IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

JERALD SATAKE, MICHAEL LUTH, RANDEE ARKIN, DOMINIC RAMISCAL, CRYSTAL HAMMOND, JIM OKADA, AND TRAVIS ROGERS, *individually and on behalf of all others similarly situated*, Plaintiffs, v. HAWAII RADIOLOGIC ASSOCIATES, LTD., Defendant.	CIVIL NO.: 3CCV-24-422 **CLASS ACTION** **DEMAND FOR JURY TRIAL**

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement and Release is entered into between Plaintiffs,[1] individually, and on behalf of the Settlement Class, and Defendant, as of the date last signed below. The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

I. Background

1. Defendant is a healthcare provider furnishing medical imaging, laboratory, and diagnostic services to patients in east and west Hawaii.

2. In the course of its business, Defendant collects, maintains, and stores Private Information pertaining to its current and former patients, including names, dates of birth, health insurance subscriber IDs, indications for medical examinations received, and types of medical examinations.

[1] All capitalized terms herein shall have the same meanings as those defined in Section II herein.

3. In August 2024, Defendant detected unauthorized access to certain of its information technology systems. Defendant subsequently determined the Private Information of approximately 43,000 current and former patients of Defendant may have been impacted in the Data Incident.

4. In or around November 2024, Defendant began notifying impacted individuals, including Plaintiffs and Settlement Class Members, of the potential unauthorized access to some combination of their Private Information in the Data Incident.

5. Following the Data Incident, two putative class action lawsuits were filed in this Court, asserting similar claims on behalf of overlapping putative classes. Additionally, two similar putative class actions arising from the Data Incident were filed in the United States District Court for the District of Hawaii. Following the related actions being filed, Plaintiffs' counsel coordinated to amend the complaint in this first-filed Action to include all Plaintiffs, and the other related actions in federal and state court were voluntarily dismissed.

6. On April 2, 2025, Plaintiffs filed the operative First Amended Class Action Complaint in this Action, asserting claims against Defendant for negligence, negligence *per se*, breach of implied contract, and unjust enrichment.

7. Considering the risk, expense, and delay of continued litigation, the Parties also began discussing early resolution of the Action. To aid in these discussions, Plaintiffs requested and Defendant produced informal discovery regarding the nature and cause of the Data Incident, the impacted individuals, damage-related issues, and Defendant's financial condition.

8. Following months of negotiation, the Parties were able to reach agreement as to all material terms of this Settlement.

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

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

10. "**Action**" refers to the above-captioned consolidated action, *Satake, et al. v. Hawaii Radiologic Associates, Ltd.*, Case No. 3CCV-24-422, filed in the Third Circuit Court of Hawaii, and any other actions consolidated into the Action.

11. "**Agreement**" or "**Settlement**" or "**Settlement Agreement**" means this Class Action Settlement Agreement and Release, including all of its attachments and exhibits.

12. "**Application for Attorneys' Fees, Costs, and Service Awards**" means the application to be made with the Motion for Final Approval seeking Class Counsel's attorneys' fees and reimbursement for costs, and Service Awards for the Class Representatives.

13. "**Cash Payment**" means the compensation paid to Settlement Class Members who elected to submit a Claim for either Cash Payment A – Extraordinary Documented Losses, Cash Payment B – Ordinary Documented Losses, or Cash Payment C – Alternate Cash.

14. "**Cash Payment A – Extraordinary Documented Losses**" means the form of cash compensation Settlement Class Members may elect as a Settlement Class Member Benefit for reimbursement of extraordinary losses.

15. **"Cash Payment B – Documented Ordinary Losses"** means the form of cash compensation Settlement Class Members may elect as a Settlement Class Member Benefit for reimbursement of ordinary losses.

16. "**Cash Payment C – Alternate Cash**" means the Settlement Class Member Benefit consisting of a flat-cash payment of $45.00 per Settlement Class Member.

17. "**Cash Payments Fund**" means the fund of $450,000.00 that Defendant will pay under this Agreement for Valid Claims for Cash Payments.

18. "**Claimant**" means a Settlement Class Member who submits a Claim Form.

19. "**Claim Form**" means the proof of claim, substantially in the form attached hereto as ***Exhibit 3*** which may be modified as necessary subject to the Parties' approval.

20. "**Claim Process**" means the process by which Claimants or Settlement Class members submit Claims to the Settlement Administrator for the election of Settlement Class Member Benefits.

