

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
WILLIAMSON COUNTY, ILLINOIS

SUZANNE RESTIVO-CONLEY, individually)
and on behalf of all others similarly situated,)
)
Plaintiff,)
vs.) Case No.: 2022LA77
)
SOUTHERN ORTHOPEDIC ASSOCIATES,)
S.C. D/B/A ORTHOPAEDIC INSTITUTE OF)
WESTERN KENTUCKY AND SOUTHERN)
ORTHOPEDIC ASSOCIATES, L.L.C. D/B/A)
ORTHOPAEDIC INSTITUTE OF WESTERN)
KENTUCKY,)
)
Defendant.)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Suzanne Restivo-Conley, Melinda Fleet, and Sally Christiansen (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through Settlement Class Counsel (as defined below), and Southern Orthopedic Associates, S.C. d/b/a Orthopaedic Institute of Western Kentucky and Southern Orthopedic Associates, L.L.C. d/b/a Orthopaedic Institute of Western Kentucky (“SOA” or “Defendant”) in order to affect a full and final settlement and dismissal with prejudice of all claims against SOA alleged in the above-captioned litigation on the terms set forth below and to the full extent reflected herein. Capitalized terms shall have the meaning ascribed to them in Section II.1 of this Settlement Agreement.

I. RECITALS

1. The Litigation.

On June 23, 2022, Plaintiff Suzanne Restivo-Conley filed a Class Action Complaint in the Circuit Court of the First Judicial Circuit, Williamson County, Illinois, against SOA on behalf of

a class of Illinois patients. The Complaint alleged that on December 20, 2021, SOA began to provide notice that between June 24, 2021, and July 8, 2021, cybercriminals had accessed SOA's patients' personal health information ("PHI") and personally identifiable information ("PII"), including names and Social Security numbers of 106,910 patients (the "Data Breach"). The Complaint alleged that SOA's action with respect to the Data Breach gave rise to claims by patients for negligence, breach of contract, unjust enrichment, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*, breach of fiduciary duty, and invasion of privacy.

On October 5, 2022, SOA filed an Answer and Affirmative Defenses to the Complaint in which it denied all liability and requested entry of judgment in its favor, as well as asserted affirmative defenses that Plaintiff Restive-Conley lacked standing and was barred by the economic loss doctrine as to the claim for negligence.

On October 26, 2022, Plaintiff Restive-Conley filed her reply to SOA's Affirmative Defenses.

Meanwhile, on August 16, 2022, Plaintiff Melinda Fleet filed a Class Action Complaint in the United States District Court for the Western District of Kentucky against Southern Orthopedic Associates, P.S.C. d/b/a Orthopaedic Institute of Western Kentucky on behalf of a nationwide class and Kentucky subclass relating to the same Data Breach negligence and alleging claims for breach of implied contract, breach of fiduciary duty, violation of the Kentucky Consumer Protection Act, KRS 367.110 *et seq.*, and invasion of privacy.

On October 12, 2022, Southern Orthopedic Associates, P.S.C. filed a motion to dismiss Plaintiff Fleet's Class Action Complaint.

On December 2, 2022, Plaintiff Fleet and Plaintiff Christiansen filed a First Amended Class Action Complaint that added an additional Plaintiff, Sally Christiansen and brought claims on behalf of a nationwide class and Kentucky and Illinois subclasses relating to the same Data Breach and bringing the same claims with an additional claim under the Illinois Consumer Fraud Act, 815 ILCS § 505/1 *et seq.*

On January 13, 2023, Southern Orthopedic Associates, P.S.C. filed a partial motion to dismiss the First Amended Class Action Complaint (“FAC”), on February 22, 2023, Plaintiff Fleet and Plaintiff Christiansen filed a response, and on March 7, 2023, Southern Orthopedic Associates, P.S.C. filed a reply.

2. The Mediation.

Plaintiff Restivo-Conley, Plaintiff Fleet, and Plaintiff Christiansen agreed to coordinate to discuss potential resolution of their cases relating to the Data Breach, and on May 25, 2023, Plaintiffs and SOA engaged in a full-day mediation with retired judge and mediator, the Honorable Wayne R. Andersen, of JAMS. Despite the parties’ efforts, no agreement was reached at the mediation, but the next day Judge Andersen made a mediator’s proposal to resolve the case, to be accepted or rejected by June 16, 2023. Both parties accepted the mediator’s proposal, subject to negotiating a final detailed settlement agreement and receiving Court approval of the settlement. Following acceptance of the mediator’s proposal, counsel for the parties in the federal court action in Kentucky jointly moved to stay the federal court action pending the approval of the above-captioned action in this Court. On July 7, 2023, the Court granted the joint motion to stay the case.

3. Claims of Plaintiffs and Benefits of Settling.

Plaintiffs believe that the claims asserted in the Lawsuit, as set forth in the Complaint (as defined below), have merit. Plaintiff and Settlement Class Counsel recognize and acknowledge the expense and length of time necessary to prosecute the Lawsuit against SOA through motion

practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Settlement Class Counsel are highly experienced in class action litigation including data breach cases and knowledgeable regarding the relevant claims, remedies, uncertainty and defenses at issue in such litigation and in this Lawsuit. They and the Plaintiffs have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

4. Denial of Wrongdoing and Liability.

SOA denies each and all of the claims and contentions alleged against it in the Lawsuit. SOA denies all allegations of wrongdoing or liability as alleged, or which could be alleged, in the Lawsuit. Nonetheless, SOA has concluded that further defense of the Lawsuit would be protracted and expensive, and that it is desirable that the Lawsuit be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. SOA has considered the uncertainty and risks inherent in any litigation. SOA has, therefore, determined that it is desirable and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

II. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class, Settlement Class Counsel, and SOA that, subject to the approval of the Court, the Lawsuit and the Released Claims (as defined below) shall be finally and fully compromised, settled, and released, and that once final approval occurs, the Lawsuit shall be dismissed with prejudice as to the Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who lawfully opt-out of the

Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. DEFINITIONS.

As used in this Settlement Agreement and its exhibits, the following terms have the meanings specified below:

1.1 “*Agreement*” or “*Settlement Agreement*” means this agreement.

1.2 “*Claim Deadline*” means a date certain, which is to be set forth in the Notice and which shall be no more than ninety (90) Days from the date Notice is mailed to Settlement Class Members.

1.3 “*Claim Form*” means the form, attached as **Exhibit C** to this Settlement Agreement, which Settlement Class Members must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall require an actual or electronic signature but shall not require a notarization or any other form of verification.

1.4 “*Claims Administration*” means the processing and payment of claims received from Settlement Class Members by the Settlement Administrator.

1.5 “*Complaint*” means the operative complaint filed by Plaintiffs in the Lawsuit, as well as the allegations made by Plaintiff Fleet and Plaintiff Christiansen in their FAC filed in the United States District Court for the Western District of Kentucky.

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

1.7 “*Court*” means the Circuit Court of the First Judicial Circuit, Williamson County, Illinois.

1.8 “*Data Incident*” means cyberattack incident allegedly involving Plaintiffs and Settlement Class Members’ Private Information that occurred on or around June 24, 2021 through July 8, 2021, and that SOA gave notice of on or around December 20, 2021.

1.9 “*Days*” means calendar days, except, when computing any period of time prescribed or allowed by this Settlement Agreement, does not include the day of the act, event, or default from which the designated period of time begins to run. Further, when computing any period of time prescribed or allowed by this Settlement Agreement, include the last day of the period, unless it is a Saturday, a Sunday, or a Federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday.

1.10 “*Effective Date*” means the date defined in Paragraph 14.1 of this Settlement Agreement.

1.11 “*Final*” means that all of the following events have occurred: (a) the settlement pursuant to this Settlement Agreement is approved by the Court; (b) the Court has entered the Final Order and Judgment; and (c) either (i) no appeal has been taken from the judgment as of the date on which all times to appeal or seek permission to appeal therefrom have expired, or (ii) if an appeal or other review proceeding of the judgment has been commenced, such appeal or other review is finally concluded and no longer is subject to further review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects.

1.12 “*Final Approval Hearing*” means the hearing in the Lawsuit at which the Court considers final approval of this Settlement and the entry of the Final Order and Judgment in the Lawsuit.

1.13 “*Final Order and Judgment*” means the final judgment and order of dismissal with prejudice in connection with the approval of the Settlement after the Final Approval Hearing is entered in the Lawsuit.

1.14 “*Lawsuit*” means the Lawsuit, styled *Suzanne Restivo-Conley v. Southern Orthopaedic Associates, S.C., et al.*, Case No. 2022LA77 pending in this Court.

1.15 “*Notice*” means the written notice to be sent or published to Settlement Class Members pursuant to the Preliminary Approval Order, attached as **Exhibits A and B** to this Settlement Agreement.

