

This Settlement Agreement, dated as of the Effective Date, is made and entered into by and among the following Settling Parties (defined below): (i) Plaintiffs Alayna Woods, Jennifer Nelson, on behalf of herself and her minor child, M.B., Jamella Montgomery, Susan Hall, Argiro Tziakas, Christina Kovalsky, and Andrew Blakemore (“Representative Plaintiffs”), individually and on behalf of the Settlement Class (defined below), by and through Federman & Sherwood, Mason LLP, and Cafferty Clobes Meriwether & Sprengel LLP (“Class Counsel”), on the one hand; and (ii) Defendant Albany ENT & Allergy Services P.C. (“AENT”), by and through its counsel of record, Greenberg Traurig, LLP (“Defendant’s Counsel”) on the other hand. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Litigation (defined below) and the Released Claims (defined below), upon and subject to the terms and conditions below.

RECITALS

WHEREAS, between March 23 and April 2, 2023, ransomware groups attacked AENT’s computer systems and obtained patient and employee information from AENT’s systems regarding approximately 224,486 individuals. The impacted files may include, but is not limited to, names, dates of birth, social security numbers, patient charts, and other medical treatment information.

WHEREAS, after AENT learned of the Security Incident, AENT notified its customers and employees that their Personal Information (defined below) may have been impacted by the Security Incident.

WHEREAS, after AENT sent its notice, several lawsuits were filed in state and federal court against AENT concerning the Security Incident. The federal cases were voluntarily dismissed, and ultimately, four putative class actions remained pending against AENT in the Supreme Court of New York, Albany County: (1) *Woods v. Albany ENT & Allergy Services, P.C.*, Index No. 904730-23; (2) *M.B. ex rel. Berkley v. Albany ENT & Allergy Services, P.C.*, Index No. 904919-23; (3) *Montgomery v. Albany ENT & Allergy Services, P.C.*, Index No. 905088-23; and (4) *Hall v. Albany ENT & Allergy Services, P.C.*, Index No. 905162-23 (the “Civil Actions”). On July 7, 2023, the Civil Actions were consolidated under the title *Woods, et al. v. Albany ENT & Allergy Services, P.C.*, Index No. 904730-23.

WHEREAS, on August 29, 2023, the plaintiffs in the Civil Actions filed a Consolidated Amended Complaint, asserting the following claims: (i) negligence, (ii) negligence per se, (iii) breach of contract, (iv) breach of implied contract, (v) violations of New York General Business Law § 349, and (vi) unjust enrichment.

WHEREAS, AENT denies each and all of the claims and contentions alleged against it in the civil actions filed, any and all liability or wrongdoing of any kind, denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Civil Actions.

WHEREAS, the Settling Parties have concluded that further litigation would be protracted and expensive, have considered the uncertainty and risks inherent in litigation, and have determined that it is desirable to effectuate a full and final settlement of the claims asserted in the above-referenced actions on the terms set forth below to avoid the associated burdens, risks, and extensive costs.

WHEREAS, on February 8, 2024, the Settling Parties engaged in an arm's-length, remote, full-day mediation session under the direction of the Honorable Wayne Andersen (Ret.) and reached an agreement in principle to resolve the Civil Actions, as outlined herein.

WHEREAS, AENT provided Class Counsel with certain additional factual information to aid in the mediation and agreed to provide further confirmatory information as required to confirm the scope of the class.

WHEREAS, AENT denies any wrongdoing whatsoever, and this Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of AENT with respect to any claim of any fault, liability, wrongdoing, or damage whatsoever, any infirmity in the defenses or arguments that AENT has asserted or would assert, or the requirements of New York Civil Practice Law and Rules 901, *et seq.* and whether the Representative Plaintiffs could satisfy those requirements.

WHEREAS, based on their substantial investigation and their substantial experience in data breach cases, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to Settlement Class Members (defined below) and are in their best interests, and have agreed to settle the claims that were asserted or could have been asserted in the Litigation arising out of or relating to the Security Incident pursuant to the terms and provisions of this Agreement after considering (a) the substantial benefits that Settlement Class Members will receive from the Settlement, (b) the uncertain outcome and attendant risks of litigation, (c) the delays inherent in litigation, and (d) the desirability of permitting the settlement of this litigation to be consummated as provided by this Agreement.