21. "**Claims Deadline**" means the date which is 15 days before the initial scheduled Final Approval Hearing and the last day by which a Claim Form may be submitted to the Settlement Administrator.

22. "**Class Counsel**" means Jeff Ostrow of Kopelowitz Ostrow, P.A. and _____.

23. "**Class List**" means the list of Settlement Class Members prepared by Defendant using information in Defendant's records and provided to the Settlement Administrator by Defendant for Notice. The Class List shall include the Settlement Class Members' names, postal addresses.

24. "**Class Representatives**" means those Plaintiffs the Court approves as representatives of the Settlement Class.

25. "**Court**" means the Third Circuit Court of Hawaii and the Judge(s) assigned to the Action.

26. "**Medical Data Monitoring**" means two years of medical data monitoring services provided by CyEx that Settlement Class Members may as a Settlement Class Member Benefit.

27. "**Data Incident**" means the alleged unauthorized access to Defendant's computer network resulting in the acquisition of Settlement Class members' Private Information in or around August 2024.

28. "**Defendant**" means Hawaii Radiologic Associates, Ltd., the defendant in the Action.

29. "**Defendant's Counsel**" means Wayne R. Wagner of Goodsill Anderson Quinn & Stifel and _____.

30. "**Effective Date**" means the day after the entry of the Final Approval Order, provided no objections are made to the Settlement. If there are objections to the Settlement, then the Effective Date shall be the later of (a) 30 days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order, or (b) if appeals are taken from the Final Approval Order, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal.

31. "**Final Approval**" means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form attached to the Motion for Final Approval.

32. "**Final Approval Hearing**" means the hearing held before the Court wherein the Court will consider granting Final Approval of the Settlement and the Application for Attorney's Fees, Costs, and Service Awards.

33. "**Final Approval Order**" means the final order the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be substantially in the form attached hereto as ***Exhibit 5***.

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

35. "**Motion for Final Approval**" means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement.

36. "**Motion for Preliminary Approval**" means the motion that Plaintiffs shall file with the court seeking Preliminary Approval of the Settlement.

37. "**Notice**" means the Postcard Notice and Long Form Notice that Plaintiffs will ask the Court to approve in connection with the Motion for Preliminary Approval, as well as the Settlement Website and the Settlement Class Member toll-free telephone line.

38. "**Notice Program**" means the methods provided for in this Agreement for giving Notice to the Settlement Class and consists of the Postcard Notice, Long Form Notice, and Claim Form, along with the Settlement Website, and the Settlement Class member toll-free telephone line.

39. "**Notice of Deficiency**" means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

40. "**Objection Deadline**" means the date that is 30 days before the initial scheduled Final Approval Hearing.

41. "**Opt-Out Deadline**" means the date that is 30 days before the initial scheduled Final Approval Hearing.

42. "**Party**" means each of the Plaintiffs and Defendant, and "**Parties**" means Plaintiffs and defendant, collectively.

43. "**Plaintiffs**" means Jerald Satake, Michael Luth, Randee Arkin, Dominic Ramiscal, Crystal Hammond, Jim Okada and Travis Rogers.

44. "**Postcard Notice**" means the postcard notice of the Settlement, which includes a double-sided tear-off Claim Form, substantially in the form attached hereto as ***Exhibit 1***, which the Settlement Administrator shall disseminate to Settlement Class Members by U.S. mail.

45. "**Preliminary Approval**" means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form submitted with the Motion for Preliminary Approval.

46. "**Preliminary Approval Order**" means the order preliminarily approving the Settlement and proposed Notice Program, substantially in the form attached hereto as ***Exhibit 4***.

47. "**Private Information**" means any combination of names, dates of birth, health insurance subscriber ID, indications for medical examinations received, and types of medical examinations, and any other personally identifiable information or protected health information that may have been stored within Defendant's information technology systems at the time of the Data Incident.

48. "**Releases**" means the releases and waiver set forth in Section XI of this Agreement.

49. "**Released Claims**" means any and all actual, potential, filed or unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected claims, demands, liabilities, rights, causes of action, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, based on contract, tort or any other theory, accrued or unaccrued, direct, individual or representative, joint or several, of every nature and description whatsoever, based on any federal, state, local, statutory, or common law or any other law, against the Released Parties, or any of them, arising out of or relating to actual or alleged facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to the Data Incident or any alleged violations of laws or regulations cited in the Complaints or the Action.