1.16 “*Notice and Claims Administration Costs*” means actual costs associated with or arising from providing notice to Settlement Class Members and performing Claims Administration in connection with the Settlement.

1.17 “*Notice Program*” means the notice program described in Section 5.

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

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

1.20 “*Parties*” means Plaintiffs, individually and on behalf of the Settlement Class, and SOA.

1.21 “*Person*” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or

agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.22 “*Private Information*” shall mean “*Personally Identifiable Information*” and includes, but is not limited to, names, Social Security numbers, driver’s license numbers, medical information, and financial account information, and all “*Protected Health Information*” and includes, but is not limited to, medical diagnosis and treatment information.

1.23 “*Plaintiffs*” or “*Class Representatives*” means Suzane Restivo-Conley, Melinda Fleet, and Sally Christiansen.

1.24 “*Preliminary Approval Date*” means the date that the Court has entered the Preliminary Approval Order in the Lawsuit.

1.25 “*Preliminary Approval Order*” means the order preliminarily approving the Settlement and providing for Notice to the Settlement Class entered by the Court in the Lawsuit, attached as **Exhibit D** to this Settlement Agreement.

1.26 “*Related Entities*” means SOA’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of SOA’s and their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was, or could have been named as a defendant in the Lawsuit, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, or aiding or abetting the criminal activity associated with the Data Incident or who pleads *nolo contendere* to any such charge.

1.27 “*Released Claims*” means any and all past, present, and future claims, causes of action, counterclaims, Lawsuit, rights, demands, charges, complaints, actions, obligations, or liabilities under any legal or equitable theory, whether known, unknown, suspected, or unsuspected

or capable of being known or suspected, and whether, accrued, unaccrued, matured, or not matured, excepting personal injury claims by minors, but otherwise including and not limited to, negligence, negligence *per se*, breach of implied contract, unjust enrichment, breach of implied covenant of good faith and fair dealing, invasion of privacy, and any other state or federal consumer protection statute, misrepresentation (whether fraudulent, negligent, or innocent), bailment, wantonness, failure to provide adequate notice pursuant to any breach notification statute, regulation, or common law duty, and any causes of action under 18 U.S.C. §§ 2701 *et seq.*, and all similar statutes in effect in any states in the United States as defined herein, and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees, costs and expenses, set-offs, losses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning, or arising out of the Data Incident and alleged exposure and compromise of any Settlement Class Member's Private Information in the Data Incident or any other allegations, facts, or circumstances described in the Lawsuit or the Complaint relating to the Data Incident. Released Claims shall not include claims for personal injury made by any Settlement Class Member who is or was a minor (under the age of 18) as of the Effective Date. Released Claims also shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the Settlement contained in this Settlement Agreement and shall not include the claims of Persons who have timely and validly requested exclusion from the Settlement Class pursuant to the opt-out procedures set forth in this Settlement Agreement.

1.28 “*Released Persons*” means SOA and the Related Entities.

1.29 “*Settlement*” means the settlement of the Lawsuit upon the terms and conditions set forth in this Settlement Agreement.

1.30 “*Settlement Administrator*” means KCC Class Action Services, LLC or another company experienced in administering class action claims generally and specifically those of the type provided for and made in Lawsuit, if jointly agreed upon by the parties and approved by the Court.

1.31 “*Settlement Agreement*” means this Settlement Agreement, including all exhibits hereto.

1.32 “*Settlement Class*” means “all persons whose Private Information was compromised in the Data Breach.” The following people are excluded from the Class: (a) any judge or magistrate presiding over this action and members of their families; (b) SOA, SOA’s subsidiaries, parents, successors, predecessors, affiliated entities, and any entity in which SOA or its parent has a controlling interest, and their current or former officers and directors; (c) persons who properly execute and file a timely request for exclusion from the Class; (d) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (e) Plaintiffs’ counsel and Defendant’s counsel; and (f) the legal representatives, successors, and assigns of any such excluded persons.

1.33 “*Settlement Class Counsel*” shall mean Cohen & Malad, LLP; Stranch, Jennings & Garvey, PLLC; Federman & Sherwood; and George Feldman McDonald, PLLC.

1.34 “*Settlement Class Member[s]*” means all persons who fall within the definition of the Settlement Class and do not validly request to be excluded.

1.35 “*Settlement Fund*” means the sum of \$660,000.00 which SOA agrees to pay to resolve the claims of the Settlement Class.

1.36 “*Settlement Website*” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, Notice, and Claim Form, among other things.

1.37 “*SOA’s Counsel*” means Mullen Coughlin, LLC and their attorneys.

1.38 “*United States*” includes all fifty (50) states, the District of Columbia, and all territories.

1.39 “*Unknown Claims*” means any of the Released Claims that any Settlement Class Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement.

1.40 “*Valid Claims*” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or dispute resolution process described in ¶ 3.1.

2. CLASS CERTIFICATION

2.1 Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, SOA agrees to stipulate to the certification of the Settlement Class and will not oppose Plaintiffs’ request for certification.

2.2 Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, SOA stipulates that Plaintiffs are adequate representatives of the Settlement Class, and that Settlement Class Counsel are adequate counsel for the Settlement Class.

2.3 If the Settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, shall be vacated, and the Lawsuit shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Party's position on the issue of class certification or any other issue. The Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved. In the event of non-approval, termination, or cancellation of this Settlement Agreement, the Settlement Fund shall be responsible for administration and notification costs incurred, if any, but shall have no other payment, reimbursement, or other financial obligation of any kind as a result of this Settlement Agreement, and the remainder of the Settlement Fund shall be returned to SOA.

3. SETTLEMENT BENEFITS.

Subject to the terms of this Settlement Agreement, SOA shall make available the following compensation to Settlement Class Members:

3.1 Monetary Compensation for Losses: Settlement Class Members who submit a valid and timely Claim Form may choose all applicable claim categories below. The overall compensation cap for any individual claimant is \$350.00 for all amounts claimed in Claim A and \$5,000.00 for all amounts claimed in Claim B. Claims will be subject to review for completeness and plausibility by the Settlement Administrator.

(a) Claim A: Compensation for Ordinary Losses. Settlement Class Members will be eligible for compensation for unreimbursed ordinary losses, as defined below, up to a total of \$350.00 per claimant, upon submission of a valid Claim Form and supporting documentation (except claims for lost time), if applicable. Ordinary losses may include (i)

out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges, data charges, miscellaneous expenses, such as postage, notary, fax, copying, mileage, and/or gasoline for local travel; (ii) fees for credit reports, credit monitoring, and/or other identity theft insurance products purchased between the date of the Data Incident and the close of the Claim Deadline; (iii) up to four (4) hours of lost time, at \$20/hour spent dealing with the Data Incident, provided that the claimant certifies that the lost time was spent remedying issues fairly traceable to the Data Incident. The maximum amount any one claimant may recover under Claim A is \$350.00.

(b) Claim B: Reimbursement for Extraordinary Losses. Settlement Class Members will be eligible for compensation for extraordinary losses, including proven actual monetary losses, upon submission of a valid Claim Form provided that: (i) the loss is an actual, documented, and unreimbursed monetary loss arising from fraud or misuse; (ii) the loss from fraud or misuse was more likely than not caused by the Data Incident; (iii) the actual misuse or fraud loss is not already covered by one or more of the ordinary loss compensation categories under Claim A; (iv) the actual misuse or fraud loss occurred between the date of the Data Incident (October 2021) and the Claim Deadline. The maximum amount any one claimant may recover under Claim B is \$5,000.00.

(c) Payments to Settlement Class Members who make valid claims under Claims A and B shall be reduced on a *pro rata* basis if the total amount claimed exceeds the money remaining in the Settlement Fund at the time to make payment.

3.2 Credit Monitoring Services. All Settlement Class Members will be eligible for one (1) year of single-bureau (“1B”) credit monitoring services with \$1,000,000.00 in identity theft protection services upon submission of a valid Claim Form. After the Court enters the Final Order

and Judgment in the Lawsuit, Settlement Class Members will be sent, to the email address they provide, an identification number to activate the credit monitoring services. The costs of credit monitoring will be paid from the Settlement Fund.

3.3 SOA has implemented and will continue to implement security for security measures and enhancements in response to the Data Incident. SOA agrees to pay for such remedial costs separate and apart from other settlement benefits.

3.4 SOA agrees not to object to an application by Plaintiff's counsel in the Lawsuit to requesting the Court award attorney's fees and costs in an amount not to exceed two hundred and twenty thousand and no/100 dollars (\$220,000.00), which are to be paid separate and apart from any other sums agreed to under this Settlement Agreement. SOA also agrees not to object to an application by Plaintiff's counsel in the Lawsuit requesting the Court award a Service Award to Plaintiff in an amount not to exceed two thousand five hundred and no/100 dollars (\$2,500.00), which is to be paid separate and apart from any other sums agreed to under this Settlement Agreement.

