

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
12/20/2022 2:42 PM
CLERK OF THE COURT
Christopher Waites

D-202-CV-2020-01578

EXHIBIT "1"

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

JESSE MARTINEZ, KYRA NIETO, MICHAEL O. GARCIA,
and JUAN GONZALES, individually and on behalf of all others
similarly situated,

Plaintiffs,

D-202-CV-2020-01578

v.

PRESBYTERIAN HEALTHCARE SERVICES,

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement, dated November 16, 2022, is made and entered into by and among the following Settling Parties (as defined below): (i) Jesse Martinez, Kyra Nieto, Michael O. Garcia, and Juan Gonzales (“Plaintiffs” or “Class Representatives”), individually and on behalf of the Settlement Class (as defined below), by and through Class Counsel (as defined below); and (ii) Presbyterian Healthcare Services (“PHS”), by and through its counsel of record, Arnold & Porter Kaye Scholer LLP and Rodey, Dickason, Sloan, Akin & Robb, P.A. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. THE LITIGATION

On or about May 9, 2019, a third-party threat actor executed an email phishing attack to attempt to gain access to certain PHS email accounts. Upon discovery of the incident, PHS immediately secured the accounts and retained an expert consultant to conduct a forensic

investigation. That investigation determined that the threat actor was able to gain access to a number of PHS employee email accounts. While some personal information was present within these email accounts (such as patients' and/or health plan members' names, social security numbers, dates of birth, clinical and/or health insurance information), PHS contends that the investigation found no evidence that the threat actor in fact accessed or exfiltrated any of that information. Although PHS contends that it found no evidence that anyone's information was in fact stolen, or that any individual had suffered any adverse impact, PHS provided written notice to 1,120,629 potentially affected individuals, including Plaintiffs.

Shortly after PHS mailed the individual notices to potentially affected individuals, several overlapping class action lawsuits were filed against PHS in New Mexico federal and state courts. Eventually, these cases were consolidated into a single amended complaint filed on behalf of a putative class of New Mexico residents in the Second Judicial District of Bernalillo County, New Mexico before Judge Benjamin Chavez, *Martinez, et al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578 (the "Litigation"). The causes of action in the Consolidated Class Action Complaint include seven claims for: (1) common law negligence; (2) common law intrusion upon solitude/invasion of privacy; (3) common law breach of express contract; (4) breach of implied contract; (5) negligence per se for alleged violation of 15 U.S.C. § 45 (the Federal Trade Commission Act), 42 U.S.C. §§ 1302d, *et seq.* (the Health Insurance Portability and Accountability Act), and 15 U.S.C. § 6801 (the Gramm-Leach-Bliley Act); (6) common law breach of fiduciary duty; and (7) violation of NMSA 1978, Section 57-12-2 (the New Mexico Unfair Practices Act).

PHS filed a motion to dismiss for lack of standing under New Mexico state law and to dismiss all causes of action for failure to state actionable claims. Judge Chavez denied PHS's motion in part and granted it in part: (1) the court denied PHS's motion as it pertained to Plaintiffs'

claim for negligence, breach of express contract, breach of implied contract, negligence per se for alleged violations of 15 U.S.C. § 45 (the Federal Trade Commission Act) and 42 U.S.C. §§ 1302d, *et seq.* (the Health Insurance Portability and Accountability Act), breach of fiduciary duty, and violation of NMSA 1978, Section 57-12-2 (the New Mexico Unfair Practices Act); but (2) dismissed Plaintiffs' claims for invasion of privacy/intrusion upon solitude, and violation of 15 U.S.C. § 6801 (the Gramm-Leach-Bliley Act).

On May 31, 2022, the parties participated in a mediation before Bruce A. Friedman. After several rounds of negotiation through the mediator, the parties reached an agreement in principle on all material terms of the class settlement. This Settlement Agreement is the result of that mediation process and further arms-length negotiations between the Settling Parties that occurred after the mediation.

Pursuant to the terms set forth below, this Settlement Agreement provides for the resolution of Released Claims (defined below) against the Released Entities (defined below) by and on behalf of the Class Representatives and Settlement Class Members relating to the Data Incident.

II. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLING

Plaintiffs believe that the claims asserted in the Litigation, as set forth in the Consolidated Class Action Complaint, have merit. Plaintiffs and Plaintiffs' Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to proceed with the Litigation against PHS through discovery, motion practice, trial, and potential appeals. Plaintiffs and Plaintiffs' Counsel have also taken into account the uncertain outcome and risk of continued litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs' Counsel are experienced in class action litigation and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. They

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.

III. DENIAL OF WRONGDOING AND LIABILITY

PHS denies any and all of the claims, causes of action, and contentions alleged against PHS, individually and collectively, in the Litigation. PHS denies all charges of wrongdoing or liability as alleged, or that could be alleged, in the Litigation. PHS likewise denies all charges of damages as alleged, or that could be alleged, in the Litigation. Nonetheless, PHS recognizes the expense and protracted nature of litigations such as this one and the uncertainty and risks inherent in any litigation, and has therefore concluded that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by Plaintiffs, individually and on behalf of the Settlement Class, and PHS that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who lawfully opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement as follows:

1. Definitions

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

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

1.2 “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Claims Administrator (as defined below).

1.3 “Claims Administrator” means Kroll Settlement Administration LLC, a company experienced in administering class action claims generally and specifically of the type provided for and made in data security litigation.

1.4 “Claims Deadline” means the postmark and/or online submission deadline for Valid Claims (as defined below) pursuant to ¶ 2.4.

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

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

1.7 “Court” means the Second Judicial District of Bernalillo County, New Mexico.

1.8 “Data Incident” means the unauthorized access of the certain PHS employee email accounts on or about May of 2019 that resulted in the written notice to 1,120,629 potentially affected individuals.

1.9 “Dispute Resolution” means the process for resolving disputed Settlement Claims as set forth in this Agreement.

1.10 “Effective Date” means the first day by which all of the events and conditions specified in ¶ 1.11 have occurred and been met.

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

1.12 “Judgment” means a judgment rendered by the Court, in the form attached hereto as **Exhibit E**, or a judgment substantially similar to such form.

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

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

1.15 “Opt-Out Date” means the date by which Settlement Class Members must mail their written 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.

1.16 “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.

1.17 “PII” means personally identifiable information, such as names, addresses, dates of birth, Social Security Numbers, and other personal identifying information.

1.18 “PHI” means protected health information, such clinical and/or health information and other protected health information, as defined by the Health Insurance Portability and Accountability Act of 1995, 42 U.S.C. §§ 1320d *et seq.*

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

1.20 “Proposed Settlement Class Counsel” and/or “Class Counsel” means the law firms of J. Gerard Stranch IV of Branstetter, Stranch & Jennings, PLLC, Lynn A. Toops of Cohen & Malad, LLP, and David Lietz of Milberg Coleman Bryson Phillips Grossman LLP.

1.21 “Related Entities” means each of the PHS’s respective predecessors, successors, parents, subsidiaries, affiliates, directors, officers, principals, agents, employees, 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 any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity of the Data Incident or who pleads *nolo contendere* to any such charge.

1.22 “Released Claims” shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any individual or class-wide causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including, but not limited to, 15 U.S.C. §§ 45, *et seq.*, and all similar statutes in effect in any states in the United States; negligence; negligence *per se*; breach of contract; breach of implied contract; violation of the New Mexico Unfair Practices Act (NMSA 1978, Section 57-12-2) and all similar state consumer protection statutes; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligence, or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees, costs, and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Entities based on, relating to, concerning or arising out of the Data Incident. Released Claims shall not include the right of any Settlement Class Member or any of the Released Entities to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.23 “Released Entities” means PHS and the Related Entities.

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

1.25 “Settlement Class” means the individuals to whom PHS sent letters notifying those individuals that information relating to them may have been compromised as a result of the Data Incident. The Settlement Class specifically excludes: (i) officers and directors of PHS and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the members of the judiciary who have presided or are president over this matter and their families and staff; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

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

1.27 “Settlement Website” means the website described in ¶ 3.2(c).

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

1.29 “Short Notice” means the content of the mailed notice to the Settlement Class Members, substantially in the form shown as **Exhibit A**. The Short Notice will direct recipients to the Settlement Website and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys’ fees, costs, and expenses and service awards, and the date of the Final Fairness Hearing (as defined in ¶ 3.4 below).

1.30 “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 Entities that, if known by him or her, might have affected his or her settlement with, and release of, the Released Entities, or might have affected his or her decision not to object and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code §1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code § 1542, which provides that:

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

Settlement Class Members, including Plaintiffs, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other

Settlement Class Member shall be deemed to have and by operation of the Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

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

1.32 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or Dispute Resolution process described in ¶ 2.8.

2. Settlement Benefits

2.1 Expense Reimbursement. All Settlement Class Members who submit a Valid Claim using the Claim Form are eligible for reimbursement for the following documented out-of-pocket expenses fairly traceable to the Data Incident, not to exceed an aggregate total of \$750.00 per Settlement Class Member: (i) long distance telephone charges; (ii) cell phone minutes (if charged by the minute), Internet usage charges (if charged by the minute or by the amount of data usage incurred solely as a result of the Data Incident), and text messages (if charged by the message and incurred solely as a result of the Data Incident); (iii) postage; (iv) documented costs associated with miscellaneous expenses such as notary, fax, postage, copying, and mileage; (v) documented costs associated with credit freezes; (vi) and documented costs of credit-monitoring services active between receiving notice of the Data Incident and the date credit monitoring becomes available under this Settlement (collectively, “Out-of-Pocket Expenses”). To receive reimbursement for Out-of-Pocket Expenses, Settlement Class Members must submit a Valid Claim, including necessary supporting documentation to the Claims

Administrator, and attest under penalty of perjury that the Out-of-Pocket Expenses are fairly traceable to the Data Incident, as described further in ¶ 2.4 below.