50. "**Released Parties**" means Defendant and its past, present, and future parents, subsidiaries, divisions, departments, affiliates, predecessors, successors and assigns, and any and

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

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

52. "**Service Awards**" means the payments the Court may award the Plaintiffs who sign this Agreement for serving as Class Representatives.

53. "**Settlement Administrator**" means Analytics LLC.

54. "**Settlement Administration Costs**" means all costs and fees of the Settlement Administrator regarding Notice and administration of the Settlement.

55. "**Settlement Class**" means all living individuals in the United States who were sent notice by the Defendant that their Private Information was potentially compromised in the Data Incident. Excluded from the Settlement Class are (a) all persons who are directors and officers of Defendant; (b) governmental entities; (c) the Judge(s) assigned to the Action, the Judge's immediate family, and Court staff; and (d) any Settlement Class Member who timely and properly opt-out of the Settlement.

56. "**Settlement Class Member**" means any member of the Settlement Class.

57. "**Settlement Class Member Benefit**" means the Cash Payment and/or Medical Data Monitoring forms of compensation to be claimed by Settlement Class Members.

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

59. "**Valid Claim**" means a Claim Form submitted by a Settlement Class Member that is (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claims

Deadline, or, if submitted online, submitted by 11:59 p.m. Eastern time on the Claims Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator's Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

III. Certification of the Settlement Class

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

IV. Settlement Consideration

61. The Settlement provides the following Settlement Class Member Benefits, all of which will be paid by Defendant: (a) Cash Payments for Documented Extraordinary Losses or Documented Ordinary Losses or Alternate Cash Payment, subject to the terms of the Cash Payment Fund; (b) Medical Data Monitoring; (c) Settlement Administration Costs; and (c) any Court-awarded attorneys' fees, costs, and Service Awards. Settlement Class Members who do not file a Valid Claim or those who opt-out of the Settlement will not receive a Cash Payment and/or Medical Data Monitoring. If a Settlement Class Member does not submit a Valid Claim, the Settlement

Class Member will release his or her claims against the Released Parties without receiving a Settlement Class Member Benefit.

62. **Cash Payments**

When submitting a Claim, Settlement Class Members may choose either (a) Cash Payment A – Documented Extraordinary Losses and (b) Cash Payment B – Documented Ordinary Losses or (c) Cash Payment C – Alternate Cash. There is a Cash Payments Fund of $450,000.00, which is the maximum amount Defendant will have to pay under this Agreement for all Cash Payments. This means in the event Valid Claims for Cash Payments exhaust the amount of the Cash Payments Fund, the amount distributed for Cash Payments may be reduced *pro rata* accordingly. The Settlement Administrator must distribute the funds in the Cash Payment Fund in the following order: Any *pro rata* reduction will be on an equal percentage basis.

a. Cash Payment A – Documented Extraordinary Losses

Settlement Class Members may submit a Claim for a Cash Payment under this section for a maximum of $4,000.00 per Settlement Cass Member for reimbursement of documented extraordinary losses or expenses from identity theft or fraud reasonably related to the Data Incident. To receive this payment a Settlement Class Member must elect Cash Payment A – Documented Extraordinary Losses on the Claim Form and submit reasonable documentation supporting the claimed losses, which means documentation contemporaneously generated or prepared by a third party supporting a claim for losses incurred, time spent, or expenses paid. Non-exhaustive examples of reasonable documentation include telephone records, correspondence including emails, or receipts. Except as expressly provided herein, personal certifications, declarations, or affidavits from the Settlement Class Member do not constitute reasonable documentation but may be included to provide clarification, context, or support for other submitted

reasonable documentation. Settlement Class Members shall not be reimbursed if they have been reimbursed for the same losses or expenses by another source. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if the Settlement Class Member's Claim for Cash Payment A – Extraordinary Losses is rejected by the Settlement Administrator for any reason and the Settlement Class Member fails to cure, the Claim will be rejected and the Settlement Class Member's Claim will be as if he or she elected Cash Payment C – Alternate Cash.

b. Cash Payment B – Documented Ordinary Losses

Settlement Class Members may submit a Claim for a Cash Payment under this section for a maximum of $100.00 per Settlement Cass Member for reimbursement of documented ordinary losses or expenses reasonably related to the Data Incident. To receive this payment a Settlement Class Member must elect Cash Payment B – Documented Ordinary Losses on the Claim Form and submit reasonable documentation supporting the claimed losses, which means documentation generated or prepared by a third party supporting a claim for losses incurred, time spent, or expenses paid. Non-exhaustive examples of reasonable documentation include telephone records, correspondence including emails, or receipts. Settlement Class Members shall not be reimbursed if they have been reimbursed for the same losses or expenses by another source. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if the Settlement Class Member's Claim for Cash Payment B – Documented Ordinary Losses is rejected by the Settlement Administrator for any reason and the Settlement Class Member fails to cure, the Claim will be rejected and the Settlement Class Member's Claim will be as if he or she elected Cash Payment C – Alternate Cash.