WHEREAS, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against AENT relating to the Security Incident, by and on behalf of Plaintiffs and Settlement Class Members, and any other such actions by and on behalf of any other individuals originating, or that may originate, in jurisdictions in the United States of America against AENT relating to the Security Incident.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiffs, individually and on behalf of the Settlement Class, Class Counsel, and AENT that, subject to the Court's approval, when Judgment becomes Final (defined herein), the Civil Actions and the Released Claims shall be finally and fully compromised, settled, and released, and the Civil Actions shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who lawfully opt out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement.

1. Definitions

As used in the Settlement Agreement, the following terms have the meanings specified below:

- 1.1 "Agreement" or "Settlement Agreement" means this agreement.
- 1.2 "Claims Administration" means providing notice to the Settlement Class Members

and the processing and payment of claims received from Settlement Class Members by the Claims Administrator (defined below).

1.3 “Claims Administrator” means Postlethwaite & Netterville, APAC (“P&N”) a notice and claims administrator with recognized expertise in class action notice and claims generally and data security litigation specifically, as jointly agreed upon by the Settling Parties and approved by the Court.

1.4 “Claims Deadline” means the postmark or online submission deadline for Valid Claims (as defined below).

1.5 “Claim Form” means the form utilized by the Settlement Class Members to submit a Settlement Claim (as defined below) for reimbursement. The Claim Form will be substantially in a form as shown in Exhibit C attached hereto, which will be available on both the Settlement Website (as defined below) and in paper format, if specifically requested by Settlement Class Members.

1.6 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.7 “Court” means the Supreme Court of New York, Albany County.

1.8 “Security Incident” means the cybersecurity incident that Albany ENT & Allergy Services, P.C. became aware of in or around March and April 2023, and which gave rise to the Civil Actions.

1.9 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is finally approved by the Court; (ii) the Court has entered a Judgment (as defined below); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether the Judgment is Final or any other aspect of the Judgment.

1.10 “Judgment” means a judgment rendered by the Court.

1.11 “Long Notice” means the long form notice of settlement posted on the Settlement Website, substantially in the form as shown in Exhibit B hereto.

1.12 “Objection Date” means the date by which Settlement Class Members must mail their objection to the settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.13 “Opt-Out Date” means the date by which Settlement Class Members must mail their requests to be excluded from the Settlement Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.14 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.15 “Personal Information” includes, but is not limited to, names, social security numbers, dates of birth, addresses, and patient charts that include medical histories and treatment information and may include driver’s license numbers.

1.16 “Plaintiffs” or “Class Representatives” or “Representative Plaintiffs” means Alayna Woods, Jennifer Nelson, Jamella Montgomery, Susan Hall, Argiro Tziakas, Christina Kovalsky, and Andrew Blakemore.

1.17 “Preliminary Approval Order” means the Court order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached hereto as Exhibit D.

1.18 “Class Counsel” means the law firms of Federman & Sherwood, Mason LLP, and Cafferty, Clobes, Meriwether & Sprengel LLC.

1.19 “Released Claims” shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States; violations of New York General Business Law § 349 and other state consumer protection statutes; violations of any federal or state data breach notification statute; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Parties based on, relating to, concerning or arising out of the Security Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class consistent with the terms and requirements of this Agreement. Released claims shall not include any claims for medical malpractice that Plaintiffs and Settlement Class Members have, or may have in the future, against AENT.

1.20 “Released Parties” means AENT and all of its past, present, and future parent companies, partnerships, subsidiaries, affiliates, divisions, employees, contractors, agents, servants, members, managers, providers, partners, principals, directors, shareholders, and owners, and all of their attorneys, heirs, executors, administrators, insurers, writing companies, coinsurers, reinsurers, joint ventures, personal representatives, predecessors, successors, transferees, trustees, and assigns, and including, without limitation, any Person related to any such entities who is, was, or could have been named as a defendant in the Litigation.

1.21 “Settlement Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.22 “Settlement Class” means all individuals whose Personal Information was compromised in the Security Incident. The Settlement Class specifically excludes: (i) AENT, and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the presiding judge, and his or her staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge.

1.23 “Settlement Class Member(s)” or “Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.24 “Settlement Website” means the website described in ¶ 3.2.