3.5 Payment of compensation to Settlement Class Members are understood and agreed by the Parties to be payments in compromise of disputed claims and not payments of contractually based obligations of SOA, such as, for example, investment services paid or payable to SOA for loans. It is also understood and agreed by the Parties that payment of compensation to Settlement Class Members are not subject to set-off or recoupment in the event unpaid bills or other amounts are due SOA from the payee of such compensation or award.

3.6 If, after the payment of all claims, monies remain in the Settlement Fund, Settlement Class Counsel shall recommend to the Court that the funds be used either to provide additional benefits to the Settlement Class, such as an additional length of credit monitoring, or

that such funds be paid on a *cy pres* basis to a charity recommended by Class Counsel, and the funds shall be paid as directed by the Court. In no event shall any of the Settlement Fund revert to Defendant after the Effective Date of the Settlement.

4. SETTLEMENT ADMINISTRATION.

4.1 All Notice and Claims Administration Costs will be paid from the Settlement Fund.

4.2 The Parties have agreed to request that the Court appoint KCC Class Action Services, LLC as Settlement Administrator. Once approved by the Court, the Settlement Administrator will be an agent of the Court and will be subject to the Court's supervision and direction as circumstances may require.

4.3 The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of this Settlement Agreement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing notice and to accomplish such other purposes as may be approved by SOA Counsel and Settlement Class Counsel. The Parties shall reasonably cooperate with such requests.

4.4 The Settlement Administrator will administer and update the Settlement Website in accordance with the terms of this Settlement Agreement. Settlement Class Counsel and SOA Counsel shall agree on all information and documents to be posted on the Settlement Website.

4.5 The Settlement Administrator will conduct Claim Administration in accordance with the terms of the Settlement Agreement, and any additional processes agreed to by Settlement Class Counsel and SOA Counsel, and subject to the Court's supervision and direction as circumstances may require.

4.6 To make a claim for monetary compensation, a Settlement Class Member must complete and submit a valid, timely Claim Form. Claim Forms shall be submitted by U.S. mail or

electronically through the Settlement Website and must be postmarked or submitted no later than the Claim Deadline.

4.7 The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted (except for claims for lost time), for timeliness, completeness, and validity.

4.8 The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all documentation (except for claims for lost time) or information needed to complete the Claim Form, including any documentation required to support claims for compensation under Paragraph 3.1 above; and (3) when applicable, the information submitted could lead a reasonable person to conclude that the claimant is eligible for the category and/or amount for which a claim is submitted (collectively, “Facially Valid”). The Settlement Administrator may, at any time, request from the claimant, in writing, additional information (“Claim Supplementation”) as the Settlement Administrator may reasonably require in order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information regarding the claimed losses, available insurance or other sources of reimbursement, the status of any claims made for insurance benefits or other reimbursement, and claims previously made for identity theft and the resolution thereof.

4.9 The Settlement Administrator will maintain records of all Claim Forms submitted until the later of (a) one hundred and eighty (180) Days after the Effective Date or (b) the date all Claim Forms have been fully processed. Claim Forms and supporting documentation may be provided to the Court upon request and to Settlement Class Counsel and/or SOA Counsel to the extent requested or necessary to resolve Claims Administration issues pursuant to this Settlement

Agreement. SOA or the Settlement Administrator will provide other reports or information as requested by the Court.

4.10 The Settlement Administrator shall mail or otherwise provide checks for approved claims within sixty (60) Days of the Effective Date, or within sixty (60) Days of the date that the Claim is approved, whichever is later.

4.11 Checks for approved Claims shall be mailed to the address provided by the Settlement Class Member on his or her Claim Form, or, to the address provided to the Settlement Administrator, in the event the claimant updates his or her address with the Settlement Administrator prior to the Claim Deadline.

4.12 Cashing a check for an approved Claim is a condition precedent to any Settlement Class Member's right to receive benefits under this Settlement Agreement. All checks issued under this section shall be void if not negotiated within ninety (90) Days of their date of issue and shall bear the language: "This check must be cashed within 90 days, after which time it is void." Checks issued pursuant to this section that are not negotiated within ninety (90) Days of their date of issue shall not be reissued. If a Settlement Class Member fails to cash a check issued under this section before it becomes void, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief under the Settlement shall be extinguished, and SOA shall have no obligation to make payments to the Settlement Class Member for compensation or loss reimbursement under Paragraph 3.1 or to make any other type of monetary relief to the Settlement Class Member. Such Settlement Class Member remains bound by all terms of the Settlement Agreement.

4.13 Information submitted by Settlement Class Members in connection with submitted claims for benefits under this Settlement Agreement shall be deemed confidential and protected as such by the Settlement Administrator, Settlement Class Counsel, and SOA Counsel.

5. PAYMENT SCHEDULE

5.1 SOA shall pay costs sufficient to fund the settlement as follows:

- a) Within thirty (30) days of the Court granting preliminary approval of this Settlement Agreement, SOA shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement in an amount estimated by the Claims Administrator (said amount being part of and not in addition to the Settlement Amount);
- c) Within seven (7) days of the Effective Date, the Settlement Administrator shall pay to Class Counsel any attorneys' fees, costs, expenses, and service award pursuant to ¶ 9.2.

5.2 Custody of the Settlement Fund. The Settlement Fund shall be deposited into an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to the Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.

5.3 Treasury Regulations and Fund Investment. 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 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 (“FDIC”) at a financial institution determined by the Settlement Administrator and approved by the Parties. 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.

5.4 Taxes. All taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to any tax treatment by any 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 Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, they, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

6. NOTICE TO SETTLEMENT CLASS MEMBERS.

6.1 The Parties agree that the following Notice Program provides reasonable notice to the Settlement Class.

6.2 Notice shall be provided to Settlement Class Members via: (1) direct notice to the extent direct notice information is available; (2) notice on the Settlement Website; and (3) a social media campaign to the extent Settlement Class Counsel determines such a campaign is reasonable in light of any associated costs.

6.3 Within fourteen (14) days of the entry of the Preliminary Approval Order and engagement of a Settlement Administrator, SOA shall provide the Settlement Administrator with the names and mailing addresses of the Settlement Class Members whose mailing addresses are known to SOA. The Settlement Administrator shall, by using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“Postal Service”), obtain updates, if any, to the mailing addresses.

6.4 Within thirty (30) Days of the entry of the Preliminary Approval Order (the “Notice Deadline”), the Settlement Administrator shall send the Notice in **Exhibit A** to all Settlement Class Members whose addresses are known to SOA by first-class U.S. mail.

6.5 If any Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall remail the Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. Where the undeliverable Notice is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to ascertain the correct address of the Settlement Class Member whose Notice was returned undeliverable and remail the Notice. Other than as set forth in the preceding sentence, neither the Parties nor the Settlement Administrator shall have any obligation to remail a Notice to a Settlement Class Member.

6.6 The Notice mailed to Settlement Class Members will consist of a Short Form Notice in a form substantially similar to that attached hereto as **Exhibit A**. The Settlement Administrator

shall have discretion to format the Short Form Notice in a reasonable manner to minimize mailing and administrative costs. Before Notices are mailed, Settlement Class Counsel and SOA Counsel shall first be provided with a proof copy (reflecting what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and any orders of the Court.

6.7 No later than thirty (30) Days following entry of the Preliminary Approval Order and engagement of a Settlement Administrator, and prior to the mailing of the Notice to Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the Complaint, the Short Form Notice, the Long Form Notice (substantially similar to that attached hereto as **Exhibit B**, as approved by the Court), the Claim Form (in a form substantially similar to that attached hereto as **Exhibit C**, as approved by the Court), the motion for preliminary approval of the settlement, and motion for attorneys' fees, costs, expenses, and service awards, as well as this Settlement Agreement, to be made available on the Settlement Website. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by Settlement Class Counsel and SOA Counsel, which approval shall not be unreasonably withheld. The Settlement Website address and the fact that the Long Form Notice and a Claim Form are available through the Settlement Website shall be included in the Notice mailed to Settlement Class Members.

6.8 The Settlement Website shall be maintained and updated until thirty (30) Days after the Claim Deadline has passed.

6.9 Claim Forms shall be returned or submitted to the Settlement Administrator via U.S. mail or submitted through the Settlement Website by the Claim Deadline set by the Court or be forever barred.

6.10 Prior to the Final Approval Hearing in the Lawsuit, the Settlement Administrator shall provide to Settlement Class Counsel and SOA Counsel to file with the Court an appropriate affidavit or declaration from the Settlement Administrator with respect to its compliance with the Court-approved Notice Program.

6.11 The Settlement Fund shall pay the entirety of the costs of Claims Administration and the costs of providing notice to the Settlement Class in accordance with the Preliminary Approval Order.

7. OPT-OUT PROCEDURE.

7.1 Each Settlement Class Member shall have the right to opt-out and not participate in the Settlement Agreement, as provided for in the Preliminary Approval Order.