c. Cash Payment C – Alternate Cash

As an alternative to Cash Payment A – Documented Extraordinary Losses or Cash Payment B – Documented Ordinary Losses above, Settlement Class Members may elect to receive Cash Payment C – Alternate Cash, which is a flat-cash payment of $45.00.

d. **Medical Data Monitoring**

In addition to a Cash Payment, Settlement Class Members may also make a Claim for two years of Cyex's Medical Shield Complete medical data monitoring.

V. Settlement Approval

63. Class Counsel will use best efforts to submit the Motion for Preliminary Approval to the Court within 14 days of the execution of this Agreement.

64. The Motion for Preliminary Approval shall, among other things, request the Court (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form and Claim Process; (5) approve the procedures for Settlement Class Members to opt-out of the Settlement or for Settlement Class Members to object to the Settlement; (6) appoint Jeff Ostrow as Class Counsel for Settlement purposes; (7) appoint Plaintiffs as Class Representatives; (8) appoint Analytics as the Settlement Administrator; (9) stay the Action pending Final Approval of the Settlement; and (10) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, the Parties, Class Counsel, and Defendant's Counsel.

VI. Settlement Administrator

65. The Parties agree that, subject to Court approval, Analytics shall be the Settlement Administrator. The Defendant shall enter into a separate agreement with Analytics for the payment

of Settlement Administration Costs. Plaintiffs, the Settlement Class, an Class Counsel shall have no liability for payment of the Settlement Administration Costs.

66. Class Counsel shall oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the Hawaii Constitution.

67. The Settlement Administrator shall administer various aspects of the Settlement as described in the following paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims Process, administering the Settlement Fund, and distributing the Settlement Class Member Benefits to those who submit Valid Claims.

68. The Settlement Administrator's duties include the following:

a. Complete the Court-approved Notice Program by noticing the Settlement Class by Postcard Notice and sending out Long Form Notices upon request from Settlement Class Members, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;

b. Establish and maintain a post office box to receive opt-out requests, objections, and Claim Forms from Settlement Class Members;

c. Establish and maintain the Settlement Website to provide important information and to receive electronic Claim Forms;

d. Establish and maintain an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the frequently asked

questions of Settlement Class members who call with or otherwise communicate such inquiries;

e. Respond to any mailed Settlement Class member inquiries;

f. Process all opt-out requests from Settlement Class members;

g. Provide weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;

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

i. Collect from Defendant the cash necessary to pay Settlement Class Member Benefits;

j. Distribute Cash Payments to Settlement Class Members who submit Valid Claims

k. Ensure Medical Data Monitoring redemption codes are sent to all Settlement Class Members who submit Valid Claims for Medical Data Monitoring;

l. Any other Settlement Administration function at the instruction of Class Counsel and Defendant's Counsel, including, but not limited to, verifying that Cash Payments and Medical Data Monitoring redemption codes have been properly distributed.

VII. Notice to the Settlement Class, Opt-Out Procedures, and Objection Procedures

69. Defendant will make available to Class Counsel and the Settlement Administrator the Class List no later than five days after entry of the Preliminary Approval Order. To the extent necessary, Defendant will cooperate with updating the Class List to accomplish the Notice Program and otherwise administer the Settlement.

70. Within 20 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice approved by the Court.

71. The Postcard Notice shall include, among other information, the following: a description of the material terms of the Settlement; a double-sided tear-off Claim Form with instructions how to submit a Claim Form; the Claims Deadline; Opt-Out Deadline for Settlement Class Members to opt-out of the Settlement Class; the Objection Deadline for Settlement Class Members to object to the Settlement and/or the Application for Attorneys' Fees and Costs; the Final Approval Hearing date; the Settlement Class toll-free telephone number, and the Settlement Website address at which Settlement Class Members may access this Agreement and other related documents and information. Class Counsel shall insert the correct dates and deadlines in the Notices before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date.