2.2 Settlement Class Members are eligible to receive reimbursement for up to three (3) hours of lost time remedying issues fairly traceable to the Data Incident (calculated at \$15 per hour), but only if the Settlement Class Member attests under penalty of perjury that any claimed lost time was spent remedying issues fairly traceable to the Data Incident and provides a written description of how the claimed lost time was spent in connection with efforts to remedy issues fairly traceable to the Data Incident, as described further in ¶ 2.4 below (“Lost Time”). Claims made for Lost Time can be combined with reimbursement for the above referenced Out-Of-Pocket Expenses, and are subject to the same total aggregate cap of \$750.00 per Settlement Class Member.

2.3 Settlement Class Members can also receive reimbursement for their documented extraordinary monetary out-of-pocket expenses to the extent not already covered by Out-of-Pocket Expenses if their identity was stolen as a result of the Data Incident in an amount not to exceed \$5,000.00 per Settlement Class Member. Settlement Class Members must provide sufficient documentary proof that their identity was stolen as a result of the Data Incident to be eligible for the following extraordinary out-of-pocket expenses, which include, but are not limited to: (i) documented professional fees and other costs incurred to address actual identity fraud or theft and (ii) other documented unreimbursed losses, fees, or charges incurred as a result of actual identity fraud or theft, including, but not limited to (a) unreimbursed bank fees, (b) unreimbursed card reissuance fees, (c) unreimbursed overdraft fees, (d) unreimbursed charges related to unavailability of funds, (e) unreimbursed late fees, (f) unreimbursed over-limit fees, (g) unreimbursed charges from banks or credit card companies, and (h) interest on payday loans due

to card cancellations or due to over-limit situations (“Extraordinary Expenses”). To claim Extraordinary Expenses, the Settlement Class Member (i) provide identification of the identity theft event(s); (ii) attest under penalty of perjury that he/she believes that each claimed loss or expense was incurred as a result of the Data Incident and actual incident of identity theft or fraud; and (iii) provide reasonable documentation of the out-of-pocket losses claimed.

2.4 Settlement Members seeking reimbursement under ¶¶ 2.1, 2.2, and 2.3 must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online, on or before the 90th day after the date on which notice commences pursuant to ¶ 3.2. The notice to the Settlement Class will specify this deadline and other relevant dates. The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Notarization shall not be required. For Out-of-Pocket Expenses and Extraordinary Expenses, the Settlement Class Member must submit reasonable documentation reflecting that these expenses claimed were both actually incurred and fairly traceable to the Data Incident and not otherwise reimbursed by another source. This documentation must include receipts or similar documentation, not to be “self-prepared” by the Settlement Class Member, that documents the costs incurred. “Self-prepared” documents, such as handwritten receipts, by themselves are insufficient to receive reimbursement, but may be considered by the Claims Administrator to add clarity or support to other submitted documentation. In assessing what qualifies as “fairly traceable,” the Settlement Administrator will consider (i) whether the timing of the loss occurred on or after May of 2020; (ii) the type of PII and/or PHI involved in the Data Incident for that particular Settlement Class Member; (iii) whether the claimed losses pertain to remedying or preventing an identity theft or fraud incident likely to be associated with the release of the type

of PII and/or PHI for that particular Settlement Class Member involved in the Data Incident; and (iv) whether the Settlement Class Member experienced other data incidents or received notices of other data incidents during this time period. Failure to provide supporting documentation of Out-of-Pocket Expenses or Extraordinary Expenses, as requested on the Claim Form, shall result in denial of the claim. For the Lost Time claimed by Settlement Class Members, the Settlement Class Member must provide an attestation under penalty of perjury indicating that the time claimed was spent in connection with remedying issues fairly traceable to the Data Incident and a written description of how the claimed lost time was spent in connection with remedying issues fairly traceable to the Data Incident.

2.5 Credit Monitoring Services.

(a) Settlement Class Members are eligible to receive twelve (12) months of credit monitoring services upon submission of a timely, Valid Claim. The credit monitoring services will be provided through Experian IdentityWorks and shall include at least the following, or similar, services:

- (i) Up to \$1 million dollars reimbursement insurance covering losses due to identity theft and stolen funds;
- (ii) Three bureau credit monitoring providing notice of certain changes to the enrolled Settlement Class Member's credit profile;
- (iii) Daily credit alerts for new inquiries, new accounts, changes of address, changes to public records, and postings of potentially negative information;
- (iv) Access to daily credit reports during membership;

(v) Access to identity restoration specialists to assist with credit and non-credit related fraud available seven (7) days a week and a dedicated fraud resolution agent;

(vi) Access to Experian IdentityWorks ExtendCARE for continued access to the same high-level identity restoration support even after the Experian IdentityWorks membership has expired; and

(vii) Dark Web monitoring that will provide notification if an enrolled Settlement Class Member's information, such as Social Security number, credit card numbers, financial account numbers, and health insurance number are found on the Dark Web.

(b) PHS shall pay the cost of the credit monitoring services separately from any caps for Out-of-Pocket Expenses and Extraordinary Expenses, as discussed above in ¶¶ 2.1 and 2.3.

2.6 Limitation on Reimbursable Expenses. Before receiving Out-of-Pocket Expenses or Extraordinary Expenses, Settlement Class Members who submit claims must exhaust all reimbursement insurance benefits covering losses due to identity theft and stolen funds available to them in connection with credit monitoring protections already provided by PHS. Nothing in this Settlement Agreement shall be construed as requiring PHS to provide, and PHS shall not be required to provide, a double payment of the same loss or injury that was reimbursed or compensated by any other source. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement.

2.7 Confirmatory Discovery.

(a) Through confirmatory discovery exchanges in connection with the mediation process, PHS has acknowledged, and Plaintiffs have confirmed that PHS has made certain systems or business practice changes to mitigate the risk of similar data incidents. Costs associated with these business practice changes will be paid by PHS separate and apart from other settlement benefits.

(b) Nothing in ¶ 2.7 shall create any contractual rights to any present or future equitable remedy requiring PHS to establish or maintain any particular security processes or procedures in the future or otherwise take any action in response to the Litigation. In addition, nothing in ¶ 2.7 may be used to create a cause of action against PHS or may be used in connection with any other matter against PHS.

2.8 Dispute Resolution Process for Claims.

(a) The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has submitted a complete Claim Form with all the necessary information, including any documentation that may be necessary to reasonably support the expenses described in ¶ 2; and (iii) the information submitted could lead a reasonable person to conclude that the claimed losses are fairly traceable to the Data Incident. The Claims Administrator will require the documentation requested on the Claim Form and documentation of the claimed losses to be provided to reasonably evaluate the claim. The Claims Administrator's initial review will be limited to a determination of whether the claim is complete.

(b) Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation (other than an adequate written description for Lost Time) to determine whether the claim is valid, the Claims Administrator

shall request additional information (“Claim Supplementation”) and give the claimant twenty-one (21) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form. In the event of unusual circumstances interfering with compliance during the twenty-one (21) day period, the claimant may request and, for good cause shown (*e.g.*, illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given, a reasonable extension of the twenty-one (21) day deadline in which to comply, as determined by the Claims Administrator; however, in no event shall the deadline be extended for longer than six (6) months from the date of the request for Claim Supplementation. If the defect is not timely cured, the claim will be deemed incomplete and thus invalid, and PHS shall bear no obligation to pay the claim.

(c) Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have ten (10) days to assess the validity of the claim and either accept (in whole or at a lesser amount) or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is valid, then the claim shall be a Valid Claim and paid according to ¶ 8.2. If the Claims Administrator determines that such a claim is not valid, then the Claims Administrator may reject the claim without any further action.

(d) Settlement Class Members shall have thirty (30) days from receipt of the final determination by the Claim Administrator to accept or reject the determination regarding an award. If the Settlement Class Member approves the final determination, then the approved amount shall be the amount to be paid (pursuant to the process described in ¶ 8.2). If the Settlement Class Member rejects the Claim Administrator’s final determination, the Claims

Administrator shall submit that claim to the Settling Parties (one Plaintiffs' lawyer and one of PHS's lawyers shall be designated to fill this role). If, after meeting and conferring in good faith to resolve the dispute, the Settling Parties do not agree regarding the Settlement Administrator's final determination, then the claim shall be referred to a claims referee for resolution. The Settlement Parties will mutually agree on the claims referee should one be required. If the Settling Parties are unable to mutually agree on a claims referee, the Settling Parties will submit the Settlement Class Member's claim to the Court for final resolution.

(e) Within thirty (30) days of a dispute being submitted to the claims referee, the claims referee shall decide the dispute. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and are fairly traceable to the Data Incident. The claims referee shall have the power to reject a claim or approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any Settlement Class Member referred to the claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for denial of the claim in full.

2.9 Settlement Expenses. All Costs of Claims Administration, including the costs of providing notice, as required under ¶ 3.2, and the costs of Dispute Resolution described ¶ 2.8, shall be paid by PHS.

2.10 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated

or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

3. Order of Preliminary Approval and Publishing of Notice of Fairness Hearing

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

- (a) Certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.10;
- (b) Preliminary approval of the Settlement Agreement as set forth herein;
- (c) Appointment of Gerard Stranch IV of Branstetter, Stranch & Jennings, PLLC, Lynn A. Toops of Cohen & Malad, LLP, and David Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC as Class Counsel;
- (d) Appointment of Plaintiffs as Class Representatives;

(e) Approval of a customary form of Short Notice to be mailed by U.S. mail to Settlement Class Members in a form substantially similar to **Exhibit A**.

