

# Exhibit A

### **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Settlement Agreement" or "Agreement") is entered into by and between Ray Stoll, Heidi Imhof, and Chase Whitman ("Settlement Class Representatives"), individually and on behalf of Participating Settlement Class Members (as defined in Paragraph 30) (together "Plaintiffs"), and (2) Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute ("Defendant") (collectively the "Parties"), in the action *Stoll et al. v. Musculoskeletal Institute, Chartered*, Case No. 8:20-cv-01798-CEH-AAS (M.D. Fla.) (the "Action"), pending in the U.S. District Court for the Middle District of Florida.

### **RECITALS**

WHEREAS, on June 30, 2020, a proposed class action lawsuit was filed against Defendant in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, relating to a data security incident disclosed by Defendant on or about June 18, 2020, potentially affecting certain Personal Information of current and former patients of Defendant and others (the "Data Security Incident").

WHEREAS, on or about August 3, 2020, Defendant removed this matter to the U.S. District Court for the Middle District of Florida, and it was assigned to Judge Charlene Edwards Honeywell.

WHEREAS, Defendant denies: a) the allegations and all liability with respect to any and all facts and claims alleged in the Action; b) that the Settlement Class Representatives in the Action and the class they purport to represent have suffered any damage; and c) that the Action satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23.

WHEREAS, on October 26, 2020, the Court entered a scheduling order. (Doc. 35).<sup>1</sup>

WHEREAS, the Parties engaged in extensive motion practice, including Defendant's Motion to Strike Plaintiffs' Amended Initial Disclosures (Doc's 29, 34, 38), Plaintiffs' Motion to Compel Full and Complete Discovery Responses and for Determination of Waiver (Doc's 46, 51, 78), Defendant's Motion to Stay (Doc's 55, 60, 79), Defendant's Motion to Quash Subpoena or Enter a Protective Order Re: CrowdStrike Subpoena (Doc. 58), Plaintiffs' Motion to file Amended Complaint (Doc's 59, 75), and Defendant's Motion to Dismiss Amended Complaint (Docs. 89, 91).

WHEREAS, on November 6, 2020, the Parties engaged in mediation with mediator, Rodney A. Max. The Parties also exchanged detailed mediation briefs with their respective positions on the merits of the claims and class certification.

WHEREAS, on February 18, 2021, the Court entered a stay of this matter pending a decision from the United States Supreme Court in *Transunion v. Ramirez*, as well as a decision

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<sup>1</sup> As used herein, "Doc." refers to the docket entry in Case No. 8:20-cv-01798-CEH-AAS (M.D. Fla.).

from the Eleventh Circuit Court of Appeals in *Tsao v. Captiva MVP Rest. Partners, LLC* (Doc. 79).

WHEREAS, on July 14, 2021, Plaintiffs moved to lift that stay, following entry of the Supreme Court's decision in *Transunion* and the Eleventh Circuit's decision in *Tsao* (Doc. 80), which request was granted, (Doc. 82).

WHEREAS, following lifting of the stay, the Parties resumed mediation discussions with Mr. Max.

WHEREAS, following extensive arm's length settlement negotiations conducted through Mr. Max, the Parties reached an agreement on the essential terms of settlement.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, and without any admission or concession by either Party, the Parties agree to a full, complete, and final settlement and resolution of the Action, subject to Court approval, on the following terms and conditions:

#### **I. DEFINITIONS**

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. "Action" means the consolidated class action lawsuit *Stoll et al. v. Musculoskeletal Institute, Chartered*, Case No. 8:20-cv-01798-CEH-AAS (M.D. Fla.), currently pending before the Honorable Charlene Edwards Honeywell in the U.S. District Court for the Middle District of Florida.

2. "Approved Claim" means the timely submitted Claim Form by a Participating Settlement Member that has been approved by the Settlement Administrator.

3. "Attested Time" means time spent remedying issues related to the Data Security Incident, as provided in Section III of this Agreement.

4. "Defendant's Counsel" means Alan Rosenthal, Natalie J. Carlos, Aaron S. Weiss, Patricia M. Carreiro and Joseph W. Swanson of Carlton Fields, P.A.

5. "Claim Form" or "Claim" means the form(s) Participating Settlement Class Members must submit to be eligible for reimbursement of Out-of-Pocket Losses, Attested Time, and/or to claim Identity Theft Protection Services under the terms of the Settlement, which is attached hereto as Exhibit 2.

6. "Claims Deadline" means the last day to submit a timely Claim Form(s), which will occur ninety (90) days after the Notice Deadline.



7. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive Settlement benefits, which will end on the Claims Deadline.

8. “Class Counsel” means John A. Yanchunis, Ryan J. McGee, and Patrick A. Barthle of Morgan & Morgan, and William ‘Billy’ Pearce Howard and Amanda J. Allen of The Consumer Protection Firm. Where applicable, “Lead Class Counsel” shall refer to John Yanchunis.

9. “Settlement Class Representatives” means Ray Stoll, Heidi Imhof, and Chase Whitman.

10. “Court” means the Honorable Charlene Edwards Honeywell, United States District Judge, Middle District of Florida, or such other judge to whom the Action may hereafter be assigned.

11. “Data Security Incident” means the data security incident initially disclosed by Defendant in or about June 2020.

12. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment or one (1) business day following entry of the Final Approval Order and Judgment if no parties have standing to appeal; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.

13. “Fee Application” means any motion for an award of attorneys’ fees, Litigation Costs and Expenses, and Service Award Payments to be paid from the Settlement Fund, as set forth in Paragraphs 86 and 88.

14. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.

15. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Settlement Agreement. Class Counsel and Defendant’s Counsel will work together on a proposed Final Approval Order and Judgment, which Defendant must approve before filing.

16. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

17. “Identity Restoration Services” means identity restoration services provided by Aura to all Participating Settlement Class Members under the Settlement. These services provide for professional fraud resolution and identity recovery assistance to Participating Settlement Class Members who experience identity theft or fraud.

18. “Identity Theft Protection Services” means Identity Guard Total, a three-bureau credit monitoring services provided by Aura to Participating Settlement Class Members under the Settlement. These services include daily three-bureau credit monitoring with Equifax, Experian, and TransUnion; identity restoration services; and \$1 million in identity theft insurance, among other features.

19. “Litigation Costs and Expenses” means costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Action.

20. “Minor Claim Form” means the form(s) a legal guardian may submit on behalf of a Participating Settlement Class Member who is under the age of eighteen (18) at the time of claim submission seeking to elect Minor Monitoring Services, reimbursement of Out-of-Pocket Losses and/or Attested Time.

21. “Minor Monitoring Services” means Aura’s minor monitoring services provided to every Participating Settlement Class Member under the age of eighteen (18) under the Settlement. These services include monthly three-bureau monitoring of information for every enrolled minor; internet surveillance; fraud resolution services; and \$1 million in identity theft insurance from material damages that may occur against a minor whose credit file is misused, among other features.

22. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses, (iii) Identity Restoration Services; (iv) Minor Monitoring Services; (v) Identity Theft Protection Services; (vi) Service Awards Payments, if applicable and approved by the Court,<sup>2</sup> and (vii) Fee Award and Costs approved by the Court.

23. “Non-Profit Residual Recipient” means a non-profit organization approved by the Court following distribution of Settlement payments for Approved Claims.

24. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order, substantially in the form attached hereto as Exhibit 1.

25. “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members, and will occur thirty (30) days after entry of the Preliminary Approval Order.

26. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated

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<sup>2</sup> See paragraph 86.



with providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

27. "Objection Deadline" is the last day on which a Settlement Class Member may file an objection to the Settlement or Fee Application, which will be forty (40) days after the Notice Deadline.

28. "Opt-Out Deadline" is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be forty (40) days after the Notice Deadline.

29. "Out-of-Pocket Losses" means documented out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Data Security Incident, and that have not already been reimbursed by a third party. Out-of-Pocket Losses may include, without limitation, unreimbursed costs associated with fraud or identity theft including professional fees including attorneys' fees, accountants' fees, and fees for credit repair services and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges, as well as costs for credit monitoring costs or other mitigative services that were incurred on or between April 9, 2020, and the Notice Deadline.