1.25 “Settling Parties” means, collectively, AENT and Plaintiffs, individually and on behalf of the Settlement Class.

1.26 “Short Notice” means the content of the mailed notice to the proposed Settlement Class Members, substantially in the form as shown in Exhibit A attached hereto. The Short Notice will direct recipients to the Settlement Website and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys’ fees, and the date of the Final Fairness Hearing (as defined below).

1.27 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (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), which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

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

1.28 “United States” as used in this Settlement Agreement includes all 50 states, the District of Columbia, and all territories.

1.29 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or dispute resolution process described in ¶ 2.4.

2. Settlement Benefits

2.1 Compensation for Ordinary and Extraordinary Losses.

2.1.1 Out-of-Pocket Losses and Unreimbursed Expenses. All Settlement Class Members who submit a Valid Claim using the Claim Form are eligible for any documented and attested-to out-of-pocket expenses directly associated with dealing with the Data Incident, not to exceed \$7,500 per Settlement Class Member, that were incurred more likely than not as a result of the Security Incident, including but not limited to (i) unreimbursed expenses, charges and/or losses relating to fraud or identity theft; (ii) other fees for credit repair or similar services; (iii) and costs associated with freezing or unfreezing credit. To receive reimbursement for extraordinary out-of-pocket losses, Settlement Class Members must submit a Valid Claim, including necessary supporting documentation, to the Claims Administrator. Reimbursement for out-of-pocket expenses is subject to the following terms: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Security Incident; and (3) the loss occurred between March 27, 2023, and the Claims Deadline.

2.1.2 Alternative Cash Payment. As an alternative to seeking reimbursement of out-of-pocket losses in 2.1.1, Settlement Class Members may receive a one-time cash payment of \$50.

2.1.3 Settlement Class Members seeking reimbursement under this ¶ 2.1 must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the 90th day after the deadline for the commencement of notice to Settlement Class Members as set forth in ¶ 3.2. The notice to the Settlement Class will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement Class Member with a

statement that his or her claim is true and correct, to the best of his or her knowledge and belief and is being made under penalty of perjury. Notarization shall not be required. The Settlement Class Member must submit reasonable documentation that the out-of-pocket expenses, charges and/or losses claimed were both actually incurred and plausibly arose from the Security Incident. Failure to provide supporting documentation of the out-of-pocket expenses referenced above, as requested on the Claim Form, shall result in denial of a claim.

2.1.4 Aggregate Cap on Claims for Out-of-Pocket Losses, Unreimbursed Expenses and Alternative Cash Payment. AENT's obligation to pay for reimbursement for out-of-pocket expenses and alternative cash payments under this ¶ 2.1 will not, under any circumstance, exceed \$550,000 in the aggregate. If the total of valid claims exceeds \$550,000.00, each claim shall be reduced *pro rata*. Nothing in this Settlement Agreement shall be construed as requiring AENT to provide, and AENT shall not be required to provide, for a double payment for the same loss or injury that was reimbursed or compensated by any other source. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable under the Settlement Agreement. This aggregate cap shall not apply to the costs of business practice changes in ¶ 2.3, credit monitoring in ¶ 2.2, notice and claims administration, or attorneys' fees, costs, and service awards.

2.2 Credit Monitoring and Identity Theft Protection. In addition to, and regardless of whether they submit a claim for, the monetary benefits described in ¶ 2.1, Settlement Class Members may claim two (2) years of three-bureau credit monitoring and identity theft protection services through P&N. The identity theft monitoring will include: (i) real time monitoring of the credit file at all three credit bureaus (Experian, Equifax, and Transunion) for two years; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) comprehensive public record monitoring; (iv) medical identity monitoring; (iv) identity theft insurance of at least \$1 million (no deductible); and (v) access to fraud resolution agents to help investigate and resolve identity thefts.

2.3 Business Practices Changes. The Settling Parties agree that as part of the settlement consideration, AENT, has adopted, paid for, implemented, and will maintain the following business practices changes related to information security to safeguard personal information on its systems for a period of at least three years from the time when the applicable business practices change is initiated: (i) implementation of enhanced multi-factor authentication; (ii) engagement with recognized third-party vendors for managed detection and response; (iii) adoption of additional encryption technologies; (iv) implementation of improved log retention and monitoring policies; and (v) creation of an incident response plan. AENT estimates that it, in total, it will spend approximately \$300,000 annually to implement and maintain the enhanced security measures provided for herein.