(f) Approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to **Exhibit B**, which, together, with the Short Notice, shall include a fair summary of the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, the requested attorneys' fees, costs, and expenses, and the requested service awards to Class Representatives, and the date, time, and place of the Final Fairness Hearing (as defined in ¶ 3.4 below);

(g) Approval of the Claim Form to be available on the Settlement Website for submitting claims and available, upon request, in a form substantially similar to **Exhibit C**; and

(h) Appointment of Kroll Settlement Administration LLC as the Claims Administrator.

3.2 PHS and/or its insurer shall pay for providing notice (estimated at \$577,889.00) and in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Any attorneys' fees, costs, and expenses of Plaintiffs' Counsel, and service awards to the Class Representatives, as approved by the Court, shall be paid by PHS. Notice shall be provided to Settlement Class Members by the Claims Administrator as follows:

(a) *Class Member Information*: Within ten (10) days of entry of the Preliminary Approval Order, PHS shall provide the Claims Administrator with the name and

physical address of each Settlement Class Member (collectively, “Class Member Information”) that PHS and/or the Released Entities possess. PHS warrants and represents that it will provide the most current Class Member Information for all Settlement Class Members as such information is contained in its or the Released Entities’ records.

(b) The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or to provide all data and information in its possession to the Settling Parties, upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

(c) *Settlement Website:* Prior to the dissemination of the Short Notice, the Claims Administrator shall establish the Settlement Website, which will inform Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The Settlement Website shall include, in .pdf format and make available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) the Settlement Agreement; (v) the operative Consolidated Class Action Complaint filed in the Litigation; and (vi) any other materials agreed upon by the Settling Parties and/or required by the Court. The Settlement Website shall provide Settlement Class Members with the ability to complete and submit the Claim Form and supporting documentation electronically.

(d) *Short Notice:* Within thirty (30) days of entry of the Preliminary Approval Order and to be substantially completed not later than thirty-five (35) days after entry

of the Preliminary Approval Order, subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class Members as follows:

(i) via direct mail to the postal address provided by PHS and/or the Released Entities by the Settlement Class Members. Before any mailing under this paragraph occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS within thirty (30) days of entry of the Preliminary Approval Order;

(ii) in the event that a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is not valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;

(iii) in the event that subsequent to the first mailing of a Short Notice, and prior to the Opt-Out Date and the Objection Date, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs the skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the

Short Notice promptly, but in no event later than seven (7) days of receiving such information. This shall be the final requirement for mailing.

(e) Publishing, on or before the date of the mailing of the Short Notice, the Claim Form and Long Notice on the Settlement Website as specified in the Preliminary Approval Order, and maintaining and updating the Settlement website throughout the claim period;

(f) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement and to respond to Settlement Class Members' questions. The Claims Administrator also will provide copies of the Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request to Settlement Class Members; and

(g) Contemporaneously with seeking final approval of the Settlement, Class Counsel and PHS shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The notice program shall commence within thirty (30) days after entry of the Preliminary Approval Order and the claims period will close ninety (90) days from the commencement of notice.

3.4 Class Counsel and counsel for PHS shall request that, after notice is completed and within sixty (60) days from the date notice commences, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated address established by the Claims Administrator. The written notice must clearly manifest the Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than thirty (30) days after the date on which notice commences pursuant to ¶ 3.2.

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

4.3 In the event that, within fifteen (15) days after the Opt-Out Date, as approved by the Court, more than ten percent (10%) of Settlement Class Members submit timely, valid Opt-Outs (exclusions), PHS may, by notifying Class Counsel and the Court in writing, terminate this Settlement Agreement. If PHS terminates the Settlement Agreement pursuant to this paragraph, PHS and/or its insurer shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Class Counsel and Plaintiffs' Counsel and service awards to Class Representatives and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection no later than thirty (30) days after the date on which notice commences pursuant to ¶ 3.2. Such notice shall state: (i) the

objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court, located at 400 Lomas Boulevard NW, Room 119, 1st Floor, Albuquerque, NM 87102, and contain the case name and docket number, *Martinez, et. al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578 (the "Action"), no later than thirty (30) days after the date on which notice commences pursuant to ¶ 3.2, and served concurrently therewith upon Class Counsel, Lynn A. Toops, Cohen & Malad, LLP, 1 Indiana Square, Suite 1400, Indianapolis, IN 46204; and counsel for PHS, Kenneth L. Chernof, Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW, Washington, D.C., 20001-3743.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The

exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the New Mexico Rules of Appellate Procedure and not through a collateral attack.

6. Releases

6.1 Settlement Class Members who do not opt-out of the settlement in accordance with Court approved opt-out procedures and deadlines are bound by the release set forth in ¶¶ 6.2 and 6.3 below.

6.2 The obligations incurred under this Settlement shall be in full and final disposition of the Litigation and of any and all Released Claims against all Released Entities.

6.3 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims and Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.4 Upon the Effective Date, and in consideration of the promises and covenants set forth in this Settlement Agreement, PHS and the Related Entities shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,

relinquished, and discharged, Plaintiffs, each and all of the Settlement Class Members, Class Counsel, and Plaintiffs' Counsel of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, or settlement of the Litigation, except for enforcement of the Settlement Agreement. Any other claims or defenses PHS or the Related Entities may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation are specifically preserved and shall not be affected by the preceding sentence.

7. Attorneys' Fees, Costs, and Expenses And Service Awards to Plaintiffs

7.1 PHS and/or its insurer shall pay the attorneys' fees, costs, and expenses of Class Counsel in the Action, as approved by the Court, in an amount not to exceed nine hundred thousand dollars (\$900,000.00).

7.2 To facilitate the Parties' agreement on attorneys' fees, costs, and expenses and reimbursement in this Action, Plaintiffs and their attorneys agree not to seek more than nine hundred thousand dollars (\$900,000.00) in attorneys' fees, costs, and expenses, and PHS agrees not to contest a request for attorneys' fees, costs, and expenses by Plaintiffs and their attorneys, so long as the request does not exceed nine hundred thousand dollars (\$900,000.00). PHS and/or its insurer shall pay any award of attorneys' fees, costs, and expenses in addition to any settlement benefits provided to Settlement Class Members pursuant to this Settlement Agreement and the costs of Claims Administration, including the costs of notice, as required under ¶ 3.2, and the costs of Dispute Resolution required under ¶ 2.8 and separate and apart from any service award to Class Representatives. The Parties did not discuss or agree upon payment of attorneys'

fees, costs, and expenses until after they agreed on all material terms of relief to the Settlement Class Members.

7.3 PHS also agrees not to contest a request for service awards up to three thousand five hundred dollars (\$3,500.00) to each Class Representative, subject to Court approval. PHS and/or its insurer shall pay any service awards to Class Representatives in addition to any benefits provided to Settlement Class Members and the costs of notice and settlement administration and separate from any award of attorneys' fees, costs, and expenses. The Parties did not discuss or agree upon payment of incentive awards to Class Representatives until after they agreed on all material terms of relief to the Settlement Class Members.

7.4 Any attorneys' fees, costs, and expenses awarded by the Court as well as any incentive awards to Class Representatives awarded by the Court shall be due and payable to Class Counsel Cohen & Malad, LLP within thirty (30) days after the later of the Court's entry of Final Judgment or the Court's entry of an order awarding attorneys' fees, costs, and expenses, regardless of the Effective Date of the Settlement. If the Final Judgment or the order awarding attorneys' fees, costs, and expenses is reversed or altered, Class Counsel shall repay the fees and costs awarded in accordance with subsequent orders or proceedings in the case.

7.5 PHS and/or its insurer shall pay attorneys' fees, costs, and expenses and any incentive awards to the Class Representatives, as set forth above in ¶¶ 7.1, 7.2, 7.3, and 7.4, to Class Counsel Cohen & Malad, LLP. Class Counsel Cohen & Malad, LLP shall distribute the award of attorneys' fees, costs, and expenses among co-Class Counsel and Plaintiffs' Counsel and the incentive awards to Class Representatives.

7.6 The amount(s) of any award of attorneys' fees, costs, and expenses, and the incentive awards to Class Representatives, are intended to be considered by the Court

separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will not in any way reduce the consideration being made available to the Settlement Class as described herein. No order of the Court or modification or reversal or appeal of any order of the Court concerning the amount(s) of any attorneys' fees, costs, and expenses, and service awards to Class Representatives awarded by the Court to Class Counsel shall affect whether the Judgment is Final or constitutes grounds for cancellation or termination of this Settlement Agreement.

8. Administration of Claims

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2. Class Counsel and PHS shall be given reports as to both claims and distribution and have the right to review and obtain supporting documentation to the extent necessary to resolve claims administration and dispute resolution issues. The Claims Administrator's and claims referee's, if applicable, determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the Dispute Resolution process set forth in ¶ 2.8. All claims agreed to be paid in full by PHS shall be deemed a Valid Claim.

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

8.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court or otherwise expressly allowed by law or the Settling Parties' written agreement, shall be forever barred from receiving any payments or benefits pursuant to the

settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein, and the Judgment.

8.4 No Person shall have any claim against the Claims Administrator, claims referee, PHS, Released Entities, Class Counsel, Plaintiffs, Plaintiffs' Counsel, and/or PHS's counsel based on determinations or distributions of benefits to Settlement Class Members or any other matters related to administration of claims and dispute resolution.

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

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

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

(a) the Court has entered the Order of Preliminary Approval and publishing of notice of a Final Fairness Hearing as required by ¶ 3.1;

(b) PHS has not exercised their option to terminate the Settlement Agreement pursuant to ¶ 4.3;

(c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and

(d) the Judgment has become Final as defined in ¶ 1.11.

9.2 If any of the conditions specified in ¶ 9.1 is not satisfied, the Settlement Agreement shall be cancelled and terminated subject to ¶ 9.4 unless Class Counsel and counsel for PHS mutually agree in writing to proceed with the Settlement Agreement.