30. "Participating Settlement Class Member" means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline.

31. "Personal Information" means protected health information as defined by the Health Insurance Portability and Accountability Act, medical information, and other personally identifiable information, including names, Social Security numbers, dates of birth, addresses, diagnosis codes, financial information, and treatment information.

32. "Preliminary Approval Order" means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, that is consistent with all material provisions of this Settlement Agreement. Class Counsel and Defendant's Counsel will work together on a proposed Preliminary Approval Order, which Defendant must approve before filing.

33. "Released Claims" means any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses) that the Releasing Parties had, have or may claim now or in the future to have (including, but not limited to, assigned claims and any and all "Unknown Claims" as defined below) that were or could have

been asserted or alleged arising out of the same nucleus of operative facts as the claims alleged or asserted in the Action, including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged, argued, raised or asserted in any pleading or court filing in the Action, including but not limited to those concerning: 1) the disclosure of the Settlement Class Members' Personal Information in the Data Security Incident; 2) Defendant's maintenance of Settlement Class Members' Personal Information as it relates to the Data Security Incident; 3) Defendant's information security policies and practices as it relates to the Data Security Incident; 4) Defendant's investigation of and response to the Data Security Incident; or 5) Defendant's provision of notice to Settlement Class Members following the Data Security Incident.

34. "Request for Exclusion" is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice.

35. "Service Award Payment" means compensation awarded by the Court and paid to the Settlement Class Representatives in recognition of their role in this litigation, in accordance with the obligations set forth in Section XIII.

36. "Settlement" means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

37. "Settlement Administrator" means Epiq Class Action and Claims Solutions, Inc. Class Counsel and Defendant's Counsel may, by agreement, substitute a different Settlement Administrator, subject to Court approval.

38. "Settlement Class" means approximately 647,000 individuals identified on the Settlement Class List, including all individuals residing in the United States who were sent notification by Defendant that their Personal Information was or may have been compromised in the Data Security Incident initially disclosed by Defendant in or about June 2020. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) the Defendant, its subsidiaries, parent companies, management companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

39. "Settlement Class List" means the list generated by Defendant containing the full names, current or last known addresses, personal email addresses where known, and birthdates for Settlement Class members under the age of eighteen (18), for all persons who fall under the definition of the Settlement Class, which Defendant shall provide to the Settlement Administrator within twenty-one (21) days of the Preliminary Approval Order.

40. "Settlement Class Member" means an individual who falls within the definition of the Settlement Class.



41. "Settlement Fund" means four million dollars (\$4,000,000.00) to be paid by Defendant as specified in Paragraphs 45–50, including any interest accrued thereon after payment. This payment is the limit and extent of Defendant's monetary obligations with respect to the Settlement.

42. "Settlement Payment" or "Settlement Check" mean the payment to be made via mailed check and/or electronic payment to a Participating Settlement Class Member pursuant to Paragraphs 51–58.

43. "Settlement Website" means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs' motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs' Fee Application, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

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

## **II. SETTLEMENT FUND**

45. **Establishment of Settlement Fund.** (a) Within (14) fourteen days of the entry of a Preliminary Approval Order, Defendant shall cause the sum of \$350,000.00 to be deposited into an interest-bearing Qualified Settlement Account (QSF) account established and administered by the Settlement Administrator at a financial institution selected by Class Counsel and (b) within fourteen (14) days of the Effective Date, Defendant shall cause the sum of \$3,650,000.00 to be deposited into an interest-bearing Qualified Settlement Account (QSF) account established and administered by the Settlement Administrator at a financial institution selected by Class Counsel.

46. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph 81.

47. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of



the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

**48. Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraph 81.

**49. Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Service Awards Payments, if approved by the Court;<sup>3</sup> (iv) Fee Award and Costs; (v) Identity Theft Protection Services; (vi) Identity Restoration Services; (vii) Minor Monitoring Services; (viii) reimbursement for Out-of-Pocket Losses and Attested Time; and (ix) Non-Profit Residual Recipient payments, if any. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court. In particular, the initial \$350,000.00 deposited into the QSF shall be used by the Settlement Administrator to pay for items (i) and (ii) of this paragraph.

**50. Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Participating Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

### **III. REIMBURSEMENT FOR OUT-OF-POCKET LOSSES AND ATTESTED TIME**

**51. Reimbursement for Out-of-Pocket Losses.** All Settlement Class Members may submit a claim for up to \$15,000.00 for reimbursement of Out-of-Pocket Losses. To receive reimbursement for Out-of-Pocket Losses, Settlement Class Members must submit a valid Claim

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<sup>3</sup> See paragraph 86.



Form that includes the following: (i) third party documentation supporting the loss and the timing of the loss; and (ii) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Third-party documentation can include receipts or other documentation not “self-prepared” by the Settlement Class Member that documents the costs incurred. Self-prepared documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. A legal guardian for a Settlement Class Member who is under the age of eighteen (18) at the time of claim submission may submit a Minor Claim Form seeking reimbursement of Out-of-Pocket Losses on the minor’s behalf.

**52. Assessing Claims for Out-of-Pocket Losses.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Losses reflects valid Out-of-Pocket Losses actually incurred that are fairly traceable to the Data Security Incident, but may consult with Class Counsel in making individual determinations. In assessing what qualifies as “fairly traceable,” the Settlement Administrator will consider (i) whether the timing of the loss occurred on or after April 9, 2020; and (ii) whether the Personal Information used to commit identity theft or fraud consisted of the type of Personal Information identified in Defendant’s notices of the Data Security Incident. Costs expended for mitigation measures like credit monitoring services, fraud resolution services, and professional services incurred to address identity theft or fraud on or after April 9, 2020, shall be presumed “reasonably incurred.” The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

**53. Reimbursement for Attested Time.** All Settlement Class Members may submit a claim for reimbursement of Attested Time up to five (5) hours at twenty-five dollars (\$25) per hour. Settlement Class Members can receive reimbursement of Attested Time at twenty-five dollars (\$25) per hour with a detailed description of the actions taken in response to the Data Security Incident and the time associated with each action. A claim for Attested Time may be combined with reimbursement for Out-of-Pocket Losses but in no circumstance will a Settlement Class Member be eligible to receive more than the \$15,000.00 individual cap. A legal guardian for a Settlement Class Member who is under the age of eighteen (18) at the time of claim submission may submit a Minor Claim Form seeking reimbursement of Attested Time on the minor’s behalf.

**54. Assessing Claims for Attested Time.** The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met in order to award payments of Attested Time, but may consult with Class Counsel in making individual determinations. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

**55. Disputes.** To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses or Attested Time is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the



deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations.

#### **IV. IDENTITY THEFT PROTECTION SERVICES, IDENTITY RESTORATION, AND MINOR MONITORING**

**56. Identity Theft Protection Services.** All Participating Settlement Class Members who are not automatically eligible for Minor Monitoring Services are eligible to enroll in three (3) years of Identity Theft Protection Services provided by Aura, regardless of whether the Settlement Class Member submits a claim for reimbursement of Out-of-Pocket Losses or Attested Time. The Settlement Administrator shall send an activation code to each Participating Settlement Class Member who is eligible for Identity Theft Protection Services within thirty (30) days of the Effective Date which can be used to activate Identity Theft Protection Services via an enrollment website maintained by Aura. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Identity Theft Protection Services claimants may activate Identity Theft Protection Services for a period of at least 60-days from the date the Settlement Administrator sends the activation code. Aura shall provide Identity Theft Protection Services to all valid claimants who timely activate those services for a period of three (3) years from the date of activation.

**57. Identity Restoration Services.** All Participating Settlement Class Members are automatically eligible to access fraud assistance/identity restoration services offered through Aura for a period of three (3) years from the Effective Date, regardless of whether they submit a claim under the Settlement.