7.2 The Notice shall inform each Settlement Class Member of the right to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement, if, within such time as is ordered by the Court (“Opt-Out Period”), the Settlement Class Member personally signs and timely submits, completes, and mails a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address set forth in the Notice. To be effective, an Opt-Out Request must be postmarked no later than the final date of the Opt-Out Period.

7.3 The Parties will recommend to the Court that the Opt-Out Period be the sixty (60)-Day period beginning upon the Notice Deadline. The deadline for filing Opt-Out Requests shall be included in the Notice.

7.4 For a Settlement Class Member’s Opt-Out Request to be valid, it must (a) state the case name, (b) state the Settlement Class Member’s full name, address, and telephone number; (c) contain the Settlement Class Member’s personal and original signature (or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a power of attorney to act on behalf of the Settlement Class Member with respect to a claim or right,

such as those in the Lawsuit); and (d) clearly manifest the Settlement Class Member's intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. The Settlement Administrator shall promptly inform Settlement Class Counsel and SOA Counsel of any Opt-Out Requests.

7.5 All Settlement Class Members who submit timely and valid Opt-Out Requests in the manner set forth in Paragraph 6.4, above, referred to herein as "Opt-Outs," shall receive no benefits or compensation under this Settlement Agreement, shall gain no rights from the Settlement Agreement, shall not be bound by the Settlement Agreement, and shall have no right to object to the Settlement or proposed Settlement Agreement or to participate at the Final Approval Hearing in the Lawsuit. All Settlement Class Members who do not request to be excluded from the Settlement Class in the manner set forth in Paragraph 6.4, above, shall be bound by the terms of this Settlement Agreement, including the Release contained herein, and any judgment entered thereon, regardless of whether he or she files a Claim Form or receives any monetary benefits from the Settlement.

7.6 An Opt-Out Request or other request for exclusion that does not fully comply with the requirements set forth in Paragraph 6.4, above, or that is not timely submitted or postmarked, or that is sent to an address other than that set forth in the Notice, shall be invalid, and the person submitting such request shall be treated as a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and any judgment entered thereon.

7.7 No person shall purport to exercise any exclusion rights of any other person, or purport (a) to opt-out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt-out more than one Settlement

Class Member on a single paper, or as an agent or representative. Any such purported Opt-Out Requests shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Opt-Out Requests shall be treated as a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and judgment entered thereon, unless he or she submits a valid and timely Opt-Out Request.

7.8 Within fourteen (14) Days after the last Day of the Opt-Out Period, the Settlement Administrator shall furnish to Settlement Class Counsel and to SOA Counsel a complete list of all timely and valid Opt-Out Requests (the “Opt-Out List”).

8. OBJECTIONS TO THE SETTLEMENT.

8.1 Any Settlement Class Member who wishes to object to the Settlement Agreement must submit a timely and valid written notice of his or her objection (“Objection”) by the Objection Deadline (as defined herein). Such notice shall: (i) state the objecting Settlement Class Member’s full name, current address, telephone number, and email address (if any); (ii) contain the objecting Settlement Class Member’s original signature; (iii) set forth information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (*e.g.*, copy of the Notice or copy of original notice of the Data Incident); (iv) set forth a statement of all grounds for the objection, including any legal support for the objection that the objector believes applicable; (v) identify all counsel representing the objector; (vi) state whether the objector and/or his or her counsel will appear at the Final Approval Hearing in the Lawsuit, and; (vii) contain the signature of the objector’s duly authorized attorney or other duly authorized representative (if any), along with documentation setting forth such representation.

8.2 To be timely, an Objection in the appropriate form must be filed with the Clerk of the Court in the Lawsuit and mailed or hand delivered concurrently upon Settlement Class Counsel and SOA Counsel at addresses set forth in the Notice no later than sixty (60) Days after the Notice Deadline (“Objection Deadline”). The deadline for filing Objections shall be included in the Notice.

8.3 An objector is not required to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file with the Court, and mail or hand-deliver to Settlement Class Counsel and SOA Counsel, a notice of appearance no later than sixty (60) Days after the Notice Deadline.

8.4 If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, the notice of appearance filed with the Court must also identify the attorney(s) representing the objector who will appear at the Final Approval Hearing and include each such attorney’s name, address, phone number, email address, state bar(s) to which counsel is admitted, as well as associated state bar numbers, and a list identifying all objections such counsel has filed to class action settlements in the past three (3) years, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney.

8.5 If the objecting Settlement Class Member intends to request permission from the Court to call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must provide a list of any such witnesses together with a brief summary of each witness’s expected testimony at least thirty (30) Days before the Final Approval Hearing.

8.6 Any Settlement Class Member who fails to comply in full with the requirements for objecting set forth in this Settlement Agreement, the Notice, and any applicable orders of the Court shall forever waive and forfeit any and all rights he or she may have to raise any Objection to the Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and shall be bound by the Settlement Agreement and by all proceedings, orders, and judgments in the Lawsuit. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Section. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final Order and Judgment approving this Settlement Agreement in the Lawsuit, or the Judgment to be entered upon final approval in Lawsuit shall be pursuant to appeal under the Pennsylvania Rules of Appellate Procedure and not through a collateral attack. Any objecting Settlement Class Member who appeals final approval of the Settlement Agreement will be required to post an appeal bond.

9. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD.

9.1 SOA has agreed not to object to a Service Award to be paid from the Settlement Fund to each of the Plaintiffs in an amount not to exceed two thousand dollars five hundred and no/100 (\$2,500.00) each, which award is intended to recognize Plaintiffs for their efforts in the litigation and commitment on behalf of the Settlement Class and the costs and expenses they incurred. The Service Award was negotiated after the primary terms of the Settlement were negotiated. If approved by the Court, the Settlement Administrator will pay the Service Awards to an account identified by Settlement Class Counsel in accordance with Section 5.

9.2 SOA has agreed not to object to an award of attorneys' fees to be paid from the Settlement Fund in an amount not to exceed two hundred and twenty thousand and no/100 (\$220,000.00) to Settlement Class Counsel, plus reasonable litigation expenses. This amount was

negotiated after the primary terms of the Settlement were negotiated. If approved by the Court, the Settlement Administrator will pay from the Settlement Fund the Court-approved amount for attorneys' fees, costs, and expenses to an account identified by Settlement Class Counsel no later than seven (7) days after the the Effective Date. Unless otherwise ordered by the Court, Settlement Class Counsel shall have the sole and absolute discretion to allocate any approved attorneys' fees, costs, and expenses amongst themselves.

9.3 Settlement Class Counsel will file the applications with the Court for the Service Awards and attorneys' fees, costs, and expenses no later than fourteen (14) Days prior to the deadlines for a Settlement Class Member to opt out of or object to the Settlement, unless otherwise ordered by the Court.

9.4 The Parties agree that SOA will not in any event or circumstance be required to pay any amounts to Plaintiffs or Settlement Class Counsel for a Service Award or attorneys' fees, costs, and expenses in excess of the amounts identified above in Paragraphs 8.1 and 8.2, and that these payments shall come from the Settlement Fund alone.

9.5 The Parties agree that the Court's approval or denial of any request for a Service Award and/or attorneys' fees, costs, and expenses are not conditions to this Settlement Agreement. The Parties further agree that the amount(s) of a Service Award, and of any award of attorneys' fees, costs, or expenses, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No order of the Court, or modification, reversal, or appeal of any order of the Court, concerning the amount of a Service Award or any attorneys' fees, costs, or expenses, ordered by the Court to be paid to Settlement Class Counsel, or Plaintiff, shall affect whether the Final Order and Judgment is Final,

cancel, or terminate this Settlement Agreement, or constitute grounds for cancellation or termination of this Settlement Agreement.

10. NOTICES.

10.1 All notices (other than the Notice) required by the Settlement Agreement shall be made in writing and communicated by mail or hand delivery to the following addresses:

All Notices to Settlement Class Counsel or Plaintiffs shall be sent to:

Lynn A. Toops
COHEN & MALAD, LLP
One Indiana Square
Suite 1400
Indianapolis, Indiana 46204
Telephone: (317) 636-6481

All Notices to SOA Counsel or SOA shall be sent to:

Amanda Nicole Harvey
MULLEN COUGHLIN, LLC
1452 Hughes Road, Suite 200
Grapevine, TX 76051
Tel: (267) 930-1697
aharvey@mullen.law

10.2 Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of comments, Objections, requests for exclusion, or other documents, communications, or filings received as a result of the Notice.

11. SETTLEMENT APPROVAL PROCESS.

11.1 As soon as practicable after execution of this Settlement Agreement, the Parties shall jointly submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement in the Lawsuit, requesting entry of a Preliminary Approval Order, in substantially the form attached hereto as **Exhibit D**.