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

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

10. Miscellaneous Provisions

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

and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement resolves all claims in the Litigation and shall not be deemed an admission of liability by PHS or the Released Entities and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth in the Settlement Agreement.

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

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

10.5 This Settlement Agreement contains the entire understanding between PHS and Plaintiffs regarding the settlement of the Litigation and supersedes all previous negotiations, agreements, commitments, understandings, and writings between PHS and Plaintiffs in connection with the payment of the settlement. Except as otherwise provided herein, each party shall bear its own costs. The Settlement Agreement supersedes all previous agreements between PHS and Plaintiffs.

10.6 Class Counsel, on behalf of the Settlement Class, are expressly authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement (pursuant to the provisions of ¶ 10) on behalf of the Settlement Class that Plaintiffs deems appropriate to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

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

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

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

10.10 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

10.11 As used in the Settlement Agreement, “he” means “he, she, or it;” “his” means “his, hers, or its,” and “him” means “him, her, or it.”

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

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

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

IN WITNESS WHEREOF, the parties hereto, and intending to be legally bound hereby, have duly executed this Agreement as of the date first set for above.

AGREED TO BY:

By: _____
Plaintiff Jesse Martinez

By:  _____
Presbyterian Healthcare Services

By: _____
Plaintiff Kyra Nieto

By: _____
Plaintiff Michael O. Garcia

By: _____
Plaintiff Juan Gonzales

AGREED TO BY:

DocuSigned by:
Jesse Martinez 11/21/2022
By: 9B2E7CA5F7634A7...
Plaintiff Jesse Martinez

By: _____
Presbyterian Healthcare Services

By: _____
Plaintiff Kyra Nieto

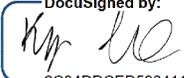
By: _____
Plaintiff Michael O. Garcia

By: _____
Plaintiff Juan Gonzales

AGREED TO BY:

By: _____
Plaintiff Jesse Martinez

By: _____
Presbyterian Healthcare Services

DocuSigned by:
 11/21/2022
By: _____
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Plaintiff Kyra Nieto

By: _____
Plaintiff Michael O. Garcia

By: _____
Plaintiff Juan Gonzales

AGREED TO BY:

By: _____
Plaintiff Jesse Martinez

By: _____
Presbyterian Healthcare Services

By: _____
Plaintiff Kyra Nieto

By: *Michael O. Garcia*

Plaintiff Michael O. Garcia

By: _____
Plaintiff Juan Gonzales

AGREED TO BY:

By: _____
Plaintiff Jesse Martinez

By: _____
Presbyterian Healthcare Services

By: _____
Plaintiff Kyra Nieto

By: _____
Plaintiff Michael O. Garcia

DocuSigned by:



11/23/2022

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By: _____
Plaintiff Juan Gonzales

AGREED TO BY:

Class Counsel

**BRANSTETTER, STRANCH &
JENNINGS, PLLC**

By:  11/21/2022
98BB7EB7F080426...
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Counsel for PHS

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Attorneys for Presbyterian Healthcare Services

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Fax: (317) 636-2593

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**

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Fax: (202) 686-2877
dlietz@milberg.com

AGREED TO BY:

Class Counsel

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JENNINGS, PLLC**

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**MILBERG COLEMAN BRYSON
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Counsel for PHS

ARNOLD & PORTER KAYE SCHOLER LLP

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Facsimile: (202) 942-5999
ken.chernof@arnoldporter.com

Attorneys for Presbyterian Healthcare Services

EXHIBIT A

[PHS Settlement]
c/o [INSERT] Claims Administration
[ADDRESS]



LEGAL NOTICE BY ORDER
OF THE SECOND DISTRICT COURT
OF BERNALILLO COUNTY, NEW MEXICO

<MAILER ID>
<NAME>
<ADDRESS 1>
<ADDRESS 2>
<CITY, STATE ZIP>

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

If Presbyterian Healthcare Services notified you of a Data Incident discovered around June 6, 2019, you could get benefits from a class action settlement.

This Notice contains information about a proposed class action settlement with Presbyterian Healthcare Services (“PHS”). More information can be found at www.settlementwebsite.com or by calling toll-free at [1-XXX-XXX-XXXX], or email at [EMAIL ACCOUNT]. Your rights may be affected whether you act or don’t act.

What is this Notice for? This Notice is being sent to inform you that a settlement has been reached in the lawsuit, *Martinez et al. v. Presbyterian Healthcare Servs.*, Case No. D-202-CV-2020-01578, pending in the Second District Court of Bernalillo County, New Mexico. The lawsuit arises out of a third party’s unauthorized access of certain PHS employee email boxes containing personally identifiable information and protected health information of certain current or former patients and/or health plan members (the “Data Incident”). PHS denies any wrongdoing and liability in connection with the allegations in the lawsuit. This class settlement has been preliminarily approved pursuant to New Mexico District Court Rule of Civil Procedure 1-023.

Who is included? Class Members include all individuals to whom PHS sent letters notifying those individuals that information relating to them may have been compromised as a result of the Data Incident discovered by PHS around June 6, 2019. Excluded from the Settlement

Class are all those persons who submit timely and valid requests for exclusion from the Settlement Class.

What are my options? You can file a claim to receive Settlement benefits, do nothing and stay in the case, exclude yourself, or object to the Settlement. To file a claim to receive Settlement benefits go to [\[Claim form page URL\]](#) and submit a Claim Form either electronically or postmarked no later than [\[entry of the Preliminary Approval Order + 120 Days\]](#). To object to or exclude yourself from the Settlement, go to [\[www.settlementwebsite.com\]](#) and follow the directions to do so no later than [\[entry of the Preliminary Approval Order + 60 Days\]](#). If you do not exclude yourself, and the Court approves the Settlement, you will be bound by the Court's orders and judgments and the release contained in the Settlement Agreement between the parties in the lawsuit, even if you do not file a claim.

What can I get? Under the proposed Settlement, Class Members who submit a Valid Claim by [\[entry of the Preliminary Approval Order + 120 Days\]](#), are entitled to:

1) **Reimbursement:** a cash payment for expenses, which include (a) ordinary expenses of (i) up to three (3) hours of lost time spent remedying issues fairly traceable to the Data Incident (calculated at \$15 per hour) and/or (b) documented out-of-pocket expenses or monetary loss (up to \$750 per Class Member for ordinary expenses); and (b) extraordinary expenses (up to \$5,000 per Class Member for extraordinary expenses), as outlined in the Settlement Agreement (available on the settlement website, at [\[www.settlementwebsite.com\]](#)).

2) Twelve Months of Credit Monitoring: Twelve (12) months of credit monitoring and identity restoration services through Experian IdentityWorks, which includes, among other things, three-bureau credit monitoring and \$1,000,000.00 reimbursement insurance for losses due to identity theft and stolen funds, as outlined in the Settlement Agreement.

How do I file a claim? You will be considered a member of the Settlement Class unless you timely exclude yourself from the settlement (*i.e.*, “opt-out”). Class Members may submit a claim online using the login and password below at www.settlementwebsite.com or via mail to the [\[PHS Settlement; ADDRESS\]](#).

Login: XXXX **Password:** YYYY

What happens next? The Court will hold a Final Fairness Hearing on [\[•\]](#) to decide whether the Settlement is fair, reasonable, and adequate. You or (at your own cost) your attorney may ask permission to speak at the hearing.

How do I get more information? If you wish to file a claim, object, or exclude yourself from the Settlement, you must follow the procedures outlined on the Settlement Website.

Carefully separate this Address Change Form at the perforation. Only complete to provide the administrator an updated address.

Check here if you are requesting a claim form by mail

Name: _____

Current Address: _____



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 1234 ALEXANDRIA, VA

POSTAGE WILL BE PAID BY ADDRESSEE

[PHS Settlement]
c/o [INSERT] Claims Administration
[ADDRESS]

EXHIBIT B

SECOND JUDICIAL DISTRICT OF
BERNALILLO COUNTY, NEW MEXICO

Notice of Class Action and Proposed Settlement

If Presbyterian Healthcare Services notified (“PHS”) you of a Data Incident PHS discovered around June 6, 2019, you may be eligible for compensation and/or credit monitoring services benefits from a class action settlement.

**The Second Judicial District of Bernalillo County, New Mexico
has preliminarily approved a class action settlement that may affect your legal rights.**

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

- A class action settlement has been reached in the case of *Martinez et al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578, pending in the Second Judicial District of Bernalillo County before the Honorable Benjamin Chavez.
- The lawsuit arises out of a third party’s unauthorized access of certain employee email boxes maintained by Presbyterian Healthcare Services (“PHS” or “Defendant”) containing personally identifiable information (“PII”) and protected health information (“PHI”), as defined by the Health Insurance Portability and Accountability Act of 1995, 42 U.S.C. 1320d *et seq.* of certain current and former patients and/or health plan members (the “Data Incident”) discovered by PHS around June 6, 2019. PHS denies wrongdoing and liability in connection with the allegations in the lawsuit.
- On [•], the Court preliminarily approved this settlement (the “Settlement”) and, by agreement of the parties to the lawsuit (the “Parties”), certified this lawsuit to proceed as a class action for settlement purposes only. A full copy of the Settlement Agreement may be reviewed at the Settlement Website at [www.settlementwebsite.com]. This Notice contains only a summary of the Settlement Agreement.
- If you received notice from PHS notifying you that your PII and/or PHI was potentially compromised in the Data Incident discovered by PHS around June 6, 2019, you are a member of the Settlement Class. Excluded from the Settlement Class are all those persons who timely and validly request exclusion from the Settlement Class, as well as: (i) officers and directors of PHS and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the members of the judiciary who have presided or are presiding over this matter and their families and staff; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. A full copy of the Second Amended Class Action Complaint may be reviewed at the Settlement Website at [www.settlementwebsite.com].
- If you are a Settlement Class Member, then you may be entitled to compensation and/or credit monitoring services benefits under the terms of the Settlement. If you are a Settlement Class Member and you wish to file a claim, object to the Settlement, or exclude yourself from the Settlement, you must follow the procedures contained in the Settlement Agreement and outlined in this Notice.
- This notice is to advise you of the status of the lawsuit, the terms of the proposed Settlement, and your rights in connection with the Settlement. This is not a lawsuit against you.
- Your legal rights related to this lawsuit are affected whether you act or don’t act. **Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