**58. Minor Monitoring Services.** All Participating Settlement Class Members under the age of eighteen (18) on or before the Claims Deadline are automatically eligible to enroll in Minor Monitoring Services provided by Aura for a period of three (3) years from the Effective Date, regardless of whether they submit a claim under the Settlement. Enrollment codes shall be mailed or emailed to all eligible Settlement Class Members within thirty (30) days of the Effective Date.

#### **V. PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS**

**59. Payment Timing.** Payments for Approved Claims for reimbursement for Out-of-Pocket Losses and/or Attested Time shall be issued in the form of a check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date.

**60. Expiration Timing.** Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Check is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is authorized to send an



e-mail and/or place a telephone call to that Participating Settlement Class Member reminding him/her of the deadline to cash such check.

61. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

62. **Uncashed Checks.** To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Participating Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Participating Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing a check or mailing the Participating Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Any reissued Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

63. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to Defendant after the Effective Date. To the extent any monies remain in the Net Settlement Fund more than 150 days after the distribution of Settlement payments to the Participating Settlement Class Members, or 30 days after all reissued Settlement Checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, any remaining monies shall be distributed to the Non-Profit Residual Recipient approved by the Court.

64. **Deceased Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Participating Settlement Class Member's estate upon receiving proof the Participating Settlement Class Member is deceased and after consultation with Class Counsel.

## **VI. CLAIMS, CAPS, AND DISTRIBUTION OF SETTLEMENT FUNDS**

65. **Submission of Electronic and Hard Copy Claims.** Participating Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. Defendant shall not be entitled to access information regarding which Settlement Class Members submitted a Claim Form or otherwise participated in the Settlement. Defendant's Counsel may



obtain this information on a showing of good cause, including but not limited to any disputes arising out of the claims process.

66. **Individual Caps.** Participating Settlement Class Members are subject to an individual aggregate cap of \$15,000.00 for payments made under the Settlement. Participating Settlement Class Members may submit claims for reimbursement of Attested Time and/or Out-of-Pocket Losses but the Participating Settlement Class Member's combined claims will be subject to the individual aggregate cap of \$15,000.00.

67. **Order of Distribution of Funds.** The Settlement Administrator must first use the Net Settlement Fund to fund the Identity Theft Protection Services, Minor Monitoring Services, and Identity Restoration Services; followed by making payments for Approved Claims for Out-of-Pocket Losses; followed by Approved Claims for Attested Time.

68. **Pro-Rata Contingencies.** In the event that the aggregate amount of all payments for reimbursement of Out-of-Pocket Losses exceeds the total amount of the Net Settlement Fund, then the value of such payments shall be reduced on a pro rata basis, such that the aggregate value of all payments for Out-of-Pocket Losses does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed for Approved Claims of Attested Time. In the event that (i) the aggregate amount of Approved Claims for Out-of-Pocket Losses does not exceed the Net Settlement Fund, and (ii) the aggregate amount of all Approved Claims for Attested Time is greater than the Net Settlement Fund, less the aggregate amount of Approved Claims for Out-of-Pocket Losses, then the value of each Participating Settlement Class Members' payment for Attested Time shall be reduced on a pro rata basis such that the aggregate value of all Approved Claims for Out-of-Pocket Losses and Attested Time do not exceed the Net Settlement Fund. Alternatively, in the event that the aggregate amount of Approved Claims for Out-of-Pocket Losses combined with the aggregate amount of Approved Claims for Attested Time does not exhaust the Net Settlement Fund, then the value of each Participating Settlement Class Members' payment for Out-of-Pocket Losses and Attested Time shall be increased on a pro rata basis, up to a maximum of the \$15,000.00 Individual Cap, such that the aggregate value of all Approved Claims for Out-of-Pocket Losses and Attested Time exhausts, as nearly as possible, the Net Settlement Fund. However, to the extent distribution of such excess amounts is not administratively feasible, and/or the additional distribution is not sufficient to exhaust the Net Settlement Fund, any remaining funds shall be distributed to the Non-Profit Residual Recipient approved by the Court. All pro rata determinations required by this Paragraph shall be performed by the Settlement Administrator.

## **VII. SETTLEMENT CLASS NOTICE**

69. **Notice.** Within twenty-one (21) days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within seven (7) days after receipt of Settlement Class List, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class. Notice shall be disseminated via e-mail to Settlement Class Members whose personal e-mail addresses are available within Defendant's records, and via U.S. mail to all Settlement Class members whose personal e-mail addresses are not available within Defendant's records. Class Counsel may direct the Settlement



Administrator to send reminder notices to Settlement Class Members at any time prior to the Claims Deadline.

### **VIII. OPT-OUTS AND OBJECTIONS**

70. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than forty (40) days after the Notice Deadline. The Request for Exclusion must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

71. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee Application by electronically filing the objection with the Court or mailing it to the Clerk of the Court. Objections need to be submitted only to the Court, and not also to Class Counsel or Defendants’ counsel. The objections will be available to the Parties on the case docket once the objections are filed by the Clerk of the Court. Such objection(s) must be submitted in writing postmarked no later than forty (40) days after the Notice Deadline. For an objection to be considered by the Court, the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, at the address listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member’s attorney. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

### **IX. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

72. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Creating, administering, and overseeing the Settlement Fund;



- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Providing Notice to Settlement Class Members via U.S. mail and e-mail;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- f. Responding to any mailed or emailed Settlement Class Member inquiries within one (1) business day;
- g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- h. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Defendant's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Defendant's Counsel;
- i. Working with the provider of Identity Theft Protection Services and Minor Monitoring Services to receive and send activation codes within thirty (30) days of the Effective Date;
- j. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- k. Providing weekly or other periodic reports to Class Counsel and Defendant's Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Defendant's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- l. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and

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

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

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

#### **X. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

75. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date.

76. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of the settlement within 45 days or a date thereafter that is agreeable to the Parties.

77. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline; and at least 90 days after Defendant notifies the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

78. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court



shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

## **XI. MODIFICATION AND TERMINATION**

79. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

80. **Decertification of the Settlement Class if Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order and Judgment; or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Defendant reserves the right to contest class certification for all other purposes. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition, the fact that Defendant did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification.

81. **Termination.** Settlement Class Representatives and Defendant shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice") within seven (7) days of: (1) the Court's refusal to issue the Preliminary Approval Order; or (2) within fourteen (14) days of any of the following: (i) the Court's refusal to enter the Final Approval Order and Judgment, or (ii) the date upon which the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court.

82. **Effect of Termination.** In the event of a termination as provided in Paragraph 81, this Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement or the Settlement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

## **XII. RELEASES**

83. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have



released, acquitted, and forever discharged any and all Released Claims against Defendant and its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, management companies, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing.

84. **Unknown Claims.** The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Action and that any of the Settlement Class Representatives or Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns does not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release Defendant and its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, management companies, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS 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.

Upon the Effective Date, each of the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.



85. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Settlement Class Representatives and Participating Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of 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 section.

### **XIII. SERVICE AWARD PAYMENTS**

86. **Service Award Payments.** At least twenty-one (21) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application that may include a request for Service Award Payments for the Settlement Class Representatives in recognition for their contributions to this Action. Defendant agrees to take no position as to Class Counsel's request for a service award not to exceed \$1,000.00 per representative. If necessary, Defendant will take no position as to the Court reserving on ruling, or otherwise retaining jurisdiction to consider, payment of a service award pending *en banc* review of *Johnson v. NPAS Sols., LLC*, 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020). If sought and awarded, the Settlement Administrator shall make the Service Award Payments to the Settlement Class Representatives from the Settlement Fund. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

87. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

### **XIV. ATTORNEYS' FEES, COSTS, EXPENSES**

88. **Attorneys' Fees and Costs and Expenses.** At least twenty-one (21) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application for an award of attorneys' fees and Litigation Costs and Expenses to be paid from the Settlement Fund. Defendant agrees to take no position as to Class Counsel's request for an award of attorneys' fees not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of Litigation Costs and Expenses not to exceed \$25,000.00. Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class Counsel shall provide to Defendant and the Settlement Administrator a properly completed and duly executed IRS Form W-9. Fee Award and Costs (plus any interest accrued thereon) shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than three (3) days after the Effective Date.