12. FINAL APPROVAL HEARING.

12.1 Settlement Class Counsel and SOA Counsel shall request that after Notice is completed, the Court hold a Final Approval Hearing and grant final approval of the Settlement set forth herein. The Parties will recommend that the Final Approval Hearing be scheduled no earlier than one hundred (100) Days after the entry of the Preliminary Approval Order.

12.2 Plaintiffs will file with the Court a motion for final approval of the class action settlement no later than fourteen (14) Days before the Final Approval Hearing, or as otherwise directed by the Court.

12.3 Plaintiffs will file with the Court a motion for attorneys' fees, costs, expenses, and service awards no later than fourteen (14) Days prior to the deadline for Settlement Class Members to object to or exclude themselves from the Settlement Agreement, or as otherwise directed by the Court.

12.4 The Parties shall ask the Court to enter a Final Order and Judgment in substantially the same form as **Exhibit E** attached hereto.

12.5 If and when the Final Order and Judgment entered by the Court becomes Final, the Lawsuit shall be dismissed with prejudice, with the Parties to bear their own attorneys' fees, costs, and expenses not otherwise provided in accordance with this Settlement Agreement.

13. TERMINATION OF THIS SETTLEMENT AGREEMENT.

13.1 Each Party shall have the right to terminate this Settlement Agreement if:

(a) The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that is not substantially similar in form and substance to **Exhibit D** attached hereto);

(b) The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from **Exhibit E** attached hereto); or

(c) The Final Order and Judgment does not become Final because a higher court reverses final approval by the Court.

13.2 In the event that within ten (10) days after the Opt-Out Date, as approved by the Court, there have been more than 5,000 timely and valid Opt-Outs submitted, SOA may, at its option, by notifying Proposed Settlement Class Counsel and the Court in writing, void this Settlement Agreement. If SOA voids the Settlement Agreement pursuant to this paragraph, SOA shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Proposed Settlement Class Counsel and Service Awards but shall be entitled to return of the remainder of the Settlement Fund.

13.3 Nothing shall prevent Plaintiffs or SOA from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement. In the event such appellate proceedings result, by order of the appellate court or by an order after remand or a combination thereof, in the entry of an order(s) whereby the Settlement is approved in a manner substantially consistent with the substantive terms and intent of this Settlement Agreement, and dismissing all claims in the Lawsuit with prejudice, and otherwise meeting the substantive criteria of this Settlement Agreement for approval of the Settlement, such order shall be treated as a Final Order and Judgment by the Court.

13.4 If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement and all orders entered in connection therewith shall be rendered null and void; (ii) the terms and provisions of the Settlement

Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Lawsuit or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*; (iii) SOA shall be responsible for all Notice and Claims Administration Costs incurred prior to the termination or disapproval; (iv) all Parties shall be deemed to have reverted to their respective positions and status in the Lawsuit as of the date this Settlement Agreement was executed and shall jointly request that a new case schedule be entered by the respective Courts in the Lawsuit; and (v) SOA shall have no payment, reimbursement, or other financial obligation of any kind as a result of this Settlement Agreement, other than as stated in Sub-Part (iii) above.

14. RELEASE.

14.1 On the Effective Date, the Parties and each and every Settlement Class Member who has not timely opted out shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim may be pursued against SOA or any Released Persons with respect to the Released Claims.

14.2 Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, who has not timely opted out, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, shall be permanently barred and enjoined from commencing, prosecuting, pursuing, or participating in any recovery in any action in this or any other forum (other than participation in the Settlement as provided herein) in which any of the Released Claims is asserted.

14.3 On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) Plaintiffs and each Settlement Class Member who has not timely opted out, and each of their respective spouses and children with claims on behalf of the Settlement

Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the “Releasing Persons”), and (ii) Settlement Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the Released Claims. The release set forth in the preceding sentence (the “Release”) shall be included as part of any judgment, so that all Released Claims shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.

14.4 Without in any way limiting the scope of the Release, the Release covers, without limitation, any and all claims for attorneys’ fees, costs, and expenses incurred by Settlement Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the Lawsuit, the Data Incident, the Settlement, the administration of such Settlement, as well as any and all claims for the Service Awards to Plaintiff.

14.5 Subject to Court approval, as of the Effective Date, all Settlement Class Members who have not timely opted out shall be bound by this Settlement Agreement and the Release and all of their claims in the Lawsuit shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Lawsuit or this Settlement.

14.6 As of the Effective Date, the Released Persons are deemed, by operation of the entry of the Final Order and Judgment, to have fully released and forever discharged Plaintiffs, the

Settlement Class Members who have not timely opted out, Settlement Class Counsel, or any other counsel representing Plaintiff or Settlement Class Members, or any of them, of and from any claims arising out of the Lawsuit or the Settlement. Any other claims or defenses SOA or other Released Persons may have against Plaintiff, the Settlement Class Members who have not timely opted out, Settlement Class Counsel, or any other counsel representing Plaintiff or Settlement Class Members, including, without limitation, any claims based upon or arising out of any employment, debtor-creditor, contractual, or other business relationship that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Lawsuit or the Released Claims that are not released, are specifically preserved and shall not be affected by the preceding sentence.

14.7 As of the Effective Date, the Released Persons are deemed, by operation of entry of the Final Order and Judgment, to have fully released and forever discharged each other of and from any claims they may have against each other arising from the claims asserted in the Lawsuit, including any claims arising out of the investigation, defense, or Settlement of the Lawsuit.

14.8 Nothing in the Release shall preclude any action to enforce the terms of this Settlement Agreement by the Parties, the Settlement Class, or Settlement Class Counsel, including participation in any of the processes detailed herein.

15. EFFECTIVE DATE.

15.1 The “Effective Date” of this Settlement Agreement shall be the first date when each and all of the following conditions have occurred:

- (a) This Settlement Agreement has been fully executed by all Parties and their counsel;

(b) Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement, and approving the Notice Program and Claim Form, all as provided above;

(c) The Court-approved Notice has been sent and the Settlement Website has been duly created and maintained as ordered by the Court;

(d) The Court has entered a Final Order and Judgment finally approving this Settlement Agreement, as provided above;

(e) The Final Order and Judgment has become Final; and

(f) The time for any appeal of the Final Order and Judgment entered by the Court has expired.

16. MISCELLANEOUS PROVISIONS.

16.1 The recitals and exhibits to this Settlement Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

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

16.3 This Settlement Agreement is for settlement purposes only. No provision contained in this Settlement Agreement or any action taken hereunder shall constitute or be construed as an admission of the merit or validity of any claim or any fact alleged in the Lawsuit or of any wrongdoing, fault, violation of law, or liability of any kind on the part of SOA or the Released Persons or any admission by SOA or the Released Persons with respect to any claim or allegation made in any action or proceeding or any concession as to the merit of any of the claims asserted by Plaintiffs in the Lawsuit. This Settlement Agreement shall not be offered or be admissible in

evidence against either Party or the Released Persons or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by SOA or the Released Persons that Plaintiffs' claims or any similar claims are suitable for class treatment outside of this Settlement.

16.4 In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing such agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Settlement Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Settlement Agreement in order to give this Settlement Agreement full force and effect.

16.5 No Person shall have any claim against Plaintiffs, Settlement Class Counsel, SOA, SOA Counsel, the Settlement Administrator, the Released Persons, or their agents based on administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any court order.

16.6 This Settlement Agreement constitutes the entire agreement between the Parties with respect to the settlement of the Lawsuit. This Settlement Agreement supersedes all prior negotiations and agreements with respect to the settlement of the Lawsuit and may not be modified or amended, except by a writing signed by or on behalf of the Parties or their respective successors-in-interest. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on, except as expressly set forth in this Settlement Agreement.

16.7 There shall be no waiver of any term or condition absent an express writing to that effect by the waiving Party. No waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

16.8 In the event a third party, such as a bankruptcy trustee, former spouse, or other third party, has or claims to have a claim against any payment made or to be made to a Settlement Class Member, it is the sole responsibility of the Settlement Class Member to transmit the funds to such third party in satisfaction of such claims.

16.9 The Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Lawsuit. The Settlement compromises and releases claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim or defense. The Parties each agree that the Settlement was negotiated in good faith by the Parties and was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such Party determines to be appropriate, any contention made in any public forum that the Lawsuit were brought or defended in bad faith or without a reasonable basis. It is agreed that neither Party shall have any liability to one another as it relates to the Lawsuit, except as set forth herein.

16.10 This Settlement Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions, and exhibits are material and

necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

16.11 The Court shall retain jurisdiction, after its entry of the Final Order and Judgment, with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties and Settlement Class Members submit to the exclusive jurisdiction of the Court for purposes of the implementation and enforcement of the Settlement embodied in this Settlement Agreement and any dispute with respect thereto.

16.12 This Settlement Agreement shall be construed under and governed by the laws of the State of Illinois without regard to its choice of law provisions.