| ACTION | EXPLANATION | DUE DATE |
|----------------------------|---|--|
| DO NOTHING | You will be included in the Settlement Class but receive no benefits. You will be bound by the Court’s judgment of dismissal and release claims against PHS relating to the Data Incident. | No deadline |
| SUBMIT A CLAIM FORM | Settlement Class Members can choose to submit a claim to receive Settlement benefits. You must submit a Valid Claim to the Claims Administrator to receive any benefits from this Settlement. For more information about submitting a claim, see question 7. You will be bound by the Court’s judgment of dismissal and release claims against Defendant relating to the Data Incident. | [entry of the Preliminary Approval Order + 120 Days] |
| ASK TO BE EXCLUDED | If you choose to exclude yourself (<i>i.e.</i> , opt out), you will not be included in the Settlement. You will receive no benefits and you will not release any claims you may have against PHS/Released Entities relating to the Data Incident. | [entry of the Preliminary Approval Order + 60 Days] |
| OBJECT | If you wish to object to the Settlement, you must timely submit written notice of your objection to the Clerk of the Court, and send a copy of your objection to the attorneys for the Parties. If you exclude yourself from the Settlement, you cannot file an objection. Settlement Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. If you file an objection and wish it to be considered, <u>you must also appear</u> at the Final Fairness Hearing, in-person or through counsel, to show cause as to why the proposed Settlement should not be approved as fair, reasonable, and adequate. | [entry of the Preliminary Approval Order + 60 Days] |

BASIC INFORMATION

1. Why did I receive notice of this Settlement?

You received postcard notice of this Settlement because records show that you received notice from PHS that your PII and/or PHI was potentially compromised in the Data Incident discovered by PHS around June 6, 2019. If these records are correct, you are a Settlement Class Member and you may be entitled to receive Settlement benefits if you submit a Valid Claim to the Claims Administrator before the deadline, and if the Court grants final approval of the Settlement. You also have other options as described in this notice.

2. What is a class action and who is involved?

In a class action lawsuit, one or more people called “class representatives” (in this case, Jesse Martinez, Kyra Nieto, Michael O. Garcia, and Juan Gonzales) sue on behalf of other people who have similar claims. The people together are a “class.” The entity they sued (in this case, PHS) is called the “defendant.” One court resolves the issues for every member of the “class” who does not exclude himself/herself.

3. Why is this lawsuit a class action?

The Parties have agreed and the Court has preliminarily decided that this lawsuit can proceed as a class action (for settlement purposes only) because it meets the requirements of State of New Mexico District Court Rule of Civil Procedure 1-023. Specifically, the Court found that, for settlement purposes only, there are a sufficient number of people who may have been affected by the Data Incident at issue in this case, there are legal questions common to each of them, any claims or defenses of the representative parties are typical to those of the class, the Class Representatives will fairly and adequately represent the Settlement Class's interests; and this class action will be more efficient than having many individual lawsuits.

4. What is this lawsuit about?

Judge Benjamin Chavez of the Second Judicial District Court of Bernalillo County, New Mexico is overseeing this class action. The case is known as *Martinez et al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578, pending in the Second Judicial District of Bernalillo County, New Mexico. The individuals who sued are called the "Plaintiffs" and the company those individuals sued, PHS, is known as the "Defendant" in this case.

Plaintiffs filed a lawsuit against the Defendant, individually, and on behalf of anyone whose personally identifiable information ("PII") and/or protected health information ("PHI"), as defined in the Health Insurance Portability and Accountability Act of 1995, 42 U.S.C. §§ 1320d *et seq.* was potentially compromised as a result of the Data Incident. The lawsuit arises out a third party's unauthorized access of certain employee email boxes that PHS maintained and that contained PII and PHI of certain current and former patients and/or health plan members (the "Lawsuit").

Defendant denies wrongdoing and liability in connection with the Lawsuit. The Court has not made any ruling on the merits of this case. To resolve this matter without the expense, delay, and uncertainties of continued litigation, the Parties have reached a Settlement, which resolves all claims against Defendant. The Settlement is not in any way an admission of wrongdoing or liability by Defendant and does not imply that there has been, or would be, any finding that Defendant violated the law. The Court has already preliminarily approved the Settlement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the Court overseeing this lawsuit must give final approval to the Settlement before it can be effective. The Court has certified the Settlement Class for settlement purposes only and subject to final approval of the Settlement, so that members of the Settlement Class can be given this notice and the opportunity to submit a claim, object, or exclude themselves from the Settlement Class. If the Court does not grant final approval of the Settlement, or if it is terminated by the Parties, the Settlement will be terminated, and the lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

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

You are included in the Settlement if you were mailed notification by PHS that your PII and/or PHI was potentially compromised in PHS's Data Incident. You will be considered a member of the Settlement Class unless you timely opt-out of the Settlement. If you are not sure whether you are included or have any other questions about the Settlement, visit [Website], call toll free [number], or write to [address].

6. What does the Settlement Provide?

The proposed Settlement will provide the following benefits to Class Members:

Expense Reimbursement

- 1) **Documented out-of-pocket expense reimbursement:** All Settlement Class Members are eligible for reimbursement for the following documented out-of-pocket expenses that must be fairly traceable to the Data Incident, not to exceed an aggregate total of \$750.00 per Settlement Class Member: (i) long distance telephone charges; (ii) cell phone minutes (if charged by the minute), Internet usage charges (if charged by the minute or by the amount of data usage incurred solely as a result of the Data Incident), and text

messages (if charges by the message and incurred solely as a result of the Data Incident); (iii) postage; (iv) documented costs associated with miscellaneous expenses such as notary, fax, postage, copying, and mileage; (v) documented costs associated with credit freezes; (vi) and documented costs of credit-monitoring services active between receiving notice of the Data Incident and the date credit monitoring becomes available under this Settlement (collectively, "Out-of-Pocket Expenses").

- 2) **Lost time reimbursement:** Settlement Class Members are also eligible to receive reimbursement for up to three (3) hours of lost time spent remedying issues fairly traceable to the Data Incident (calculated at \$15 per hour), but only if the Settlement Class Member attests under penalty of perjury that any claimed lost time was spent in connection with efforts to remedy issues fairly traceable to the Data Incident; and (ii) provides a written description of how the claimed lost time was spent in connection with efforts to remedy issues fairly traceable to the Data Incident ("Lost Time"). Claims made for Lost Time can be combined with reimbursement for the above-referenced Out-Of-Pocket Expenses, and are subject to the same total aggregate cap of \$750.00 per Settlement Class Member.
- 3) **Documented extraordinary out-of-pocket expense reimbursement:** Settlement Class Members can also receive reimbursement for their documented extraordinary monetary out-of-pocket losses to the extent not already covered by Out-of-Pocket Expenses if their identity was stolen as a result of the Data Incident in an amount not to exceed \$5,000.00 per Settlement Class Member. Settlement Class Members must provide sufficient documentary proof that their identity was stolen as a result of the Data Incident to be eligible for the following extraordinary out-of-pocket expenses, which include (i) documented professional fees and other costs incurred to address actual identity fraud or theft; (ii) other documented unreimbursed losses, fees, or charges incurred as a result of actual identity fraud or theft, including, but not limited to (a) unreimbursed bank fees, (b) unreimbursed card reissuance fees, (c) unreimbursed overdraft fees, (d) unreimbursed charges related to unavailability of funds, (e) unreimbursed late fees, (f) unreimbursed over-limit fees, (g) unreimbursed charges from banks or credit card companies, and (h) interest on payday loans due to card cancellations or due to over-limit situations ("Extraordinary Expenses").
- 4) **Twelve Months of Credit Monitoring Services:** Defendant agrees to offer twelve (12) months of credit monitoring to all Settlement Class Members. The credit monitoring will be provided through IdentityWorks. The credit monitoring services include three-bureau credit monitoring and \$1,000,000.00 reimbursement insurance for losses due to identity theft and stolen funds.

Reimbursement Terms: To receive compensation for Out-of-Pocket Expenses, Extraordinary Expenses, or Lost Time, you must submit a Valid Claim along with any necessary supporting documentation (other than an adequate written description for Lost Time) by [\[entry of the Preliminary Approval Order + 120 Days\]](#), as outlined in the Settlement Agreement. For Extraordinary Expenses and Out-of-Pocket Expenses, the Settlement Class Member must submit reasonable documentation reflecting that the out-of-pocket losses claimed were both actually incurred and fairly traceable to the Data Incident and have not otherwise been reimbursed by another source. This documentation must include receipts or similar documentation, not to be "self-prepared" by the Settlement Class Member, that documents the costs incurred. "Self-prepared" documents, such as handwritten receipts, by themselves are insufficient to receive reimbursement. For the Lost Time claimed by Settlement Class Members, the Settlement Class Member must provide an attestation under penalty of perjury indicating that the time claimed was spent in connection with remedying issues fairly traceable to the Data Incident and a written description of how the claimed lost time was spent in connection with remedying issues fairly traceable to the Data Incident. Settlement Class Members who submit claims for Out-of-Pocket Expenses and Extraordinary Expenses must exhaust all reimbursement insurance benefits covering losses due to identity theft and stolen funds available to them in connection with the credit monitoring protections already provided by PHS before PHS is responsible for any Out-of-Pocket or Extraordinary Expenses claimed, as outlined in the Settlement Agreement. You can review the Claim Form at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com) to see an explanation of the types of loss that will be considered, as well as specific documentation requirements.