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

**XV. NO ADMISSION OF LIABILITY**

90. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

91. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Defendant in the Action or in any proceeding in any court, administrative agency or other tribunal.

**XVI. THE SETTLEMENT SHALL PROCEED REGARDLESS OF FEDERAL JURISDICTION**

92. This settlement has been entered notwithstanding the Eleventh Circuit's consideration of data breach related standing and class certification case(s). To the extent decisions from the Eleventh Circuit or Supreme Court causes the Court to find that it lacks subject matter jurisdiction over this case based on lack of Article III standing, the parties' will file a joint motion to remand this case to the Circuit Court in and for the Thirteenth Judicial Circuit, Hillsborough County, Florida. This Settlement shall then proceed in the Circuit Court in and for the Thirteenth Judicial Circuit, Hillsborough County, Florida. If this case is remanded to state court pursuant to this section, then:

- (a) Settlement Class Representatives, on behalf of the Settlement Class, will file the same or materially the same motion for preliminary approval contemplated by this Agreement, along with this Agreement after remand;
- (b) The Parties agree to propose materially the same proposed Preliminary Approval Order, Order of Final Approval, Class Notice, and Settlement Claim Form proposed herein; the only changes that shall be made, and then only if deemed necessary, shall be to reflect the change of court, the passage of time, any need for additional notice, any need for a new state court presiding over the matter to make its own findings regarding the propriety of certifying the Settlement Class, and any other change in circumstance the Parties agree is needed to secure entry of an Order of Final Approval; and
- (c) Any additional Notice and Administrative Expenses presented for approval by the state court shall be exclusively drawn from the Settlement Fund.



## **XVII. MISCELLANEOUS**

93. **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

94. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

95. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to "days" in this agreement shall refer to calendar days unless otherwise specified.

96. **Construction.** For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

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

98. **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 in good faith prior to seeking Court intervention.

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

100. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically through e-mail of an Adobe PDF shall be deemed an original.

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

John A. Yanchunis (FBN 324681)  
jyanchunis@ForThePeople.com

Ryan J. McGee (FBN 064957)  
rmcgee@ForThePeople.com  
Patrick A. Barthle II (FBN 099286)  
pbarthle@ForThePeople.com  
**MORGAN & MORGAN**  
**COMPLEX LITIGATION GROUP**  
201 N. Franklin Street, 7th Floor  
Tampa, Florida 33602  
Telephone: (813) 223-5505

William 'Billy' Pearce Howard  
Billy@TheConsumerProtectionFirm.com  
Amanda J. Allen  
Amanda@TheConsumerProtectionFirm.com  
**THE CONSUMER PROTECTION FIRM**  
4030 Henderson Boulevard  
Tampa, FL 33629  
(813) 500-1500 Telephone  
(813) 435-2369 Facsimile

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


Alan Rosenthal (FBN 220833)  
arosenal@carltonfields.com  
Natalie J. Carlos (FBN 0146269)  
ncarlos@carltonfields.com  
Aaron S. Weiss (FBN 48813)  
aweiss@carltonfields.com  
Patricia M. Carreiro (FBN 1017952)  
pcarreiro@carltonfields.com  
**CARLTON FIELDS, P.A.**  
2 MiamiCentral  
700 NW 1st Avenue, Suite 1200  
Miami, Florida 33136-4118  
(305) 530-0050

Joseph W. Swanson (FBN 29618)  
jswanson@carltonfields.com  
**CARLTON FIELDS, P.A.**  
Suite 1000  
4221 W. Boy Scout Boulevard  
Tampa, Florida 33607-5780  
(813) 223-7000

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

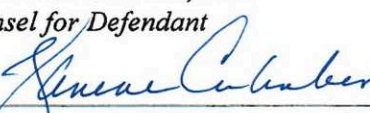


102. **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

By:   
Alan Rosenthal  
CARLTON FIELDS, P.A.  
*Counsel for Defendant*

###

Date: 3/10/22

By:   
Name: Janene Culumber  
Position: Chief Financial Officer  
*On Behalf of Musculoskeletal Institute, Chartered  
d/b/a Florida Orthopaedic Institute*

Date: 3/11/2022

By: \_\_\_\_\_  
John A. Yanchunis  
MORGAN & MORGAN

Date: \_\_\_\_\_

*Counsel for Plaintiffs and the Settlement Class*

102. **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.

# # #

By: \_\_\_\_\_  
Alan Rosenthal  
CARLTON FIELDS, P.A.  
*Counsel for Defendant*

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
*On Behalf of Musculoskeletal Institute, Chartered  
d/b/a Florida Orthopaedic Institute*

Date: \_\_\_\_\_

By: \_\_\_\_\_

John A. Yanchunis  
MORGAN & MORGAN

*Counsel for Plaintiffs and the Settlement Class*

Date: 3/16/2022



# Exhibit 1

**This is a Court approved Legal Notice. This is not an advertisement.**

*Stoll et al. v. Musculoskeletal Institute, Chartered, Case No. 8:20-cv-01798-CEH-AAS*

*UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA*

## FLORIDA ORTHOPAEDIC INSTITUTE CLASS ACTION SETTLEMENT

**TO: All individuals who were notified by Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute (“FOI”) that their personal information was or may have been compromised in the data security incident initially disclosed by FOI in or about June 2020.**

A Class Action Settlement has been proposed in litigation against FOI relating to a data security incident that FOI disclosed in or about June 2020 (“Data Security Incident”). You are receiving this notice because the following individual(s) are “Settlement Class Members” entitled to benefits from a class action settlement [LIST CLASS MEMBERS, INCLUDING ANY MINORS]. **The easiest way to submit a claim under the settlement is online at [www.\[URL\].com](http://www.[URL].com).**

Under the terms of the settlement, FOI has agreed to establish a fund of \$4,000,000.00 that will be used to pay for the following forms of relief:

- **Reimbursement for Out-of-Pocket Losses:** The Settlement Fund will be used to reimburse Settlement Class Members for out-of-pocket losses fairly traceable to the Data Security Incident, up to \$15,000.00 per individual (“Out-of-Pocket Losses”).
- **Reimbursement for Attested Time:** The Settlement Fund will be used to reimburse Settlement Class Members for time spent remedying issues related to the Data Security Incident for up to five (5) hours at \$25.00 per hour (“Attested Time”).
- **Identity Restoration Services:** Regardless of whether you submit a claim under the Settlement, all Settlement Class Members will be eligible to access identity restoration services offered through Pango f/k/a Aura, including professional fraud resolution assistance to help with identity recovery and restoration in case you experience identity theft or fraud in the future, for a period of three (3) years (“Identity Restoration Services”).
- **Minor Monitoring Services:** A parent or legal guardian of a Settlement Class Member who is a minor at the time the settlement is final may enroll the minor in three (3) years of Aura’s Minor Monitoring Services. These services include monthly three- bureau monitoring of information for the minor; internet surveillance; fraud resolution services, and \$1,000,000 in identity theft insurance for material damages caused by the misuse of the minor’s credit file; or
- **Identity Theft Protection Services:** All Settlement Class Members are eligible to enroll in three (3) years of Aura’s Identity Guard Total credit monitoring services at no cost, regardless of whether you submit a claim for Out-of-Pocket Losses or Attested Time. These services retail for nearly \$196 per individual and include reports for your credit files at Experian, Equifax, and TransUnion, a \$1 million identity theft insurance policy, and additional features discussed below (“Identity Theft Protection Services”).