2.4 Dispute Resolution for Claims.

2.4.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the expenses described in ¶ 2.1; and (iii) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the

claimed losses as a result of the Security Incident. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require to evaluate the claim, *e.g.*, documentation requested on the Claim Form, and required documentation regarding the claimed losses. The Claims Administrator's initial review will be limited to a determination of whether the claim is complete and plausible. For any claims that the Claims Administrator determines to be implausible, the Claims Administrator will submit those claims to counsel for the Settling Parties. If the Settling Parties do not agree with the claimant's claim, after meeting and conferring, then the claim shall be referred to a claims referee for resolution. The Settling Parties will mutually agree on the claims referee should one be required.

2.4.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Claims Administrator shall request additional information ("Claim Supplementation") and give the claimant twenty-eight (28) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the twenty-one (21) day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the twenty-eight (28) day deadline in which to comply; however, in no event shall the deadline be extended to later than one-hundred-and-eighty (180) days from the Effective Date. If the defect is not timely cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.4.3 Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have ten (10) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is facially valid, then the claim shall be paid. If the Claim Administrator determines that such a claim is not facially valid because the claimant has not provided all information needed to complete the Claim Form and enable the Claim Administrator to evaluate the claim, then the Claim Administrator may reject the claim without any further action. If the claim is rejected in whole or in part, for other reasons, then the claim shall be referred to the claims referee.

2.4.4 If any dispute is submitted to the claims referee, the claims referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days of the claims referee's receipt of the submitted dispute. The claims referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days of the claims referee's receipt of the submitted dispute. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Security Incident. The claims referee shall have the power to approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for denial of the claim in full. The claims

referee shall make a final decision within thirty (30) days of the latter of the following events: its receipt of the submitted dispute and receipt of all supplemental information requested.

2.5 Settlement Expenses. AENT will pay the following costs outside of the aggregate cap identified in ¶ 2.1.4: the costs of credit monitoring and identity theft protection described in ¶ 2.2; the costs of dispute resolution described in ¶ 2.4; attorneys' fees and costs, as well as service awards described in the subsections of ¶ 7; and the costs of claims administration described under ¶¶ 8.1, 8.2, and 8.3.

2.6 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved.

3. Preliminary Approval and Notice of Fairness Hearing

3.1. As soon as practicable after the execution of the Settlement Agreement, Proposed Co-Lead Counsel and counsel for AENT shall jointly submit this Settlement Agreement to the Court, and Proposed Co-Lead Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form attached hereto as Exhibit D, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.7;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Federman & Sherwood, Mason LLP, and Clobes, Cafferty, Meriwether & Sprengel LLP as Class Counsel;
- d) appointment of Plaintiffs as Class Representatives;
- e) approval of a customary form of Short Notice to be mailed by U.S. mail to Settlement Class Members in a form substantially similar to Exhibit A, attached hereto.
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to Exhibit B, attached hereto, which, together with the Short Notice, shall include a fair summary of the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, the requested attorneys' fees, and the date, time and place of the Final Fairness Hearing;

- g) approval of the Claim Form to be available on the Settlement Website for submitting claims and available, upon request, in a form substantially similar to Exhibit C, attached hereto; and
- h) appointment of the Claims Administrator.

The Short Notice, Long Notice, and Claim Form shall be reviewed by the Claims Administrator and may be revised as agreed upon by the Settling Parties before such submissions to the Court for approval.

3.2 AENT shall pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Any attorneys' fees, costs, and expenses of Plaintiffs' Counsel, and a service award to the Class Representatives, as approved by the Court, shall be paid by AENT as set forth in ¶ 7 below. Notice shall be provided to Settlement Class Members by the Claims Administrator in a manner that satisfies constitutional requirements and due process. The notice plan shall be subject to approval by the Court as meeting the requirements of New York Civil Practice Law and Rules 901, *et seq.* and constitutional due process requirements. The Claims Administrator shall establish a dedicated Settlement Website and shall maintain and update the website throughout the claim period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line staffed with a reasonable number of live operators shall be made available to address Settlement Class Members' inquiries. The Claims Administrator will also provide copies of the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement, upon request. Before the Final Fairness Hearing, Class Counsel shall file with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice. The Short Notice, Long Notice, and Claim Form approved by the Court may be adjusted by the Claims Administrator in consultation with an agreement by the Settling Parties, as may be reasonable and necessary and not inconsistent with such approval. The Notice Program shall commence within 15 days of the entry of the Preliminary Approval Order and shall be completed within 45 days of the entry of the Preliminary Approval Order.