Credit Monitoring Terms: To receive twelve (12) months of credit monitoring services provided by Defendant, Settlement Class Members must submit a Valid Claim before the Claims Deadline, as outlined in the Settlement Agreement. After the Settlement becomes Effective, Settlement Class Members who have submitted Valid Claims will receive an email from the Claims Administrator with additional information about how to enroll for the credit monitoring services benefit. If the Settlement Class Member submits a Valid claim in hardcopy for credit monitoring, that Settlement Class Member will receive additional information about how to enroll in credit monitoring via the United States Postal Service. He or she must elect to enroll in credit monitoring services to receive this benefit. He or she may claim the credit monitoring services benefit regardless of whether he or she claims reimbursement for any other benefits under the Settlement. This benefit does not require the Settlement Class Member to submit any evidence or explanation.

Remedial Measures: The Settlement also provides remedial relief for all Settlement Class Members, regardless of whether you make a claim in the Settlement. Specifically, Defendant has made certain systems or practice changes to mitigate the risk of similar data incidents.

Fees, Costs, and Expenses Associated with the Settlement: As outlined in the Settlement agreement, PHS agrees (1) to pay the attorneys' fees, costs, and expenses incurred by Class Counsel in the Action, as approved by the Court, in an amount not to exceed nine hundred thousand dollars (\$900,000.00); and (2) not to contest a request for incentive awards of up to three thousand five hundred dollars (\$3,500.00) to each named Plaintiff.

For those Class Members entitled to a cash payment, the exact amount of such payment is unknown at this time and may vary depending on several factors, as outlined above and in the Settlement Agreement. Pursuant to the terms of the Settlement Agreement, the Claims Administrator will calculate the final amount that is due to each eligible Settlement Class Member and shall pay each eligible Settlement Class Member who timely returns a completed Valid Claim Form and who does not actively exclude himself or herself from the Class and who otherwise qualifies for payment pursuant to the terms of the Settlement Agreement.

7. How do I receive a benefit?

If you are an eligible Settlement Class Member and you do not opt-out of the Settlement, and if you wish to receive compensation from the Settlement, then you must make a Valid Claim by [entry of the Preliminary Approval Order + 120 Days], consistent with the Settlement Agreement.

Claims can be filed online at [www.settlementwebsite.com] by [entry of the Preliminary Approval Order + 120 Days] or by mailing your claim form to the Claims Administrator at [PHS Settlement; ADDRESS]. You may also contact the Claims Administrator toll-free at [1-XXX-XXX-XXXX], or via email at [EMAIL ACCOUNT], with any questions. Claims for distribution submitted after [entry of the Preliminary Approval Order + 120 Days] will not be paid.

8. How will I receive payments?

The Claims Administrator will issue a check to each Class Member entitled to compensation under the Settlement Agreement either within sixty (60) days of the Effective Date or within thirty (30) days of the date that the last claim is approved, whichever is later. If there is an appeal of the Settlement, payment may be delayed. Cashing the settlement check is a condition precedent to any Settlement Class Member's right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance. If a check becomes void, the Settlement Class Member shall have until six (6) months after the Effective Date to request re-issuance.

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement, so please be patient. Updated information about the case can be obtained through Class Counsel at the telephone number or email address provided below.

YOUR RIGHTS AND OPTIONS

9. What happens if I do nothing at all?

If you do nothing, you will not get any benefit from the Settlement, you will not be able to sue for claims in this case, and you release the claims against the PHS and Released Entities, as outlined in the Settlement Agreement.

10. Why would I ask to be excluded?

If you already have your own lawsuit against Defendant about the same claims in this lawsuit and want to continue with it, you need to ask to be excluded from the Class. If you exclude yourself, you will not be legally bound by the Court’s judgment of dismissal in this case. If you start your own lawsuit against Defendant after you exclude yourself, you’ll have to hire and pay your own lawyer for that lawsuit, and you’ll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Defendant, you should talk to your own lawyer.

11. How do I ask the Court to exclude me from the “class” in this case?

You have the right to exclude yourself from (i.e., “opt out” of) the Settlement Class. If you exclude yourself, you will not be eligible to receive any compensation and/or credit monitoring services benefits from the Settlement, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the lawsuit, and you will keep your right to sue the Defendant on your own for the claims that this Settlement resolves.

To exclude yourself from the Class, you must sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest your intent to be excluded from the Settlement Class. All requests for exclusion must be submitted, signed, and mailed to the Claims Administrator and postmarked no later than [entry of the Preliminary Approval Order + 60 Days]. If you return a late request for exclusion, the request will be deemed invalid, and you will remain a member of the Class and will be bound by all of the terms of the Settlement.

YOU CANNOT EXCLUDE YOURSELF BY TELEPHONE OR BY SENDING AN EMAIL.

DO NOT SUBMIT BOTH A CLAIM FORM AND A REQUEST FOR EXCLUSION. IF YOU SUBMIT BOTH A CLAIM FORM AND A REQUEST FOR EXCLUSION, YOUR CLAIM FORM WILL BE DISREGARDED.

12. How do I object to the settlement?

You have the right to object to the Settlement if you wish. To object, you must file a written statement with the Clerk of the Court, located at 400 Lomas Boulevard NW, Room 119, 1st Floor , Albuquerque, NM 87102, containing the case name and docket number *Martinez et. al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578 (the “Action”), no later than [entry of the Preliminary Approval Order + 60 Days], and served concurrently therewith upon Class Counsel, Lynn A. Toops, Cohen & Malad, LLP, 1 Indiana Square, Suite 1400, Indianapolis, IN 46204; and counsel for PHS, Kenneth L. Chernof, Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW, Washington, D.C., 20001-3743. You must mail a copy of your objection to the following three places postmarked no later than [entry of the Preliminary Approval Order + 60 Day]:

| COURT | CLASS COUNSEL | PHS’S COUNSEL |
|--|---|--|
| Clerk of Court Second Judicial District 400 Lomas Boulevard NW Room 119, 1st Floor Albuquerque, NM 87102 | Lynn A. Toops Cohen & Malad, LLP 1 Indiana Square, Suite 1400 Indianapolis, IN 46204 | Kenneth L. Chernof Arnold & Porter Kaye Scholer LLP 601 Massachusetts Avenue, NW Washington, D.C., 20001-3743 |

Your objection must include: (i) the objector’s full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a

member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years.

You will not be excluded from the Settlement by filing an objection. If you have submitted a request for exclusion from the Settlement, you cannot file an objection.

Any attorney you may hire for the purpose of making an objection must file his or her entry of appearance on or before [INSERT]. The entry of appearance shall be filed with the Clerk of the Court with a copy served upon Class Counsel and Defendant's Counsel.

Any Settlement Class Member who does not timely file and serve this written objection will not be permitted to raise an objection, except for good cause shown, and any Settlement Class Member who fails to object in the manner described above will be deemed to have waived objections to the claim and will be foreclosed from raising any objections.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

For purposes of this settlement, the Class Representatives and the Settlement Class are represented by Class Counsel. Class Counsel is comprised of Gerard Stranch IV of Branstetter, Stranch & Jennings, PLLC, Lynn A. Toops of Cohen & Malad, LLP, and David Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC.

You will not be personally charged for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. Is there a release or waiver of claims?

Yes. Unless you affirmatively exclude yourself, you will agree to the "Release" of claims as described in Section 6 of the Settlement Agreement. That means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or other Released Entities for any of the Released Claims. It also means that the Court's orders will apply to you and legally bind you. You may view the Settlement Agreement for the full language of the claims you will give up if you remain in the Settlement by requesting a copy from the Claims Administrator or viewing it online at www.settlementwebsite.com.

THE COURT'S FINAL FAIRNESS HEARING

15. When and where will the Court decide whether to approve the settlement?

The Court has already granted preliminary approval of the Settlement. The Court will hold a Final Fairness Hearing on [DATE] at [TIME], in [Courtroom #] of the Second Judicial District of Bernalillo County, New Mexico courthouse, located at 400 Lomas Blvd NW, Albuquerque, NM 87102. The Final Fairness Hearing may be continued to a future date without further notice. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider and rule on them. The Court may also decide the amount of attorneys' fees, costs, and expenses to pay Class Counsel and the amount of incentive awards to pay Class Representatives. After the hearing, the Court will decide whether to approve the Settlement.

If the Court does not approve the Settlement, or if it approves the Settlement and the approval is reversed on appeal, or if the Settlement does not become final for some other reason, Settlement Class Members will receive no benefits from the Settlement. Plaintiffs, Defendant, and all of the Settlement Class Members will be in the same position as they were prior to the execution of the Settlement, and the Settlement will have no legal effect, no class will remain certified (subject to approval or otherwise), and the Plaintiffs and Defendant will continue to litigate the case. There can be no assurance that, if the Settlement is not approved, the Settlement Class will recover more than is provided in the Settlement, or indeed, anything at all.

16. Do I have to come to the hearing?

No. Class counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you may come to Court to talk about it. You may also pay your own lawyer to attend, if you so choose.

GETTING MORE INFORMATION

17. Are more details available?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at www.settlementwebsite.com, request a copy via email to [EMAIL ACCOUNT](mailto:EMAILACCOUNT), or call the Claims Administrator toll-free at [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX).

Please do not contact the Court Clerk, the Judge, Defendant’s Counsel, or Defendant; they are not in a position to give you any advice about the Settlement.