The Court still must decide whether to approve the settlement. No payments will be made until after the Court grants final approval of the settlement and all appeals, if any, are resolved. Your legal rights are affected whether you respond or not. ***Read this notice carefully.***

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
<b>File a claim for out-of-pocket</b>	You must submit a claim in order to receive reimbursement for Out-of-Pocket Losses and/or loss of time. Under the Settlement, you	<b>DATE</b>



<b>losses and lost time</b>	<p>may claim Out-of-Pocket Losses, Attested Time, and Identity Theft Protection Services that you already purchased.</p> <p>For more detailed information, see Questions 6, 8, 11 and 12.</p>	
<b>File a claim for identity theft protection services</b>	<p>You must submit a claim(s) in order to receive the Identity Theft Protection Services offered under the Settlement. If you are a parent or legal guardian of a Settlement Class Member who is a minor, you must submit a claim(s) in order for that Settlement Class Member to receive Minor Monitoring Services.</p> <p>For more detailed information, see Questions 6, 9 and 12.</p>	<b>DATE</b>
<b>Access identity restoration services</b>	<p>You can access Identity Restoration Services after the Settlement becomes final, whether or not you make a claim under the Settlement.</p> <p>For more detailed information, see Questions 6 and 10.</p>	No deadline
<b>Exclude yourself</b>	<p>You can exclude yourself from the Settlement by informing the Settlement Administrator that you want to “opt-out” of the Settlement. If the settlement becomes final, this is the only option that allows you to retain your rights to separately sue FOI for claims related to the Data Security Incident. If you opt-out, you may not make a claim for benefits under the Settlement.</p> <p>For more detailed information, see Question 17.</p>	<b>DATE</b>
<b>Object or comment on the settlement</b>	<p>You may object to the Settlement by writing to the Court and explaining why you don’t think the Settlement should be approved. If you object, you will remain a Settlement Class Member, and if the Settlement is approved, you will be eligible for the benefits of the Settlement and give up your right to sue on certain claims described in the Settlement Agreement which is available at <a href="http://www.[]URL[].com">www.[]URL[].com</a>.</p> <p>For more detailed information, see Question 18.</p>	<b>DATE</b>
<b>Do nothing</b>	<p>If you do nothing, you will not be eligible to receive reimbursement for Out-Of-Pocket Losses or Attested Time, or enroll in Identity Theft Protection Services. You will be eligible to access Identity Restoration Services and Minor Monitoring Services if you have a qualifying minor dependent(s). If the Settlement becomes final, you will give up your rights to sue FOI separately relating to the Data Security Incident.</p> <p>For more detailed information, see Questions 6 and 14.</p>	No deadline

Questions? Go to [www.\[\]URL\[\].com](http://www.[]URL[].com) or call [PHONE NUMBER]

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Questions? Go to [www.\[\]URL\[\].com](http://www.[]URL[].com) or call [PHONE NUMBER]



## **BASIC INFORMATION AND OVERVIEW**

### **1. Why did I get this Notice?**

You received this notice because FOI sent you notice that your personal information was or may have been compromised in the data security incident initially disclosed by FOI in or about June 2020. A Court authorized this notice because you have a right to know how the proposed settlement may affect your rights. This notice explains the nature of the litigation, the general terms of the proposed settlement and what it may mean to you. This notice also explains the ways you may participate in, or exclude yourself from, the Settlement.

### **2. What is this lawsuit about?**

In or about June 2020, FOI disclosed that on or about April 9, 2020, its computer system suffered a ransomware attack that encrypted the data stored on its servers. FOI acknowledged that the personal information of certain of its patients may have been accessed or taken during the incident. This information may have included people's names, dates of birth, Social Security numbers, medical information, insurance plan identification number, payer identification number, claims addresses, and/or FOI claims history, or other personal information.

FOI notified impacted individuals in June 2020.

Thereafter, a class action lawsuit was filed in the United States District Court for the Middle District of Florida by individuals who allege that they were affected by the Data Security Incident. The judge overseeing the case is the Honorable Charlene Edwards Honeywell. The case proceeded under the caption *Stoll et al. v. Musculoskeletal Institute, Chartered*, Case No. 8:20-cv-01798-CEH-AAS. The individuals who sued are called the "Plaintiffs." FOI is the "Defendant." Plaintiffs claim that FOI did not adequately protect their personal information. The amended complaint filed in the lawsuit, which describes the specific legal claims alleged by the Plaintiffs, is available at [www.foi.com](http://www.foi.com).

FOI denies any wrongdoing, and no court or other entity has made any judgment or other determination of any wrongdoing.

### **3. Why is this a class action?**

In a class action, one or more people called "class representatives" sue on behalf of themselves and other people with similar claims. All of these people together are the "class" or "class members." Because this is a class action, even persons who did not file their own lawsuit can obtain relief from harm that may have been caused by the Data Security Incident, except for those individuals who timely exclude themselves from the Settlement Class.

### **4. Why is there a settlement?**

The Court has not decided in favor of Plaintiffs or FOI. Instead, both sides agreed to a settlement. Settlements avoid the costs and uncertainty of a trial and related appeals, while more quickly providing benefits to members of the Settlement Class. The class representatives appointed to represent the class and the attorneys for the Settlement Class ("Class Counsel," see Question 15) believe that the Settlement is in the best interests of the Settlement Class Members.

## **WHO IS PART OF THE SETTLEMENT**

### **5. How do I know if I am part of the Settlement?**

You are a member of the Settlement Class if you received notice from FOI that your personal information was or may have been compromised in the data security incident initially disclosed by FOI in or about June 2020, or you received this settlement notice stating that you or your dependent(s) are class members.

Questions? Go to [www.foi.com](http://www.foi.com) or call [PHONE NUMBER]

Excluded from the Settlement are:

- FOI, its subsidiaries, parent companies, management companies, successors, predecessors, and any entity in which FOI or its parents have a controlling interest, and their current or former officers, directors, and employees;
- The presiding judge and any judicial staff or immediate family members; and
- Any Settlement Class Member who excludes himself or herself from the Settlement (see Question 17).

**If you are not sure whether you are included in the Settlement Class, call [PHONE NUMBER].**

### **THE SETTLEMENT BENEFITS**

#### **6. What does the Settlement provide?**

Under the Settlement, FOI will pay \$4,000,000.00 into a Settlement Fund that will be used to provide the following benefits:

- Cash reimbursement for Out-of-Pocket Losses fairly traceable to the Data Security Incident (see Question 8);
- Cash reimbursement for Attested Time spent remedying issues related to the Data Security Incident (see Question 8);
- Identity Restoration Services (see Question 10);
- Identity Theft Protection Services (see Question 9) or
- Minor Monitoring Services for affected minors (see Question 9);
- Attorneys' fees and expenses as approved by the Court (see Question 16), Service Awards if permitted, taxes and tax-related expenses, and the costs of notifying the class and administering the Settlement.

Depending on the number of valid claims, the costs of settlement administration, and the amount awarded by the Court for attorney's fees and costs and service awards, payments for certain benefits may be reduced proportionally or withheld as set forth in paragraph 68 of the Settlement Agreement.

#### **7. Will FOI know if I submit a claim for settlement benefits?**

No. As part of the Settlement Agreement, FOI will not have access to the identities of Settlement Class Members who make claims for any of the benefits provided by this Settlement.

#### **8. How will the Settlement compensate me for identity theft and fraud I have already suffered or expenses I have already paid to protect myself?**

**Settlement Benefit: Payment for Unreimbursed Out-of-Pocket Losses:** If you spent money to address fraud or identity theft that or to protect yourself from future harm that is fairly traceable to the Data Security Incident, then you can submit a claim for reimbursement up to \$15,000. Out-of-Pocket losses that are eligible for reimbursement through the Settlement may include, but are not limited to, the following costs related to the Data Security Incident and incurred after April 9, 2020:

- Unreimbursed costs associated with fraud or identity theft;
- Professional fees including attorneys' fees, accountants' fees and fees for credit repair services;
- Miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
- Costs of credit monitoring or other identity theft protection services incurred on or after April 9, 2020;

Questions? Go to [www.foi.com](http://www.foi.com) or call [PHONE NUMBER]



- Costs associated with freezing or unfreezing credit with any credit reporting agency.