No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

72. The Settlement Administrator shall establish the Settlement Website no later than the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claim Form that can be submitted directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

73. The Long Form Notice shall also include a procedure for Settlement Class Members to opt-out of the Settlement Class, and the Postcard Notice shall direct Settlement Class Members to review the Long Form Notice to obtain the opt-out instructions. A Settlement Class Member may opt-out of the Settlement Class at any time prior to the Opt-Out Deadline by mailing a request to opt-out to the Settlement Administrator postmarked on or before the Opt-Out Deadline. The opt-out request must be personally signed by the Settlement Class Member and contain the requestor's name, address, telephone number, and email address (if any), the title of the Action, and a statement indicating a request to be excluded from the Settlement Class. Requests to opt out may only be done on an individual basis, and no person may request to be excluded from the Settlement Class through "mass" or "class" opt outs. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Valid Claim.

74. The Long Form Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards, and the Postcard Notice shall direct Settlement Class Members to review the Long Form Notice to obtain the objection instructions. Objections must be filed with the Court, and sent by

U.S. Mail to Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted on or before the Objection Deadline, as specified in the Notice, and the Settlement Class Member must not have excluded him/herself from the Settlement Class. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

75. For an objection to be considered by the Court, the objection must also set forth the following:

a. the objector's full name, mailing address, telephone number, and email address (if any);

b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;

c. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;

d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards, and whether they will appear at the Final Approval Hearing;

e. the number of times in which the objector's counsel and/or the objector's counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling on the objection issued by the trial and appellate courts in each such listed case;

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

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

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

76. Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel. This includes taking depositions and propounding document requests.

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

78. The Notice Program shall be completed in its entirety no later than 45 days before the initial scheduled Final Approval Hearing.

VIII. Claims Process and Disbursement of Cash Payments

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

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

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

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

83. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement

Administrator identifies actual or possible fraud or abuse relating to the submission of Claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from the Claimant or deny the Claim, subject to the supervision of the Parties and ultimate oversight by the Court.

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

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

a. Failure to fully complete and/or sign the Claim Form;

b. Illegible Claim Form;

c. The Claim Form is fraudulent;

d. The Claim Form is duplicative of another Claim Form;

e. The Claimant is not a Settlement Class Member;

f. The Claimant submitted a timely and valid request to opt-out of the Settlement Class;

g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;

h. Failure to submit a Claim Form by the Claims Deadline; and/or

i. The Claim Form otherwise does not comply with the requirements of this Settlement.

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

a. The Settlement Administrator shall have 30 days from the Claims Deadline to approve or reject Claims based on findings of fraud or duplication.

b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this paragraph.

c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class

Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants.

d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

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

88. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

89. No later than 60 days after Final Approval or 30 days after the Effective Date, whichever is later, the Settlement Administrator shall distribute the Settlement Class Member Benefits.

90. Cash Payments to Settlement Class Members will be made by electronic payment or by paper check. Settlement Class Members will choose their form of payment on their Claim Form. In the event a Settlement Class Member does not make an election or there is a problem with issuance of an electronic payment, a paper check will be sent to the Settlement Class Member's last known address. Paper checks must be negotiated within 90 days of issuance. In the event the Settlement Administrator is unable to distribute funds to the person or persons entitled

to receive them due to incorrect or incomplete information provided to the Settlement Administrator, the Settlement Class Member shall forfeit their right to the funds.

91. The Settlement Administrator will send an email to Settlement Class Members with Valid Claims that include an election for Medical Data Monitoring with information on how to enroll in the Medical Data Monitoring, including the Medical Data Monitoring redemption code.

IX. Final Approval Order and Final Judgment

92. Plaintiffs shall file their Motion for Final Approval, inclusive of the Application for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the date initially set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on the Motion for Final Approval and the Application for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Member (or their counsel) who objects to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service Awards, provided the objectors submitted timely objections that meet all of the requirements listed in this Agreement.

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

a. Determine that the Settlement is fair, adequate and reasonable;

b. Finally certify the Settlement Class for settlement purposes only;

c. Determine that the Notice Program satisfies Due Process requirements and applicable law;

d. Bar and enjoin all Releasing Parties from asserting or otherwise pursuing any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;

e. Release Defendant and the Released Parties from the Released Claims; and

f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. Service Awards, Attorneys' Fees and Costs

94. ***Service Awards*** – In recognition of the time and effort the Class Representatives expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class Representatives, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel shall request a Service Award for the Class Representatives in the amount not to exceed $2,000.00 each. The Service Awards payments to the Class Representative shall be separate and apart from Class Representatives' entitlement to Settlement Class Member Benefits. If approved, Defendant shall pay or cause to be paid the Service Awards to Class Counsel by wire transfer within five days of Final Approval.