DEADLINE SUMMARY

18. What are the important deadlines?

The following are the important dates and deadlines under the proposed Settlement:

| | |
|---|--|
| Last Day to Submit Request for Exclusion: | [entry of the Preliminary Approval Order + 60 Days] |
| Last Day to File and Serve Objections: | [entry of the Preliminary Approval Order + 60 Days] |
| Last Day to File a Claim Form: | [entry of the Preliminary Approval Order + 120 Days] |
| Final Fairness Hearing: | [INSERT] |

EXHIBIT C

Martinez et al. v. Presbyterian Healthcare Services
Settlement Class Member Claim Form
Second District Court of Bernalillo County, New Mexico,
No. D-202-CV-2020-01578

DEADLINE: THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [entry of the Preliminary Approval Order + 120 Days] AND MUST BE FULLY COMPLETED, SIGNED UNDER PENALTY OF PERJURY, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT. YOUR FAILURE TO SUBMIT A TIMELY AND COMPLETE CLAIM FORM WILL RESULT IN YOUR FORFEITING ANY COMPENSATION AND/OR CREDIT MONITORING BENEFITS FOR WHICH YOU MAY BE ELIGIBLE UNDER THE SETTLEMENT.

Instructions: Please read carefully the Notice of Class Action Settlement (“Notice”), which is included with this Claim Form. If Presbyterian Healthcare Services (“PHS”) notified you of a Data Incident PHS discovered around June 6, 2019, you may be eligible for benefits from a class action settlement.

YOU MUST TIMELY COMPLETE AND SUBMIT THIS CLAIM FORM TO BE ELIGIBLE TO RECEIVE COMPENSATION AND/OR CREDIT MONITORING BENEFITS UNDER THE SETTLEMENT. FAILURE TO COMPLETE THIS CLAIM FORM MEANS YOU WILL RECEIVE NO BENEFITS, BUT WILL BE BOUND BY THE COURT’S DISMISSAL AND RELEASE OF CLAIMS AGAINST PHS RELATED TO THE DATA INCIDENT.

If you wish to receive compensation and/or credit monitoring benefits from the Settlement, you must take all of the following steps:

- Complete all gray-highlighted sections in the “Your Contact Information” section of this Claim Form in black or blue ink or electronically.
- Check the box next to the benefit(s) you are claiming (Credit Monitoring and/or Reimbursement).
- If you are claiming Reimbursement, complete the gray-highlighted sections relating to the type(s) of Reimbursement you are claiming and provide the information and documentation requested in the section(s).
- Sign and date this Claim Form below attesting, under penalty of perjury, that the statements and information you have provided are true and correct to the best of your knowledge and belief.
- Return this Claim Form by the Deadline ([entry of the Preliminary Approval Order + 120 Days]) to: [PHS Settlement; ADDRESS] or online at [www.settlementwebsite.com]. For questions, visit [www.settlementwebsite.com], email at [EMAIL ACCOUNT], or call [1-XXX-XXX-XXXX].

| YOUR CONTACT INFORMATION | | |
|---|--|--|
| Name: | <input style="width:100%; height: 20px;" type="text"/> | |
| First | Middle | Last |
| Address: | <input style="width:100%; height: 20px;" type="text"/> | |
| (You must provide a street address. A P.O. Box will not be accepted.) | | |
| <input style="width:100%; height: 20px;" type="text"/> | <input style="width:100%; height: 20px;" type="text"/> | <input style="width:100%; height: 20px;" type="text"/> |
| City | State | ZIP Code |
| Current Phone Number: | <input style="width:100%; height: 20px;" type="text"/> | |
| (Please provide a phone number where you can be reached if further information is required). | | |
| Current Email Address: | <input style="width:100%; height: 20px;" type="text"/> | |
| (Please provide an email address where you can be reached for enrollment in the Credit Monitoring Services benefit). | | |
| Check this box if you do not have an email address: <input type="checkbox"/> | | |
| CLASS MEMBERSHIP | | |
| By submitting this Claim Form, you attest that you are a Class Member in this Settlement, meaning you were notified by PHS that your personally identifiable information (“PII”) and/or personal health information (“PHI”) was potentially compromised in PHS’s Data Incident. | | |

SETTLEMENT BENEFITS

(check the box next to each benefit you claim)

Credit Monitoring Services.

As a Class Member, you are entitled to receive twelve (12) months of credit monitoring services at no cost to you. The credit monitoring services offered include three-bureau credit monitoring and \$1,000,000.00 reimbursement insurance covering losses due to identity theft and stolen funds. After you submit a Valid Claim and the Settlement becomes Effective, you will receive an email from the Claims Administrator with additional information about how to enroll for your credit monitoring services benefit. If you do not have an email address, additional information will be provided to you via the United States Postal Service. You must elect to enroll in credit monitoring services to receive this benefit. You may claim the credit monitoring services benefit regardless of whether you are claiming reimbursement below for any expenses. This benefit does not require you to submit any evidence or explanation, just your contact information, above, and your signature, below.

Expense Reimbursement.

Documented Out-of-Pocket Expenses. Please describe in the box below the amount of loss(es) you actually incurred that are fairly traceable to the Data Incident that PHS discovered around June 6, 2019, and as described in the notice from PHS. Documented out-of-pocket expenses may include: (i) long distance telephone charges; (ii) cell phone minutes (if charged by the minute), Internet usage charges (if charged by the minute or by the amount of data usage incurred solely as a result of the Data Incident), and text messages (if charged by the message and incurred solely as a result of the Data Incident); (iii) postage; (iv) documented costs associated with miscellaneous expenses such as notary, fax, postage, copying, and mileage; (v) documented costs associated with credit freezes; (vi) and documented costs of credit-monitoring services active between receiving notice of the Data Incident and the date credit monitoring becomes available under this Settlement.

\$ _____.

Documented Extraordinary Out-of-Pocket Expenses. To the extent not already covered by Documented Out-of-Pocket Expenses, documented extraordinary out-of-pocket expenses may include: (i) documented professional fees and other costs incurred to address actual identity fraud or theft and (ii) other documented unreimbursed losses, fees, or charges incurred as a result of actual identity fraud or theft, including (a) unreimbursed bank fees, (b) unreimbursed card reissuance fees, (c) unreimbursed overdraft fees, (d) unreimbursed charges related to unavailability of funds, (e) unreimbursed late fees, (f) unreimbursed over-limit fees, (g) unreimbursed charges from banks or credit card companies, and (h) interest on payday loans due to card cancellations or due to over-limit situations ("Extraordinary Expenses").

\$ _____.

By submitting this claim for expense reimbursement, you are attesting, subject to penalty of perjury, that these losses or expenses were incurred and are fairly traceable to the Data Incident and that these losses or expenses have not otherwise been reimbursed from another source.

In addition to this Claim Form, you must provide to the Claims Administrator reasonable documentation of the losses and/or expenses claimed above to allow for assessment and validation of these claims. This documentation must include receipts or similar documentation, not "self-prepared" documents such as handwritten receipts. If documentation cannot be provided, you must provide in the box below (and can use a separate paper if more space is needed) an explanation as to why documentation cannot be provided. That reason will be considered by the Claims Administrator and Counsel.

Lost Time. The Settlement allows for reimbursement of up to three (3) hours of lost time (calculated at fifteen dollars (\$15 per hour) for time spent in connection with efforts to remedy issues fairly traceable to the Data Incident discovered by PHS

around June 6, 2019, and described in the notice from PHS. Please state the precise number of hours you have expended in connection with efforts to remedy issues fairly traceable to the Data Incident.

_____ hours of lost time, at the rate of \$15 per hour

In addition to this Claim Form, you must provide a description to the Claims Administrator of how the claimed lost time was spent in connection with efforts to remedy issues fairly traceable to the Data Incident, to allow for assessment and validation of your claim. Please provide that description below. (You can use a separate paper if more space is needed).

By submitting this claim for Lost Time, you are attesting, under penalty of perjury, that this time was spent remedying issues fairly traceable to the Data Incident

Submission of a claim does not guarantee credit monitoring services or expense reimbursement. In connection with a Valid Claim, each Class Member may receive up to, but no more than, \$750.00 per Settlement Class Member for documented Out-of-Pocket Expenses and Lost Time. Settlement Class Members may not receive more than \$5,000.00 for documented Extraordinary Expenses.. This process takes time. Please be patient.

The Claims Administrator may require the submission of supplemental information and documentation reasonably necessary to evaluate any claims.

I understand that, unless I opt out of the settlement, I am bound by the terms and releases set forth in the Settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Signature: _____

Date: _____

Printed Name: _____

CLAIM FORMS MUST BE SUBMITTED ONLINE OR POSTMARKED NO LATER THAN [entry of the Preliminary Approval Order + 120 Days] TO BE ELIGIBLE FOR PAYMENT. FILE ONLINE AT: [WWW.SETTLEMENTWEBSITE.COM] OR MAIL THIS CLAIM FORM TO: [PHS Settlement; ADDRESS]. If you have questions, you may call the Claims Administrator at 1-8XX-XXX-XXX, or email at [EMAIL ACCOUNT].

EXHIBIT D

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

JESSE MARTINEZ, KYRA NIETO, MICHAEL O. GARCIA,
and JUAN GONZALES, individually and on behalf of all others
similarly situated,

Plaintiffs,

D-202-CV-2020-01578

v.

PRESBYTERIAN HEALTHCARE SERVICES,

Defendant.

PRELIMINARY APPROVAL ORDER

This matter is before the Court on a motion pursuant to Rule 1-023(E) of the New Mexico Rules of Civil Procedure for the District Courts for preliminary approval of the class action Settlement Agreement (the “Settlement”) between Plaintiffs, individually and on behalf of all others similarly situated, and Defendant Presbyterian Healthcare Services (“PHS”). The Court, being duly advised, now finds that the motion should be, and hereby is, GRANTED.

ACCORDINGLY, THE COURT HEREBY FINDS AND ORDERS:

1. Terms capitalized in this Order and not otherwise defined shall have the meanings set forth in the Settlement.
2. This Court has jurisdiction over the subject matter and parties to this action.
3. This Court finds the proposed settlement set forth in the Settlement Agreement fair, reasonable, and adequate such that it is hereby preliminarily approved, and notice of the settlement should be provided to the Settlement Class and that a final approval hearing should be held.