This list provides examples only, and other losses or costs traceable to the Data Security Incident may also be eligible for reimbursement. **YOU MUST BE ABLE TO DOCUMENT YOUR CLAIM.**

The Settlement Administrator has the sole authority to determine the validity of claims for Out-Of-Pocket Losses. Only valid claims will be paid. The deadline to file a claim for Out-of-Pocket Losses is **[DATE]** (this is the last day to file online and the postmark deadline for mailed claims).

**Settlement Benefit: Reimbursement for Attested Time:** If you spent time dealing with fraud or identity theft or to protect yourself from future harm that is fairly traceable to the Data Security Incident, then you may also make a claim for reimbursement for up to 5 hours at \$25 per hour.

You may receive reimbursement for up to 5 hours at \$25 per hour by providing an attestation and a brief description of (i) the actions taken in response to the Data Security Incident in dealing with misuse of your information or taking preventative measures and (ii) the time associated with each action. Claims for Attested Time are capped at \$125 per individual but may be combined with reimbursement for Out-of-Pocket Losses subject to an individual aggregate cap of \$15,000. The Settlement Administrator has the authority to determine the validity of claims for Attested Time. Only valid claims will be paid. The deadline to file a claim for Attested Time is **[DATE]**.

#### **9. How will the Settlement help protect me against future identity theft and fraud?**

**Settlement Benefit: Identity Theft Protection Services:** The Settlement provides a way to help protect yourself from unauthorized use of your personal information. Settlement Class Members may submit a claim to enroll in three (3) years of Aura's Identity Guard Total identity theft protection services at no cost. These services retail at nearly \$196 annually per individual and include the following features:

- Three-bureau credit monitoring providing notice of changes to your credit report at all three national credit reporting agencies;
- High Risk Transaction Monitoring;
- Dark Web Monitoring;
- Threat alerts powered by IBM Watson;
- Lost Wallet Protection;
- Identity restoration services to help you address credit and non-credit related fraud; and
- Up to \$1 Million in insurance coverage for certain costs relating to identity theft and unauthorized electronic fund transfers.

If you submit a valid claim form and elect to enroll in Identity Theft Protection Services, you will receive enrollment instructions by mail or email after the Settlement becomes final. You may make a claim for reimbursement for Out-of-Pocket Losses and/or Attested Time and Identity Theft Protection Services under the Settlement. You may only elect to receive Identity Theft Protection Services (See Questions 9 and 10).

**Settlement Benefit: Minor Monitoring Services:** A parent or legal guardian of a Settlement Class Member who is a minor at the time the settlement is final may enroll the minor in three (3) years of Aura's Minor Monitoring Services. These services include three-bureau monitoring for the minor; internet surveillance; fraud resolution services, and \$1,000,000 in identity theft insurance for material damages caused by the misuse of the minor's credit file. Parents or guardians of Settlement Class Members who are minors still need to submit a minor claim form to enroll the Settlement Class Member in Minor Monitoring. The Settlement Administrator will send enrollment instructions by mail or email to a legal guardian for each qualifying minor after the Settlement becomes final.

Questions? Go to [www.\[\]URL\[\]\(\).com](http://www.[]URL[]().com) or call [PHONE NUMBER]

### **10. How will the Settlement help me deal with identity theft or fraud if it happens?**

**Settlement Benefit: Identity Restoration Services:** All Settlement Class Members who do not opt out of the Settlement will receive access to Identity Restoration Services through Aura's Identity Guard Total after the Settlement becomes final. These services include access to Fraud Resolution Specialists to assist you in addressing an identity theft event, including assistance with dealing with companies, government agencies, and credit bureaus.

All Settlement Class Members who do not opt out of the Settlement may access Identity Resolution Services after the Settlement becomes final, even they do not make a claim, by going to [www.\[\]URL\[\].com](http://www.[]URL[].com), or calling toll free number [PHONE NUMBER] and referencing engagement code XXXXX.

## **HOW TO GET SETTLEMENT BENEFITS**

### **11. How do I file a claim for Identity Theft Protection Services, Attested Time, and/or Out-of-Pocket Losses?**

To submit a claim for Out-of-Pocket Losses or Attested Time fairly traceable to the Data Security Incident, or Identity Theft Protection Services, you will need to file a claim form. There are two options for filing claims:

- (1) **File Online:** You may complete and submit the claim form online at [\[\]URL\[\].com](http://[]URL[].com). This is the quickest way to file a claim.
- (2) **File by Mail:** Alternatively, you may complete the claim form attached to this notice and mail it to the address on the form with supporting documentation, if any. If you lost or did not otherwise receive a claim form, you can download a hard copy of the claim form (available at [www.\[\]URL\[\].com](http://www.[]URL[].com)), or ask the Settlement Administrator to mail a claim form to you by calling [PHONE NUMBER]. Complete your claim form, and mail it (including postage) to: FOI Data Security Incident Litigation c/o [Administrator], [ADDRESS].

The deadline to file a claim is [DATE] (this is the last day to file online and/or the postmark deadline for mailed claims).

### **12. How do I submit a claim on behalf of a Settlement Class Member who is a minor?**

If you received notice that your minor dependent(s) is a Settlement Class Member, a parent or legal guardian may submit a claim on the minor's behalf by filling out and submitting the minor claim form included with this notice or filing online at [www.\[\]URL\[\].com](http://www.[]URL[].com). Legal guardians may seek reimbursement for Out-of-Pocket Losses and Attested Time on behalf of the minor as set forth in Question 8.

### **13. When and how will I receive the benefits I claim from the Settlement?**

Identity Theft Protection Services claimed by Settlement Class Members will begin, and payments for valid claims will be made, after the Court enters the Final Approval Order and Judgment and the Settlement becomes final. This process may take several months or longer if there is an appeal; please be patient. Once there is a Final Approval Order and Judgment, it will be posted on the Settlement Administrator's website.

If you make a claim for Identity Theft Protection Services, the Settlement Administrator will send you information on how to activate your Identity Theft Protection Services once the Settlement is final. The Settlement Administrator will provide you with an activation code that you will use at the Aura website to

Questions? Go to [www.\[\]URL\[\].com](http://www.[]URL[].com) or call [PHONE NUMBER]



activate the applicable Identity Theft Protection Services. The activation code(s) will remain valid for at least 60 days.

Checks for valid claims for Out-of-Pocket Losses and Attested Time either will be mailed by the Settlement Administrator to the mailing address that you provide, or will be provided through PayPal or Venmo at your election.

## **LEGAL RIGHTS RESOLVED THROUGH THE SETTLEMENT**

### **14. What happens if I do nothing and what am I giving up to stay in the settlement class?**

If you make a claim under the Settlement, or if you do nothing, you will be releasing all of your legal claims against FOI arising out of the issues this Settlement resolves. Unless you exclude yourself from the Settlement (see Question 17), all of the decisions by the Court will bind you. The specific claims you are giving up against FOI are described in Section XII of the Settlement Agreement. The Settlement Agreement is available at [www.foiurl.com](http://www.foiurl.com). You will be releasing FOI and all related people as described in Section XII of the Settlement Agreement.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions regarding the release, you may contact Class Counsel as provided for in Question 15.

## **THE LAWYERS REPRESENTING YOU**

### **15. Do I have a lawyer in the case?**

Yes. The Court appointed the following attorneys to represent you and other Settlement Class Members as “Class Counsel.”

John A. Yanchunis (FBN 324681)  
 jyanchunis@ForThePeople.com  
 Ryan J. McGee (FBN 064957)  
 rmcgee@ForThePeople.com  
 Patrick A. Barthle II (FBN 099286)  
 pbarthle@ForThePeople.com  
**MORGAN & MORGAN**  
**COMPLEX LITIGATION GROUP**  
 201 N. Franklin Street, 7th Floor  
 Tampa, Florida 33602  
 Telephone: (813) 223-5505

William ‘Billy’ Peerce Howard  
 Billy@TheConsumerProtectionFirm.com  
 Amanda J. Allen  
 Amanda@TheConsumerProtectionFirm.com  
**THE CONSUMER PROTECTION FIRM**  
 4030 Henderson Boulevard  
 Tampa, FL 33629  
 (813) 500-1500 Telephone  
 (813) 435-2369 Facsimile

You will not be charged by these lawyers for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense. If you have questions about how to submit a claim or if you need to update your address information, please contact the Settlement Administrator (see Question 19).