16.13 In the event that any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision had never been a part of this Settlement Agreement, as long as the benefits to SOA or the Settlement Class Members are not materially altered as the result of the invalid, illegal, or unenforceable provision.

16.14 This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

16.15 The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

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

16.17 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement.

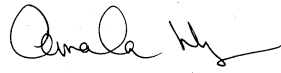
16.18 Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her, or its independent judgment and the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

16.19 Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

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

[Remainder of this page left blank.]

Dated: September 26, 2023


/s/

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Dated: September 26, 2023


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*Attorneys for Plaintiffs and the Settlement
Class*

**EXHIBIT A
(SUMMARY NOTICE)**

Summary Notice

Restivo-Conley v. Southern Orthopedic Associates (“SOA”),
No. 2022LA77 (Circuit Court of the First Judicial Circuit, Williamson County, IL)

A proposed settlement has been reached in the above-entitled class action lawsuit. The lawsuit alleges that, around June-July 2021, SOA was the victim of a cyberattack resulting in the exposure of personal information and protected health information, including names and Social Security numbers (the “Data Incident”). Records indicate you are included. SOA denies all liability, but it has entered into a proposed Settlement.

Settlement Benefits. SOA will pay \$660,000 into a Settlement Fund. If you do not opt out of the Settlement, you may be entitled to receive Settlement benefits by submitting a Claim Form no later than [DATE], which you can obtain online at [www.SettlementWebsite.com] or by calling [1-8XX-XXXX]. If eligible, you may submit a claim for one year of free credit monitoring and identity theft protection services (including \$1,000,000 in identity theft insurance) offered through [VENDOR], and you may submit a claim for Ordinary Losses (up to \$350) including Lost Time (up to 4 hours at \$20/hr) and Extraordinary Losses (up to \$5,000) you experienced related to the Data Incident. If valid claims exceed the amount of the Settlement Fund remaining at the time, payments will be reduced pro rata. More information is included on the Claim Form and Long-Form Notice on the settlement website.

Your Options. You can do nothing and claim no benefits, submit a Claim Form to claim benefits, object to the Settlement or any part of it, or opt out of the Settlement. If you do anything but opt out, you will give up the right to sue SOA on the issues covered by the Settlement. If you opt out, you will retain the right to sue, but you will not be eligible to receive any of the benefits of the Settlement. Detailed instructions on how to make a claim, object, or opt out are available online at [www.SettlementWebsite.com] or by calling [1-8XX-XXXX]. Objections or opt out requests must be postmarked no later than [DATE].

Final Approval Hearing. The Court will hold a final approval hearing on [Month] [Day], 2023, at [HH]:[MM][a/p.m] at the Williamson County Courthouse, 200 W. Jefferson St., Marion, IL 62959. The Court will decide at the hearing whether the Settlement is fair, reasonable, and adequate. The Court will also consider a request for attorneys’ fees of \$220,000, reimbursement of expenses, and a service award of \$2,500 to each of the three Plaintiffs, paid from the Settlement Fund.

Need More Information? Visit [www.SettlementWebsite.com] or call [1-8XX-XXXX].

**EXHIBIT B
(DETAILED NOTICE)**

If you were sent a Notice of Data Breach from Southern Orthopedic Associates, you could get benefits from a class action settlement.

An Illinois court authorized this notice. This is not a solicitation from a lawyer.

The settlement provides benefits to settle claims relating to a Data Incident that occurred in or around June-July 2021, when SOA (“Defendant”) was the victim of a cyberattack resulting in the exposure of personal information and protected health information, including names and Social Security numbers (the “Data Incident”). Defendant denies all liability but has entered into a proposed settlement to resolve the claims. The settlement benefits include that Defendant will pay \$660,000 into a non-reversionary Settlement Fund. The Fund will be used:

- To provide the option to enroll in one year of credit monitoring and identity theft protection services (including \$1,000,000 in identity theft insurance) through [VENDOR], at no cost.
- To pay valid claims submitted for Ordinary Losses (up to \$350) including Lost Time (up to 4 hours at \$20/hr) and Extraordinary Losses (up to \$5,000) you experienced related to the Data Incident. If valid claims exceed the amount remaining in the Settlement Fund at the time of payment, payments will be reduced pro rata.
- You have the right to do nothing, submit a claim, object to the Settlement or any part of it, or opt out of the Settlement. If you do not opt out of the Settlement, and final approval is granted, you will release any claims you have relating to the Data Incident as set forth in the settlement agreement.
- Your legal rights are affected, so please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM	To receive any of the benefits and the identity theft protection services available from the Settlement, you must submit a claim using the Claim Form, which may be obtained online at www.SettlementWebsite.com or by calling [1-8XX-XXXX]. If you submit a claim, you give up the right to bring a separate lawsuit about the same issues, but you are eligible to receive any of the settlement benefits to which you have a valid claim.
EXCLUDE YOURSELF	If you exclude yourself from the Settlement, you will get no benefits from the Settlement, but you will keep the right to bring a separate lawsuit about the same issues at your own expense, if you choose.
OBJECT	If you object to the Settlement or any part of it, you may write to the Court about your objection. If the Settlement is approved you will still give up the right to bring a separate lawsuit about the same issues, and you will need to submit a claim to receive any settlement benefits.
DO NOTHING	If you do nothing you will give up the right to bring a separate lawsuit about the same issues, and you will not be eligible to receive any benefits of the Settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.

Please be patient while the Court decides whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals.

BASIC INFORMATION

1. Why did I get this notice?

This notice has been posted to the settlement website relating to a class action brought against Defendant relating to a Data Incident that occurred in or around June–July 2021, in which Plaintiff alleges Defendant was the victim of a cyberattack resulting in the disclosure of personal information and protected health information, including names and Social Security numbers.

The Court approved this notice because class members have a right to know about the proposed class action settlement, and about their options, before the Court decides whether to approve the Settlement. This package explains the lawsuit, the Settlement, class members' legal rights, what benefits are available, and how to claim those benefits.

The Court in charge of the case is the Circuit Court of the First Judicial Circuit, Williamson County, Illinois, and the case is known as *Restivo-Conley v. Southern Orthopedic Associates*, No. 2022LA77. The persons who sued are called the Plaintiffs, and the company sued is called the Defendant.

2. What is the lawsuit about?

The lawsuit claims that the Defendant failed to properly safeguard the personally identifiable information that Plaintiffs allege was compromised in the Data Incident. Defendant contends that it acted in accordance with applicable laws or obligations and that it has no liability or fault relating to the Data Incident.

3. Why is this a class action?

In a class action lawsuit, one or more people called “Class Representatives” sue on behalf of themselves and other people who have similar claims. All of these people are called a Class or Class Members. This is a class action because the Court has preliminarily determined that the Settlement meets the legal requirements for resolution of a class action. Because the case is a class action, one court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class.

4. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or the Defendant. Instead, both sides agreed to a settlement. The Plaintiffs have the duty to act in the best interests of the class as a whole and, in this case, it is the Plaintiffs' belief, as well as Class Counsel's opinion, that this Settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that Defendant is legally responsible, whether this case could proceed as a class action if litigated, whether Plaintiffs

would be able to prove causation and damages at trial, and whether any verdict would withstand appeal, which might result in Class Members receiving no recovery, or a substantially smaller recovery than that being offered here. Even if the Plaintiffs were to win at trial, there is no assurance that the Class Members would be awarded more than the current Settlement provides, and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation in exchange for access to guaranteed benefits now.

While Defendant disputes Plaintiffs' claims, it has agreed to settle the lawsuit to avoid the costs, distractions, and risks of litigation. Thus, even though Defendant denies that it did anything improper, it believes settlement is in the best interests of all the Parties. The Court will evaluate the Settlement to determine whether it is fair, reasonable, and adequate before it approves the Settlement.

WHO IS IN THE SETTLEMENT

To see if you will get money or other benefits from this settlement, you first have to decide if you are a Class Member.

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

If you received a notice from Defendant that your information was potentially compromised in the Data Incident, then you are a member of the Settlement Class, you will be a part of the Settlement unless you exclude yourself. If you are not sure whether you have been properly included, you can call the number at the bottom of this notice to check.

THE SETTLEMENT BENEFITS—WHAT YOU GET

6. What does the Settlement provide and how can I claim benefits?

Under the Settlement, Defendant will pay \$660,000 into a Settlement Fund to resolve the litigation. The Settlement Fund will be used to provide for a number of benefits, and Class Members can claim as many of the benefits as they are entitled to.

First, Class Members may submit a claim to receive, at no cost, one year of credit monitoring and identity theft protection services (including \$1,000,000 in identity theft insurance).