4. The Court conditionally certifies, solely for the purposes of settlement, the

Settlement Class defined as:

The individuals to whom PHS sent letters notifying those individuals that information relating to them may have been compromised as a result of the Data Incident.

The Settlement Class specifically excludes: (i) officers and directors of PHS and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the members of the judiciary who have presided or are president over this matter and their families and staff; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

5. Subject to final approval of the settlement, the Court finds and concludes that the Settlement Class meets the requirements for class certification under Rules 1-023(A) and (B)(3) of the New Mexico Rules of Civil Procedure for the District Courts. Specifically, the Court finds:

- a. the Settlement Class is so numerous that joinder of all members is impracticable, as there are thousands of members of the Settlement Class;
- b. there are questions of law or fact common to the Settlement Class;
- c. the claims of the Plaintiffs are typical of the claims of the Settlement Class in that they all relate to the Incident;
- d. Plaintiffs and their counsel will fairly and adequately protect the interests of the Settlement Class, as Plaintiffs and their Counsel's interests are aligned with interests of the Settlement Class in pursuing the litigation and the Settlement;

- e. questions or fact common to the members of the Settlement Class predominate over any questions affecting only individual members, as the focus of the litigation is on the Incident;
- f. a class action is superior to other methods for the fair and efficient adjudication of the controversy, particularly because a Settlement avoids any complexities of a potential trial.

6. The Court appoints Plaintiffs Jesse Martinez, Kyra Nieto, Michael O. Garcia, and Juan Gonzales as Class Representatives and appoints J. Gerard Stranch IV of Branstetter, Stranch & Jennings, PLLC, Lynn A. Toops of Cohen & Malad, LLP, and David K. Lietz of Milberg Coleman Bryson Phillips Grossman LLP, as Class Counsel. The Court appoints Kroll, LLC as Claims Administrator.

7. The Court finds that the Settlement, on a preliminary examination, appears to be within the range of a fair, reasonable, and adequate compromise of the claims, particularly considering: (a) the Settlement was negotiated at arm's-length by experienced counsel and through the use of a third-party neutral mediator; (b) the value of the Settlement compares favorably to the risks, uncertainties, and delays of continued litigation; (c) the response of the Settlement Class to the proposal has been overwhelmingly favorable; and (d) attorneys' fees and service awards were not negotiated until after the parties had reached agreement on the materials terms of the Settlement for the benefit of the Settlement Class and are subject to Court approval. The Court therefore grants preliminary approval to the Settlement.

8. The Court approves the proposed form, manner, and method of providing notice of the Settlement to the Settlement Class, as set forth in the Settlement, complies with the requirements of Rule 1-023(C) of the New Mexico Rules of Civil Procedure of the District

Courts and with the requirements of Due Process. The Court also approves the form and method of providing the Claim Form to Settlement Class members as set forth in the Settlement. The notice procedures described in the Settlement are found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing, comply with all the requirements of Rule 1-023 and due process law, and constitute the best notice practicable under the circumstances.

9. Within thirty (30) days of entry of this Order, Class Counsel shall cause the Claims Administrator to send the Short Notice to each Settlement Class Member; and shall cause to be published the Long Notice available to the rest of the Settlement Class as stated in the Settlement. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval. Contemporaneous with seeking final approval of the Settlement, Class Counsel shall file with the Court and serve on PHS a verification of compliance with the notice requirements.

10. Members of the Settlement Class shall be afforded an opportunity to exclude themselves from the Settlement by sending a written notice to the address established by the Claims Administrator postmarked no later than 30 days from the date on which the notice is first mailed clearly manifesting the person's intent to be excluded from the Settlement.

11. Any member of the Settlement Class who does not timely submit a request for exclusion shall also be afforded the right to object to the Settlement by sending a notice of objection postmarked no later than 30 days from the date on which the notice is first mailed. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member,

including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. The objection must be filed with the Clerk of the Court, located at 400 Lomas Boulevard NW, Room 119, 1st Floor , Albuquerque, NM 87102, and contain the case name and docket number, *Martinez et. al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578, and be served concurrently upon Class Counsel, Lynn A. Toops, Cohen & Malad, LLP, 1 Indiana Square, Suite 1400, Indianapolis, IN 46204; and counsel for PHS, Kenneth L. Chernof, Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW, Washington, D.C., 20001-3743.

12. Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the litigation.

13. The Court adopts the following schedule for the remaining events in this case:

| Event | Date |
|---|---|
| Notice program commences | Within 30 days after entry of the Preliminary Approval Order. |
| Class Counsel to file Fee Petition | 14 days before Opt-Out Date |
| Postmark deadline for Opt-Outs and Objections | 60 days after entry of the Preliminary Approval Order. |
| Motion for Final Approval | 14 days before Final Approval |

14. A Final Approval Hearing shall be held on _____, 202__, at _____ a.m/p.m., before this Court at 400 Lomas Boulevard NW, Albuquerque, NM 87102 (or by videoconference or teleconference, if necessary), for the purpose of: (a) determining whether the proposed Settlement should be finally approved by the Court as fair, reasonable and adequate; (b) considering Class Counsel's Motion for Award of Fees, Costs, and Service Award; and (c) consideration of such other matters as the Court may deem necessary or appropriate. 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.

IT IS SO ORDERED.

BENJAMIN CHAVEZ
DISTRICT COURT JUDGE

EXHIBIT E

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

JESSE MARTINEZ, KYRA NIETO, MICHAEL O. GARCIA,
and JUAN GONZALES, individually and on behalf of all others
similarly situated,

Plaintiffs,

D-202-CV-2020-01578

v.

PRESBYTERIAN HEALTHCARE SERVICES,

Defendant.

FINAL APPROVAL ORDER

This matter is before the Court on a motion pursuant to Rule 1-023(E) of the New Mexico Rules of Civil Procedure for the District Courts for final approval of the class action Settlement Agreement (the “Settlement”) between Plaintiffs, individually and on behalf of all others similarly situated, and Defendant Presbyterian Healthcare Services (“PHS”). The Court, being duly advised, now finds that the motion should be, and hereby is, GRANTED.

ACCORDINGLY, THE COURT HEREBY FINDS AND ORDERS:

1. Terms capitalized in this Order and not otherwise defined shall have the meanings set forth in the Settlement.
2. This Court has jurisdiction over the subject matter and parties to this action.
3. The Court previously entered a Preliminary Approval Order, which granted preliminary approval to the Settlement; approved the form, manner, and method for providing notice of the Settlement to the proposed Settlement Class; set dates for Settlement Class

Members to object to, or exclude themselves from, the Settlement; and scheduled a final approval hearing to consider whether to grant final approval to the Settlement.

4. A declaration from the Settlement Administrator has been submitted to the Court showing that notice was given to the Settlement Class in the form, manner, and method prescribed by the Court. The Court finds that the notice complied with the requirements of Rule 1-023(C) of the New Mexico Rules of Civil Procedure of the District Courts and with the requirements of Due Process.

5. The deadline for Settlement Class Members to object to, or exclude themselves from, the Settlement has passed.

6. [Insert statement that “No Settlement Class Members has submitted a timely objection to the Settlement” or address and overrules any objections that have been submitted]

7. The Court reaffirms its certification of the Settlement Class for purposes of entering judgment on the Settlement and defined as:

The individuals to whom PHS sent letters notifying those individuals that information relating to them may have been compromised as a result of the Data Incident.

The Settlement Class specifically excludes: (i) officers and directors of PHS and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the members of the judiciary who have presided or are president over this matter and their families and staff; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

8. As set forth in the Preliminary Approval Order, the Court finds that the Settlement Class meets the requirements for class certification under Rules 1-023(A) and (B)(3) of the New Mexico Rules of Civil Procedure for the District Courts.

9. The Court likewise reaffirms its appointment of Jesse Martinez, Kyra Nieto, Michael O. Garcia, and Juan Gonzales as Class Representatives and reaffirms the appointment of J. Gerard Stranch IV of Branstetter, Stranch & Jennings, PLLC, Lynn A. Toops of Cohen & Malad, LLP, and David K. Lietz of Millberg Coleman Bryson Phillips Grossman LLP, as Class Counsel.

10. The Court finds that the Settlement represents a fair, adequate, and reasonable compromise of the claims, particularly considering: (a) the Settlement was negotiated at arm's-length by experienced counsel and through the use of a third-party neutral mediator; (b) the value of the Settlement compares favorably to the risks, uncertainties, and delays of continued litigation; (c) the response of the Settlement Class to the proposal has been overwhelmingly favorable; and (d) attorneys' fees and service awards were not negotiated until after the parties had reached agreement on the materials terms of the Settlement for the benefit of the Settlement Class. The Court therefore grants final approval to the Settlement.

11. The Court orders and directs the parties to implement the terms and benefits provided for by the Settlement.

12. Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims and Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement) in which any of the Released Claims is asserted. Upon the

Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims and Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

13. As outlined in the Settlement, all payments made to Settlement Class Members pursuant to the Settlement that are not cashed within ninety (90) days, after which time it is void.” If a check becomes void, the Settlement Class Member shall have until six (6) months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief shall be extinguished, PHS shall have no obligation to make payments to the Settlement Class Member for expense and reimbursement under ¶ 2.1 or any other type of monetary relief.

14. The matter is hereby dismissed with prejudice and without costs, except as to those costs and fees provided in the Settlement and approved by the Court. This is a final order, and judgment is entered upon the Settlement; this Order resolves all claims as to all parties, notwithstanding the Court’s continuing jurisdiction over the implementation of the Settlement.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED.

IT IS SO ORDERED this _____

**BENJAMIN CHAVEZ
DISTRICT COURT JUDGE**