### **16. How will these lawyers be paid?**

Class Counsel have undertaken this case on a contingency-fee basis and have not been paid any money in relation to their work on this case to date. Accordingly, Class Counsel have asked the Court to award them attorneys’ fees in the amount of \$1,333,333.00 equaling 33.33% of the Settlement Fund, and reimbursement for costs and expenses in the amount of \$25,000.00 to be paid from the Settlement Fund. You will not have to separately pay any portion of these fees yourself. The Court will decide the amount of fees and costs and expenses to be paid. Class Counsel’s request for attorneys’ fees and costs (which must be approved by the Court) was filed on [[DATE]] and is available to view on the settlement website at [www.foiurl.com](http://www.foiurl.com).

Questions? Go to [www.foiurl.com](http://www.foiurl.com) or call [PHONE NUMBER]

Class Counsel may also request a service award not to exceed \$1,000.00 per class representative, in recognition of their service to the Class, pending *en banc* review of *Johnson v. NPAS Sols., LLC*, 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020). Under current Eleventh Circuit law, service awards are not permissible, and Class Counsel will only seek payment of such an award if *Johnson v. NPAS Sols.* is vacated.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

#### **17. How do I exclude myself from the Settlement?**

If you are a member of the settlement class but do not want to remain in the class, you may exclude yourself from the class (also known as “opting out”). If you exclude yourself, you will lose any right to participate in the Settlement, including any right to receive the benefits outlined in this Notice.

If you decide on this option, you may keep any rights you have, if any, against FOI and you may file your own suit against FOI based upon the same legal claims that are asserted in this lawsuit, but you will need to find your own attorney at your own cost to represent you in that lawsuit. If you are considering this option, you may want to consult an attorney to determine your options.

To exclude yourself from the Settlement, you must mail a request for exclusion, postmarked no later than [DATE], to:

**FOI Class Action Settlement Administrator**  
**Attn: Exclusion**  
**FOI Data Security Incident Litigation**  
**c/o**  
**[ADDRESS LINE 1]**  
**[ADDRESS LINE 2]**

This statement must contain the following information:

- (1) The name of this proceeding (*Stoll et al. v. Musculoskeletal Institute, Chartered*, Case No. 8:20-cv-01798-CEH-AAS, or similar identifying words such as “FOI Data Security Incident Lawsuit”);
- (2) Your full name and address;
- (3) The words “Request for Exclusion” at the top of the document or a statement that you do not wish to participate in the settlement; and
- (4) Your signature.

**If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the settlement class, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Court, and you may not recover under any other individual settlement agreement regarding the claims released as part of the Settlement.**

### **OBJECTING OR COMMENTING ON THE SETTLEMENT**

#### **18. How do I tell the Court that I don’t like the Settlement?**

If you are a Settlement Class Member, you can object to the Settlement if you don’t think it is fair, reasonable, or adequate, including Class Counsel’s motion for an award of attorneys’ fees and costs and expenses. The Court cannot order a larger settlement or award you more based on your individual circumstances; the Court can only approve or deny the Settlement as it is presented.

To object, you must send a letter stating that you object to the Settlement. Your objection must include:

Questions? Go to [www.\[URL\].com](http://www.[URL].com) or call [PHONE NUMBER]



- (1) The name of this proceeding (*Stoll et al. v. Musculoskeletal Institute, Chartered*, Case No. 8:20-cv-01798-CEH-AAS, or similar identifying words such as “FOI Data Security Incident Lawsuit”);
- (2) Your full name, address, and telephone number;
- (3) State with specificity the grounds for the objection, as well as any documents supporting the objection;
- (4) A statement as to whether the objection applies only to you and your circumstances, to a specific subset of the class, or to the entire class;
- (5) The name and address of any attorneys representing you with respect to the objection;
- (6) A statement regarding whether you or your attorney intend to appear at the Final Approval Hearing; and
- (7) You or your attorney’s signature.

To be considered by the Court, your objection should be sent to the United States District Court for the Middle District of Florida at the following address:

Clerk of Court  
United States Courthouse  
801 North Florida Avenue  
Tampa, Florida 33602

Your objection must be mailed, postmarked no later than **[[DATE]]**. If you are represented by a lawyer, the lawyer may file your objection through the Court’s CM/ECF system and must do so by **[[DATE]]**. Include your lawyer’s contact information in the objection.

**You must submit your objections directly to the Court. If you do not comply with these procedures and the deadline for objections, you may lose any opportunity to have your objection considered at the Final Approval Hearing or otherwise to contest the approval of the Settlement or to appeal from any orders or judgments entered by the Court in connection with the proposed settlement. You will still be eligible to receive settlement benefits if the Settlement becomes final even if you object to the Settlement.**

The Court has scheduled a Final Approval Hearing to listen to and consider whether the Settlement is fair, adequate, and reasonable. If there are objections, the Court will consider them.

The hearing will take place on **[[DATE and TIME]]** before the Honorable Judge Charlene Edwards Honeywell, at the United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602. This hearing date and time may be moved or may be conducted telephonically or by video conference. Please refer to the settlement website for notice of any changes.

### **GETTING MORE INFORMATION**

#### **19. Where can I get more information?**

This notice summarizes the Settlement. More details are in the Settlement Agreement itself. You can get a copy of the Settlement Agreement and other case documents at [www.\[\]URL\[\].com](http://www.[]URL[].com). If you have questions about this Notice or the Settlement, you may contact the Settlement Administrator by [PHONE, EMAIL, OR MAIL] at FOI Data Security Incident Litigation c/o [Administrator] [ADDRESS]. If you wish to communicate directly with Class Counsel, you may contact them (contact information noted above in Question 15). You may also seek advice and guidance from your own private attorney at your own expense, if you wish to do so.

The status of the settlement, any appeals, and the date of payments will be posted on the Settlement website.

Questions? Go to [www.\[\]URL\[\].com](http://www.[]URL[].com) or call [PHONE NUMBER]

The Court cannot respond to any questions regarding this Notice, the lawsuit, or the proposed settlement.  
*Please do not contact the Court or its Clerk with questions about the Settlement.*

Questions? Go to [www.\[\]URL\[\].com](http://www.[]URL[].com) or call [PHONE NUMBER]



**CONTENT OF POSTCARD NOTICE**

**Front**

**Court Approved Legal Notice**

**If you are former or current patient of Florida Orthopaedic Institute whose personal information was or may have been compromised in the data security incident initially disclosed by FOI in or about June 2020, you are Eligible for Benefits From a Class Action Settlement**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.*

*Para el notificación en Español visitar nuestro sitio web*

**Back**

A Settlement has been proposed in litigation against Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute (“FOI”) relating to a data security incident that FOI disclosed in or about June 2020 (“Data Security Incident”). FOI acknowledged that the personal information of certain of its patients may have been accessed or taken during the incident. FOI denies any wrongdoing. No judgment or determination of wrongdoing has been made.

**Who is Included?** Individuals who received notification from FOI that their personal information was or may have been compromised in the Data Security Incident initially disclosed by FOI in or about June 2020.

**What does the Settlement Provide?** If the Settlement is approved, Class Members who submit a valid and timely Claim Form and submit any required documentation may be entitled to a cash payment for reimbursement of certain out-of-pocket expenses resulting from the Data Security Incident up to \$15,000, including reimbursement for time spent dealing with the Data Security Incident of up to 5 hours at \$25 per hour. The Settlement also provides three years of free Identity Theft Protection Services, and Minor Monitoring Services for affected minors. Regardless of whether a claim is made, all Settlement Class Members will be eligible to access identity restoration services offered through Aura, including professional fraud resolution assistance to help with identity recovery and restoration in case identity theft or fraud occurs in the future, for a period of three (3) years (“Identity Restoration Services”). All cash payments may be adjusted *pro rata* depending on the number of Class Members that participate in the Settlement.