Second, Class Members who suffered an out-of-pocket loss or lost time related to the Data Incident may submit a claim for a cash reimbursement. Defendant will pay valid claims for Ordinary Losses (up to \$350.00), including Lost Time (up to \$80.00, at \$20/hr for up to 4 hours) that a Class Member experienced attributable to the Data Incident. Defendant will pay valid claims for Extraordinary Losses up to \$5,000. If all valid claims exceed the amount available in the Settlement Fund at the time of payment, payments will be reduced pro rata. Ordinary Losses include (i) out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), miscellaneous expenses, such as postage,

notary, fax, copying, mileage, and/or gasoline for local travel; (ii) fees for credit reports, credit monitoring, and/or other identity theft insurance products purchased between the date of the Data Incident and the close of the Claim Deadline. Extraordinary Losses include documented unreimbursed losses relating to fraud stemming from the Data Incident.

To receive any of the cash benefits or the identity theft protection services available from the Settlement, you must submit a claim using the Claim Form, which may be obtained online at www.SettlementWebsite.com or by calling [1-8XX-XXXX](tel:1-8XX-XXXX).

7. When would I get my benefits?

The Court will hold a hearing on [\[Month\] \[Day\], 202_](#), to decide whether to approve the Settlement. You do not need to attend this hearing. If the Court approves the Settlement, there may be a period when appeals can be filed. Once any appeals are resolved or if no appeals are filed, it will be possible to distribute the funds. This may take several months and perhaps more than a year.

8. What am I giving up to get a payment?

Unless you exclude yourself, you are staying in the Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant relating to the legal claims in *this* case. It also means that all of the Court's orders will apply to you. Once the Settlement is final, except for claims any minors may have for personal injury, your claims relating to *this* case will be released.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement or the other benefits described here, but you want to keep the right to sue or continue to sue the Defendant on your own about the legal issues in this case, then you must take steps to get out. This is called excluding yourself—or is sometimes referred to as “opting out” of the settlement.

9. How do I get out of the Settlement?

To exclude yourself from this Settlement, you must send a letter by mail saying that you want to opt-out or be excluded from *Restivo-Conley v. Southern Orthopedic Associates*. The letter must include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than [\[PARTIES TO PROVIDE DATE\]](#) to:

Southern Orthopedic Associates Exclusions

[\[Notice Administrator Address 1\]](#)

[\[Notice Administrator Address 2\]](#)

[\[City\], \[State\] \[ZIP\]](#).

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not get any settlement benefits, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

10. If I don't exclude myself, can I sue later for the same thing?

No. Unless you exclude yourself, you give up the right to sue the Defendant for the claims resolved by this Settlement. If the Settlement is finally approved, you will be permanently enjoined and barred from initiating or continuing any lawsuit or other proceeding against Defendant about the issues in this lawsuit. Remember that the exclusion deadline is **[PARTIES TO PROVIDE DATE]**.

11. If I exclude myself, can I get money from this Settlement?

No. If you exclude yourself, you are not eligible for any money or other benefits from this Settlement.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

The Court appointed the law firms of Stranch, Jennings & Garvey, PLLC; Cohen & Malad, LLP; Federman & Sherman; and George Feldman McDonald, PLLC to represent you and other Class Members. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees of up to \$220,000 and litigation expenses from the Settlement Fund, and service awards to each of the three Plaintiffs for \$2,500.00 each, from the Settlement Fund, subject to Court approval.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

14. How do I tell the Court that I don't like the Settlement?

If you're a Class Member, you can object to the Settlement if you don't like any part of it. To object, you must send a letter to the Settlement Administrator saying that you object to the Settlement, or part of it, in *Restivo-Conley v. Southern Orthopedic Associates*, No. 2022LA77. To have your objection considered by the Court, you also must file your objection with the Clerk of the Court (identified below). You must state the reasons for your objection and include any evidence, briefs, motions or other materials you intend to offer in support of the objection. You must include your name, address, telephone number, your signature, and the reasons you object

to the Settlement, along with any materials in support of your arguments. If you intend to appear at the final approval hearing either yourself or by a lawyer, you must also state your intention to appear. You must mail the objection to the Settlement Administrator at the following address no later than **[PARTIES TO PROVIDE DATE]**:

Southern Orthopedic Associates Objections

[Court info]

[Notice Administrator Address 1]

[City], [State] [ZIP].

15. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement. Excluding yourself is telling the Court that you don't want to be part of the Settlement. If you exclude yourself, you have no basis to object because this case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You do not need to attend, but you are welcome to do so, if you choose.

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **[PARTIES TO PROVIDE TIME]** on **[PARTIES TO PROVIDE DATE]** at **[address of the court]** (or by telephonic or videoconference if necessary, please check the Settlement Website for updates on the hearing). At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing and complied with question 18 of this notice. The Court may also decide how much to pay Class Counsel and the Plaintiff. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

17. Do I have to come to the hearing?

No. You are welcome to come at your own expense if you wish, but Class Counsel will answer questions the Court may have. If you send an objection, you don't have to come to Court to talk about it, unless you want to. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary unless you want to.

18. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing along with your objection as set forth in paragraph 14 above.

IF YOU DO NOTHING

Questions? Call **[PHONE #]** or visit **[WEBSITE]** Page 7

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19. What happens if I do nothing at all?

If you do nothing, you will be a part of this Settlement, but you must submit a claim to receive any benefits. You won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant relating to the claims brought in this case.

GETTING MORE INFORMATION

20. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement on file with the Court and available on the settlement website at [INSERT]. You can also call toll free [PHONE #].

**EXHIBIT C
(CLAIM FORM)**

SOA Settlement Administrator P.O. Box XXXX City, ST XXXXX	ALL CLAIM FORMS MUST BE SUBMITTED NOT LATER THAN [DATE]
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Restivo-Conley v. Southern Orthopedic Associates.
Circuit Court of the First Judicial Circuit, Williamson County, Illinois

CLAIM FORM

This claim form should be filled out online or submitted by mail if you are an individual who was notified of the Data Incident by letter from Southern Orthopedic Associates, and you wish to sign up for credit monitoring and identity protection services or had out-of-pocket expenses or lost time spent dealing with the Data Incident. You may get a check if you fill out this claim form, if the settlement is approved, and if you are found to be eligible for a payment.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website, **[Insert Settlement Website URL]**, or call **[Insert Toll Free Settlement Number]** for more information.

If you wish to submit a claim for a settlement payment, you need to provide the information requested below. Please print clearly in blue or black ink. This claim form must be mailed and postmarked by **[DATE]**. Alternatively, you may submit a claim using the online form located on the settlement website listed above.

TO RECEIVE BENEFITS FROM THIS SETTLEMENT, YOU MUST PROVIDE ALL OF THE REQUIRED INFORMATION BELOW AND YOU MUST SIGN THIS CLAIM FORM. THIS CLAIM FORM SHOULD ONLY BE USED IF A CLAIM IS BEING MAILED IN AND IS NOT BEING FILED ONLINE.

1. Class Member Information.

First Name		Middle Initial
Last Name		Suffix
Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)		
City	State	Zip Code
Current Email Address (Optional)		
Current Phone Number (Required)	Settlement Claim ID (Required)	

2. Credit Monitoring and Identity Theft Protection Services.

One year of credit monitoring and identity theft protection.

Check the box above if you wish to receive one year of credit monitoring and identity theft protection services (including \$1,000,000 in identity theft insurance) at no cost to you. If your claim is approved you will receive an activation code for the service by email, along with instructions on how to activate the service. If you select this benefit, you may also claim reimbursement for Ordinary Losses, including Lost Time, and/or Extraordinary Losses.

3. Payment of Ordinary Losses, including Lost Time.

Please provide as much information as you can to help us figure out if you are entitled to a settlement payment.

PLEASE PROVIDE THE INFORMATION LISTED BELOW:

Check the box for each category of out-of-pocket expenses or lost time that you incurred as a result of the Data Incident. Please be sure to fill in the total amount you are claiming for each category and to attach documentation as described (if you provide account statements as part of proof for any part of your claim, you may mark out any unrelated transactions if you wish).

Ordinary Losses and Lost Time attributable to the Data Incident

Settlement Class Members may claim up to \$350 in Ordinary Losses, including Lost Time. Ordinary losses may include (i) out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges, data charges, miscellaneous expenses, such as postage, notary, fax, copying, mileage, and/or gasoline for local travel; (ii) fees for credit reports, credit monitoring, and/or other identity theft insurance products purchased between the date of the Data Incident and the close of the Claim Deadline; (iii) up to four (4) hours of lost time, at \$20/hour provided that the claimant certifies that the lost time was spent remedying issues fairly traceable to the Data Incident.

I spent this many hours of time related to the Data Incident: . (round to the nearest 0.1 (6 minutes) (no documentation is needed).

Briefly describe how you spent that time in the space below:

I suffered this much in Ordinary Losses (not including Lost Time, above): \$ _____.

