to a share of any attorneys' fees awarded to Settlement Class Counsel in this lawsuit.

15.2. **Arm's-Length Negotiations.** The Parties represent and agree that the terms of the Settlement were negotiated at arm's-length and in good faith by the Parties and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

15.3. **Best Efforts.** The Parties and their respective counsel of record agree that they will use their reasonable best efforts to obtain (and, if necessary, defend on appeal) all necessary approvals of the Court required by this Stipulation (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement); provided, however, that Defendants shall

have no obligation to file briefs or otherwise advocate in favor of the Fee and Expense Application and Service Award Application.

15.4. **Independent Investigation and Decision to Settle.** The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in any substantive or procedural law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law or changes in any substantive or procedural law, subsequently occurring or otherwise.

15.5. **Time Periods.** The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Settlement Class Counsel and Defendants' Counsel.

15.6. **Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of Indiana without regard to its choice of law principles.

15.7. **No Construction Against Drafter.** This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

15.8. **Press.** Except as required by law, this document, the court orders in this case or any other disclosure obligations, the Parties, and the Parties' counsel, shall not issue any press releases or make any media statements about this case or the Settlement until after the Effective Date. Nothing in this agreement prohibits counsel from including this settlement and information on the settlement on their website, social media accounts or in the Firm resume or other similar materials used by the firm.

15.9. **Agreement Binding on Successors in Interest.** This Stipulation shall be binding upon and shall inure to the benefit of the Parties and the Class (and, in the case of the releases, all Released Parties) and the respective legal representatives, heirs, executors, administrators, transferees, successors, and assigns of all such foregoing Persons and upon any corporation, partnership, or other entity into or with which any party may merge, consolidate, or reorganize.

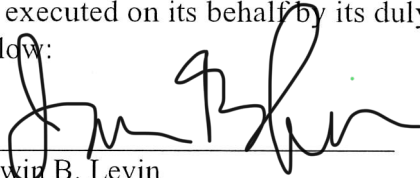
15.10. **Enforcement.** Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Court in which this Action is pending.

15.11. **Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the Parties' attorneys. The signatories may execute this Agreement in

counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all signatories had signed the same instrument.

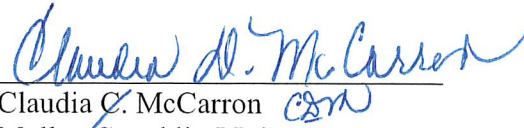
15.12. **Signatures.** Each person executing this Agreement warrants that such person has the full authority to do so. Signatures sent in PDF format by email will constitute sufficient execution of this Agreement.

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below:



Irwin B. Levin  
COHEN & MALAD, LLP  
One Indiana Square, Suite 1400  
Indianapolis, IN 46204  
[ilevin@cohenandmalad.com](mailto:ilevin@cohenandmalad.com)

**Settlement Class Counsel**



Claudia C. McCarron *CCM*  
Mullen Coughlin LLC  
1275 Drummers Lane, Suite 302  
Wayne, PA 19087  
[cmccarron@mullen.law](mailto:cmccarron@mullen.law)

**Attorney for Defendants**