95. Class Counsel shall apply to the Court for an award of $290,000.00 for attorneys' fees and litigation costs. Defendant shall pay or cause to be paid the Court-approved attorneys' fees and costs to Class Counsel by wire transfer within five days of Final Approval.

96. This Settlement is not contingent on approval of Application for Attorneys' Fees, Costs, and Service Awards, and if the Court denies the request or grants amounts less than what

was requested, the remaining provisions of the Agreement shall remain in force. The provisions for attorneys' fees, costs, and Service Awards were not negotiated until after the Parties reached agreement on all material terms of the Settlement.

XI. Releases

97. Upon the Effective Date, and in consideration of the Settlement relief and other consideration described herein, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished, and completely discharged the Released Parties from any and all Released Claims, including but not limited to any federal or state statutory or common law claims arising out of or relating to the Data Incident that the Releasing Parties may have or had. Each Party expressly waives all rights under California Civil Code section 1542, which provides as follows:

> 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.

The Releasing Parties also waive the provisions and rights of any law(s) that are comparable in effect to California Civil Code section 1542 (including, without limitation, California Civil Code § 1798.80, *et seq*., Montana Code Ann. § 28- 1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11). The Releasing Parties agree that, once this Agreement is executed, they will not, directly or indirectly, individually or in concert with another, maintain, cause to be maintained, or voluntarily assist in maintaining any further demand, action, claim, lawsuit, arbitration, or similar proceeding, in any capacity whatsoever, against any of the Released Parties based on any of the Released Claims.

98. Settlement Class Members who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims and will not obtain any benefits, including any Settlement Class Member Benefits, under the Settlement.

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

100. The power to enforce any Settlement term is not affected by the Releases.

XII. Termination of Settlement

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

a. Court approval of the Settlement consideration set forth in Section IV and the Releases set forth in Section XI of this Agreement;

b. The Court has entered the Preliminary Approval Order;

c. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and

d. The Effective Date has occurred.

102. If any of the conditions specified in the preceding paragraph are not met, or if the Court otherwise imposes any modification to or condition of approval of the Settlement to which the Parties do not consent, then this Agreement shall be cancelled and terminated.

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

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

XIII. Effect of Termination

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

106. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be

discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XIV. No Admission of Liability

107. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Action. Defendant specifically denies that a class could or should be certified in the Action for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

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

109. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed

or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind.

110. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

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

XV. Miscellaneous Provisions

112. ***Confidentiality***. To the extent permitted by ethics rules, the Parties and their counsel shall keep confidential all settlement communications, including communications regarding the negotiation and drafting of this Agreement.

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

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

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

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

117. ***Integration and No Reliance***. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

118. ***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.

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

120. ***Counterparts***. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required.

121. ***Jurisdiction.*** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any

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

122. ***Calculation of Time.*** In the event that any deadline or required date of performance under this Agreement falls on a Saturday, Sunday, or legal holiday, such deadline shall be deemed to occur on the next succeeding business day.

123. ***Notices***. All notices provided for herein, shall be sent by email.

a. If to Plaintiffs or Class Counsel:

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

b. If to Defendant or Defendant's Counsel:

Wayne R. Wagner
Goodsill Anderson Quinn & Stifel
999 Bishop Street, Suite 1600
Honolulu, HI 96813
wwagner@goodsill.com

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

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

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

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

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

128. ***Independent Investigation and Decision to Settle.*** The Parties understand and acknowledge the following: (a) they have performed an independent investigation of the allegations of fact and law made in connection with the Action; and (b) even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, it will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they used to make certain determinations, arguments, and

settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with the Action pursuant to the terms of this Agreement now. Thus, in furtherance of the Parties' intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

129. ***Receipt of Advice of Counsel***. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement the Releases, and fully understands the effect of this Agreement and the Releases.

130. ***Bar to Future Suits***. Upon entry of the Final Approval Order, the Releasing Parties shall be enjoined from prosecuting any Released Claim in any proceeding against the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this paragraph.

CLASS COUNSEL (for Plaintiffs)

_____

JEFF OSTROW
KOPELOWITZ OSTROW P.A.

_____

DEFENDANT

_____

By: _____
Its: _____

DEFENDANT'S COUNSEL

_____

WAYNE R. WAGNER
GOODSILL ANDERSON QUINN & STIFEL