Please describe the categories of Ordinary Losses you are claiming, and be sure to attach all documentation you have relating to these expenses:

□ Extraordinary Losses attributable to the Data Incident

Settlement Class Members may make a claim for documented Extraordinary Losses related to the Data Incident, up to a maximum amount of \$5,000.00.

Extraordinary losses, including proven actual monetary losses, provided that: (i) the loss is an actual, documented, and unreimbursed monetary loss arising from fraud or misuse; (ii) the loss from fraud or misuse was more likely than not caused by the Data Incident; (iii) the actual misuse or fraud loss is not already covered by one or more of the ordinary loss compensation categories above; and (iv) the actual misuse or fraud loss occurred between the date of the Data Incident (June-July 2021) and **[Claim Deadline]**.

Total amount claimed for this category: \$_____ (maximum \$5,000.00)

Please describe the categories of Extraordinary Losses you are claiming, and be sure to attach all documentation you have relating to these expenses:

4. Sign and Date Your Claim Form.

I declare that the information supplied above is true and correct to the best of my recollection.

Signature	Printed Name	Date
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5. Reminder Checklist.

- Keep copies of the completed Claim Form and documentation for your own records.
- If your address changes or you need to make a correction to the address on this Claim Form, please visit the Settlement website at **[insert Settlement Website URL]** and complete the Update Contact Information form or send written notification of your new address. Make sure to include your Settlement Claim ID and your phone number in case we need to contact you in order to complete your request.
- Please do not provide any sensitive documents that may contain personal information via email to the Settlement Administrator. If you need to supplement your claim submission with additional documentation, please visit the Settlement website at **[insert Settlement Website URL]** and provide these documents by completing the Secure Contact Form or by mail.

- For more information, please visit the settlement website at **[insert Settlement Website URL]**, or call the Settlement Administrator at **1-XXX-XXX-XXXX**. Please do not call the Court or the Clerk of the Court for additional information.

EXHIBIT D
(PRELIMINARY APPROVAL ORDER)

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
WILLIAMSON COUNTY, ILLINOIS

SUZANNE RESTIVO-CONLEY, individually)
and on behalf of all others similarly situated,)

Plaintiff,)

vs.)

Case No.: 2022LA77

SOUTHERN ORTHOPEDIC ASSOCIATES,)
S.C. D/B/A ORTHOPAEDIC INSTITUTE OF)
WESTERN KENTUCKY AND SOUTHERN)
ORTHOPEDIC ASSOCIATES, L.L.C. D/B/A)
ORTHOPAEDIC INSTITUTE OF WESTERN)
KENTUCKY,)

Defendant.)

PRELIMINARY APPROVAL ORDER

Suzanne Restivo-Conley, Melinda Fleet, and Sally Christiansen, by counsel, have submitted a Class Action Settlement Agreement (the “Settlement”) and have applied under 735 ILCS 5/2-806 for an order: (1) preliminarily approving the terms and conditions set forth in the Settlement, (2) certifying a class for purposes of settlement, (3) approving the form and method of notice to the Settlement Class, and (4) scheduling a final approval hearing to consider final approval of the Settlement. The Court has given due consideration to the terms of the Settlement, the exhibits to the Settlement, the submissions in support of preliminary approval of the Settlement, and the record of proceedings, and now finds that the proposed Settlement should be preliminarily approved pending notice to members of the Settlement Class and a final hearing on whether the Settlement is fair, reasonable, and adequate.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement.

2. This Court has jurisdiction over the subject matter of this lawsuit and jurisdiction over the Plaintiff, the members of the Settlement Class, and Defendant in the above-captioned case (the “Parties”).

3. The Court finds that for the purposes of settlement and notice the requirements of 735 ILCS 5/2-801 have been met, specifically:

- a. The Settlement Class is so numerous that joinder of all members is impracticable, as there are thousands of members;
- b. There are questions of law or fact common to the Settlement Class based upon the claims raised in the lawsuit stemming from the Data Incident, which common questions predominate over any questions affecting only individual members;
- c. The representative parties will fairly and adequately protect the interest of the Settlement Class; and
- d. The class action is an appropriate method for the fair and efficient adjudication of the controversy.;

The Court therefore **CERTIFIES** the following Settlement Class:

All persons Defendant identified as being among those individuals impacted by the Data Incident, including all who were sent a notice of the Data Incident.

The Court appoints Suzanne Restivo-Conley, Melinda Fleet, and Sally Christiansen as Class Representatives of the Settlement Class and appoints as Class Counsel the law firms of Stranch, Jennings & Garvey, PLLC; Cohen & Malad, LLP, Federman & Sherman, and George Feldman McDonald, PLLC.

4. The Court finds that the terms of the Settlement are within the range of a fair, reasonable, and adequate settlement between the Settlement Class and Defendant under the

circumstances of this case. The Court therefore preliminarily approves the Settlement and directs the Parties to the Settlement to perform and satisfy the terms and conditions of the Settlement that are triggered by such preliminary approval.

5. The proposed Summary Notice in the form attached to the Settlement, and the manner of distribution of such Notice by email and direct mail, are hereby approved by this Court as the best notice practicable to the Class. The proposed Detailed Notice attached to the Settlement and the manner of distribution of such by posting to the Settlement Website, is hereby approved by the Court. The form and manner of notice proposed in the Settlement complies with the requirements of due process. The Claim Form is likewise approved by the Court.

6. Pursuant to 735 ILCS 5/2-806 a final approval hearing (the “Final Approval Hearing”) shall be held before the undersigned at the Williamson County Courthouse, 200 W. Jefferson St., Marion, IL 62959. (or by telephone or video conference, if necessary) at _____ .m., on _____, 2023, for the purpose of: (a) determining whether the Settlement is fair, reasonable, and adequate and should be finally approved; (b) determining whether a Final Approval Order should be entered; and (c) considering Class Counsel’s application for an award of attorneys’ fees, expenses, and a service award. The Court may adjourn, continue, and reconvene the Final Approval Hearing pursuant to oral announcement without further notice to the Settlement Class, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Settlement Class.

7. KCC Class Action Services, LLC is appointed as Settlement Administrator and shall cause notice to be sent to each member of the Settlement Class as set forth in the Settlement.

8. Class Members shall be afforded an opportunity to request exclusion from the Settlement. A request for exclusion must: (i) state that the member of the Settlement Class wishes to opt-out or request exclusion from the Class; (ii) contain the full name, current address, and telephone number of the person requesting exclusion; (iii) be signed by the person requesting exclusion; and (v) be sent to the Settlement Administrator by U.S. mail with a postmark on or before the Opt Out Period as defined in the Settlement. Members of the Settlement Class who submit a timely and valid request for exclusion from the Settlement shall not participate in and shall not be bound by the Settlement. Members of the Settlement Class who do not timely and validly opt out of the Settlement in accordance with the Notice shall be bound by all determinations and judgments in the action concerning the Settlement.

9. Class Members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement. Any objection must: (i) contain the full name and current address of the person objecting; (ii) contain the title of the Lawsuit: “*Restivo-Conley v. Southern Orthopedic Associates.*” with the case number; (iii) state the reasons for the Class Member’s objection; (iv) be accompanied by any evidence, briefs, motions, or other materials the Class Member intends to offer in support of the objection; (v) be signed by the Class Member; (vi) state any intention to appear at the Final Approval Hearing; (vii) be sent by U.S. mail, first class and postage prepaid, with a postmark no later than the Objection Deadline, as defined in the Settlement, to the Settlement Administrator; and (viii) be filed with the Court no later than the Objection Deadline, as defined in the Settlement.

10. Any member of the Settlement Class who does not make his or her objection known in the manner provided in the Settlement and notice shall be deemed to have waived such

objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement.

11. Any request for intervention in this action for purposes of commenting on or objecting to the Settlement must meet the requirements set forth above, including the deadline for filing objections, and also must be accompanied by any evidence, briefs, motions or other materials the proposed intervenor intends to offer in support of the request for intervention.

12. Any lawyer intending to appear at the Final Approval Hearing must be authorized to represent a Class Member, must be duly admitted to practice law before the Court, and must file a written appearance. Copies of the appearance must be served on Class Counsel and counsel for Defendant in accordance with applicable rules of Court.

13. Class Counsel shall file with the Court the Settlement Administrator's sworn statement of all persons timely requesting exclusion from the Settlement, along with copies of the requests, as well as copies of all objections received by the Settlement Administrator.

14. No later than fourteen (14) days prior to the deadlines for a Settlement Class Member to opt out of or object to the Settlement, Class Counsel shall file a motion for approval of the attorneys' fees, expenses, and service awards to be paid from the Settlement Fund, along with any supporting materials, to be considered at the Final Approval Hearing.

15. If the Settlement does not become effective or is rescinded pursuant to the Settlement, the Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Plaintiff and Defendant, and all orders issued pursuant to the Settlement shall be vacated.

17. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED.

Judge