3.3 Class Counsel and AENT's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than sixty (60) days after the date on which the notice program commences pursuant to ¶ 3.2.

4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling

within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Security Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vii) a list of all settlements to which the objector and/or their counsel have objected in the preceding three (3) years; and (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation). To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court, Albany County Courthouse, Room 102, 16 Eagle Street, Albany, NY 12207, and contain the case name and docket number for *Woods et al. v. Albany ENT & Allergy Services, P.C.*, Index No. 904730-23, no later than sixty (60) days from the date on which notice program commences pursuant to ¶ 3.2, and served concurrently therewith upon Class Counsel, Daniel O. Herrera, Cafferty Clobes Meriwether & Sprengel LLP, 135 S. LaSalle St., Suite 3210, Chicago, IL 60602 and counsel for AENT, Christopher Dodrill, Greenberg Traurig, LLP, 2200 Ross Avenue, Suite 5200, Dallas, Texas 75201.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately or to object to the Settlement Agreement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the New York Practice Rules of the Appellate Division and not through a collateral attack.

6. Releases

6.1 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, 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 participation in the settlement as

provided herein) in which any of the Released Claims is asserted.

6.2 Upon the Effective Date, AENT shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Plaintiffs, each and all of the Settlement Class Members and Plaintiffs' Counsel of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses AENT may have against such Persons including, without limitation, any claims based upon or arising out of any debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither AENT nor their Released Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Plaintiffs, each and all of the Settlement Class Members and Plaintiffs' Counsel.

7. Attorneys' Fees, Costs, and Expenses; Service Award to Plaintiffs

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that AENT would not object to a request for reasonable attorneys' fees, costs, expenses, and a service award to Plaintiffs as may be ordered by the Court. AENT and Class Counsel then negotiated and agreed to the provision described in ¶ 7.2.

7.2 Class Counsel may petition the court for attorneys' fees, inclusive of any costs and expenses of the Litigation, in an amount not to exceed \$415,000.00. Class Counsel, in their sole discretion, shall allocate and distribute any amount of attorneys' fees, costs, and expenses awarded by the Court among them.

7.3 Subject to Court approval, AENT has agreed not to object to a request for a service award in the amount of \$1,000 to each named Plaintiff.

7.4 If awarded by the Court, AENT shall pay the attorneys' fees, costs, expenses, and service awards to Plaintiffs, as set forth above in ¶¶ 7.2, 7.3, and 7.4, within thirty (30) days after the Effective Date. Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and service awards to Plaintiffs consistent with ¶¶ 7.2 and 7.3. The payment of attorneys' fees, costs, expenses, and service awards shall be paid outside of the aggregate cap in ¶ 2.1.4.

7.5 Any award of attorneys' fees, costs, and expenses, and the service award to Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will not in any way reduce the consideration being made available to the Settlement Class as described herein. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service awards ordered by the Court to Class Counsel or Plaintiffs shall affect whether the Judgment is Final or constitute grounds for

cancellation or termination of this Settlement Agreement.

8. Administration of Claims

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶¶ 2.1 and 2.2. Class Counsel and AENT shall be given reports as to both claims and distribution and have the right to review and obtain supporting documentation to the extent necessary to resolve claims administration issues. The Claims Administrator's and claims referee's, as applicable, determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the dispute resolution process set forth in ¶ 2.5. All claims agreed to be paid in full by AENT shall be deemed a Valid Claim.

8.2 Checks for Valid Claims shall be mailed and postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later.

8.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise expressly allowed by law or the Settling Parties' written agreement, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4 No Person shall have any claim against the Claims Administrator, claims referee, AENT, Released Parties, Class Counsel, Plaintiffs, Plaintiffs' Counsel, and/or AENT's counsel based on distributions of benefits to Settlement Class Members or any alleged failure by AENT to implement the business practice changes in ¶ 2.3.