**How To Get Benefits:** You must submit a Claim Form, including any required documentation. (You do not need to file a Claim to access the Identity Restoration Services.) The deadline to file a Claim Form is **Month XX, 2022**. You can easily file a Claim online at [www.XXXXXXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXXXXXX.com). You can also get a paper Claim Form at the website or by calling toll free 1-XXX-XXX-XXXX, and file by mail. **When filing your Claim use your unique Claim Number (printed on the front of this Notice).**

**Your Other Options.** If you file a Claim Form, object to the Settlement and attorneys' fees and expenses, or do nothing, you are choosing to stay in the Settlement Class. You will be legally bound by all orders of the Court and you will not be able to start, continue or be part of any other lawsuit against FOI about the Data Security Incident. If you don't want to be legally bound by the Settlement or receive any benefits from it, you must exclude yourself by **Month XX, 2022**. If you do not exclude yourself, you may object to the Settlement and attorneys' fees and expenses by **Month XX, 2022**. The Court has scheduled a hearing in this case for **Month XX, 2022**, to consider whether to approve the Settlement, attorneys' fees of up to 33.3% of the Settlement Fund plus costs and expenses, Service Awards of up to \$1,000 for the Class Representatives, as well as any objections. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. For complete information about all of your rights and options, as well as Claim Forms, the Long Form Notice and Settlement Agreement, visit [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com), or call 1-XXX-XXX-XXXX.



# Exhibit 2

**Must be postmarked  
or submitted online  
NO LATER THAN  
Month Day, 2022**

FOI DATA SECURITY INCIDENT SETTLEMENT  
C/O [CLAIMS ADMINISTRATOR]  
P.O. BOX \_\_\_\_\_  
[CITY],[STATE] [ZIP]  
WWW.[[URL]].COM

## FOI Data Security Incident Claim Form

### SETTLEMENT BENEFITS – WHAT YOU MAY GET

If you received notice that your personal information may have been compromised in the FOI data security incident announced in June 2020, and if you did not opt out of the settlement, you may submit a claim.

**The easiest way to submit a claim is online at [www.\[\[URL\]\].com](http://www.[[URL]].com), or you can complete and mail this claim form to the mailing address above.**

**You may submit a claim for one or more of these benefits:**

**Cash Reimbursement.** Use the claim form to request money for one or more of the following:

1. **Reimbursement for Money You Spent.** If you spent money trying to avoid or recover from fraud or identity theft because of the FOI data security incident, you may be eligible for reimbursement up to \$15,000. You must submit documents supporting your claim.
2. **Reimbursement for Time Spent.** If you spent time trying to avoid or recover from fraud or identity theft because of the FOI data security incident, you may be eligible for reimbursement of \$25 per hour for up to five (5) total hours.

**Identity Theft Protection.** Use this claim form to request identity theft protection services through Aura for three (3) years.

**Settlement Class Members who are Minors.** Persons under the age of eighteen (18) and whose information was or may have been compromised in the FOI Data Security Incident are eligible to submit a claim for settlement benefits through their legal guardian by checking the box below.

No claim is required for **Identity Restoration Services**. U.S. consumers affected by the FOI data security incident who did not opt out of the settlement will be able to access identity restoration services for a period of at least three (3) years once the Settlement is final by calling 1-NNN-NNN-NNNN and referencing engagement code XXXXX.

\* \* \*

**Claims must be submitted online or mailed by [DATE]. Use the address at the top of this form for mailed claims.**

*Please note: The settlement administrator may contact you to request additional documents to process your claim. Your cash benefit may decrease depending on the number of claims filed.*

For more information and detailed instructions visit [www.\[\[URL\]\].com](http://www.[[URL]].com).

**Settlement benefits will be distributed after the Settlement is approved by the Court and final. If you submit a claim, it will be maintained as confidential and not shared with FOI.**

## Your Information

*We will use this information to contact you and process your claim. It will not be used for any other purpose. If any of the following information changes, you must promptly notify us by emailing ---@[[URL]].com.*

<b>1. NAME:</b>	First	Middle Initial	Last
<b>2. ALTERNATIVE NAME(S):</b>			
<b>3. MAILING ADDRESS:</b>	Street Address		
	Apt. No.		
	City		
	State		
	Zip		
<b>4. PHONE NUMBER:</b>			
<b>5. EMAIL ADDRESS:</b>			
<b>6. I AM A MINOR:</b>	<input type="checkbox"/> Check this box if you are submitting a claim and you are under the age of 18.		

## Cash Payment: Money You Lost or Spent

If you lost or spent money trying to prevent or recover from fraud or identity theft caused by the FOI data security incident and have not been reimbursed for that money, you may be eligible for reimbursement for up to \$15,000.

It is important for you to send documents that show what happened and how much you lost or spent, so that you can be repaid.



To look up more details about how cash payments work, visit **www.{{URL}}.com** or call toll-free \_\_\_\_\_. You will find more information about the types of costs and losses that can be paid back to you, what documents you need to attach, and how the Settlement Administrator decides whether to approve your payment.

<b>Examples of Loss Type and Documents</b>	<b>Amount and Date</b>	<b>Description of Loss or Money Spent and Supporting Documents</b> (Identify what you are attaching, and why it's related to the FOI security incident)
Credit monitoring and identity theft protection purchased on or after 04/09/2020  <i>Examples: Receipts or statements for credit monitoring services</i>	\$  Date:	<hr/> <hr/> <hr/> <hr/>
Costs, expenses, and losses due to identity theft, fraud, or misuse of your personal information on or after 04/09/2020  <i>Examples: Account statement with unauthorized charges highlighted; police reports; IRS documents; FTC Identity Theft Reports; letters refusing to refund fraudulent charges; credit monitoring services you purchased</i>	\$  Date:	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
Professional fees paid to address identity theft on or after 04/09/2020  <i>Examples: Receipts, bills, and invoices from accountants, lawyers, or others</i>	\$  Date:	<hr/> <hr/> <hr/> <hr/>
Other expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges related to the data security incident  <i>Examples: Phone bills, receipts, detailed list of places you traveled (i.e. police station, IRS office), reason why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled</i>	\$  Date:	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

# Cash Payment: Time Spent

If you spent time trying to recover from fraud or identity theft caused by the data security incident, or if you spent time trying to avoid fraud or identity theft because of the data security incident (for example, researching the security incident, placing or removing credit freezes on your credit files, purchasing credit monitoring services, or taking other actions), complete the chart below. You may be eligible for reimbursement of \$25 per hour for up to five (5) hours.

You must describe the actions you took in response to the data security incident and the time each action took.

**How much time did you lose related to the data security incident?** \_\_\_\_\_ : \_\_\_\_\_  
 (Do not answer this question if you are not claiming lost time.)                      *Hours       Minutes*

*By filling out the boxes below, you are certifying that the time you spent doesn't relate to other data security incidents.*

Explanation of Time Spent (Identify what you did and why)	Approx. Date(s)	Number of Hours and Minutes
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<p><b>Identity Theft Protection Services</b></p>
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You may be eligible to receive three years of free, credit monitoring at all three national credit reporting agencies through Aura. These services retail for nearly \$180 per year per individual and include reports for your credit files at Experian, Equifax, and TransUnion, a \$1 million identity theft insurance policy, and additional features designed to protect against identity theft.

*If you wish to submit a claim to receive Identity Theft Protection Services, please check the box below:*

☐ **Identity Theft Protection:** I want to receive free, three-bureau credit monitoring for three years.

*If you select this option, you will be sent instructions and an activation code after the settlement is final to your email address or home address.*

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### How You Would Like to Receive Payment?

[illegible]

☐ Check

☐ Electronic Payment:



Email Address:

[illegible][illegible]

Email Address:



## Signature

I affirm under the laws of the United States that the information supplied in this claim form is true and correct to the best of my knowledge and that any documents that I have submitted in support of my claim are true and correct copies of original documentation.

I understand that I may be asked to provide more information by the claims administrator before my claim is complete.

**Signature:**

**Dated:**

**Print Name:**