8.5 Information submitted by Settlement Class Members in connection with submitted claims under this Settlement Agreement shall be deemed confidential and protected as such by the Claims Administrator, claims referee, Class Counsel, and counsel for AENT.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 3.1;
- b) the Court has entered the Judgment granting final approval to the settlement as set forth herein;
- c) the Judgment has become Final, as defined in ¶ 1.09; and
- d) the number of Opt-Outs is fewer than indicated in the Parties' separate filing under seal with the Court.

9.2 If all conditions specified in ¶ 9.1(a)-(c) hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 9.5 unless Class Counsel and counsel for AENT mutually agree in writing to proceed with the Settlement Agreement.

9.3 If the condition in Paragraph 9.1(d) does not occur (*i.e.*, if the number of Opt-Outs is greater than indicated in the Settling Parties' separate filing under seal with the Court), AENT, in its sole discretion, shall have the right to terminate this Class Settlement Agreement by notifying Class Counsel and the Court in writing that it has elected to void this Settlement Agreement. If AENT voids the Settlement Agreement pursuant to this paragraph, AENT shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Class Counsel and service awards, and shall not, at any time, seek recovery of such expenses from any other party to the Litigation or from counsel to any other party to the Litigation.

9.4 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Class Counsel and to AENT's counsel a complete list of all timely and valid requests for exclusion ("Opt-Out List").

9.5 In the event that the Settlement Agreement or the releases set forth in ¶¶ 6.1, 6.2, and 6.3 above are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms: (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled Litigation deadlines be reasonably extended by the Court to avoid prejudice to any Settling Party or Settling Party's counsel; and (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, AENT shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, and Claims Administration, and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

10. Miscellaneous

10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such

party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth in the Settlement Agreement.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Parties; or (ii) 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 any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Parties may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.5 This Agreement contains the entire understanding between AENT and Plaintiffs regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between AENT and Plaintiffs in connection with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs. This Agreement supersedes all previous agreements made between AENT and Plaintiffs. Any agreements reached between AENT, Plaintiffs, and any third party, are expressly excluded from this provision.

10.6 Class Counsel, on behalf of the Settlement Class, are expressly authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto warrants that such Person has the full authority to do so.

10.8 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be the same instrument. A complete set of original executed counterparts shall be filed with the Court.

10.9 The Settlement Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto. No assignment of this Settlement Agreement will be valid without the other party's prior, written permission.

10.10 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the

Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

10.11 All dollar amounts are in United States dollars (USD).

10.12 Cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until six (6) months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and AENT shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶ 2.1 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

10.13 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

[Remainder of page intentionally left blank; Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed by their duly authorized attorneys.

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/s/ _____
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Co-Lead Counsel for Plaintiffs

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

ALAYNA WOODS, JENNIFER NELSON,
on behalf of herself and on behalf of her minor
child, **E.N.-H., DANA BERKLEY** on behalf
of her minor child, **M.B., JAMELLA**
MONTGOMERY, SUSAN HALL,
ARGIRO TZIAKAS, CHRISTINA
KOVALSKY, and **ANDRE BLAKEMORE-**
BELL, on behalf of themselves and all others
similarly situated,

Index No. 904730-23

Plaintiffs,

-against-

**ALBANY ENT & ALLERGY SERVICES,
PC,**

Defendant.

CONFIDENTIAL AGREEMENT TO BE FILED UNDER SEAL

Pursuant to Section 9.1 and 9.3 of the Settlement Agreement reached in *Woods v. Albany ENT & Allergy Services, PC*, Index No. 904730-23, this confidential Agreement is made by and among the Parties to the Settlement Agreement:

All capitalized terms in this Confidential Agreement have the same meanings as in the Settlement Agreement. Defendant shall have the option to withdraw from the Settlement Agreement and to render it null and void pursuant to Section 9.1 and 9.3 of the Settlement Agreement if within ten (10) days after the Opt-Out Date (as approved by the Court), two-hundred and twenty-five (225) or more Settlement Class Members have validly opted out of the Settlement Class.

IN WITNESS WHEREOF, the Parties have executed and caused this confidential Supplemental Agreement to be executed by their duly authorized attorneys below.

William B. Federman

/s/ _____
William B. Federman
Federman & Sherwood

/s/ *Christopher S. Dodrill*
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