

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC.
NATIONAL PRESCRIPTION OPIATE
CONSULTANT LITIGATION

Case No. 21-md-02996-CRB (SK)

**SETTLEMENT AGREEMENT AMONG
THIRD PARTY PAYORS AND MCKINSEY
DEFENDANTS**

This Document Relates to:
ALL THIRD PARTY PAYOR ACTIONS

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1 This Settlement Agreement (hereinafter, “Agreement”) is made and entered into as of
2 December 18, 2023, by and between Defendants McKinsey & Company, Inc., McKinsey
3 Holdings, Inc., McKinsey & Company, Inc. United States, and McKinsey & Company, Inc.
4 Washington D.C. (“Defendants”), and Settlement Class Counsel for Third Party Payors, both
5 individually and on behalf of the Class in the above-captioned action. This Agreement is
6 intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the
7 Released Claims, upon and subject to the terms and conditions herein, and subject to the
8 approval of the Court under Federal Rule of Civil Procedure 23(e).

9 **AGREEMENT**

10 NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set
11 forth below and other good and valuable consideration herein, it is hereby stipulated and
12 agreed by and among the Settling Parties, by and through their attorneys of record, that,
13 subject to the approval of the Court, the Actions and the Released Claims as against
14 Defendants and all other Releases shall be finally and fully settled, compromised, and
15 dismissed on the merits and with prejudice upon and subject to the terms and conditions of
16 this Agreement, as follows:

17 **I. Definitions**

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

19 1. “Action” means any lawsuit purportedly brought on behalf of any Third Party
20 Payor coordinated under MDL 2996, *In re: McKinsey & Co., Inc. National Prescription Opiate*
21 *Consultant Litigation*, No. 21-md-2996-CRB (SK) (N.D. Cal.), including, but not limited to:

- 22 • *Amalgamated Union Local 450-A Welfare Fund v. McKinsey & Co., Inc.*, No. 1:22-cv-06789 (E.D.N.Y.).
- 23 • *BCTGM Atl. Health & Welfare Fund v. McKinsey & Co., Inc.*, No. 3:22-cv-07348 (N.D. Cal.);
- 24 • *Cleveland Bakers & Teamsters Health & Welfare Fund v. McKinsey & Co., Inc.*, No. 21-cv-01218 (N.D. Ohio);
- 25 • *Dist. Council 37 Benefits Fund Tr. v. McKinsey & Co., Inc.*, No. 3:21-cv-06274-CRB (N.D. Cal.);
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- 1 • *Int’l Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Tr. Fund v. McKinsey & Co., Inc.*, No. 3:21-cv-06069-CRB (N.D. Cal.);
- 2 • *Series 17-04-631, LLC, v. McKinsey & Co., Inc.*, No. 1:21-cv-10553 (D. Mass.);
- 3 • *Teamsters Local 404 Health Servs. & Ins. Plan v. McKinsey & Co., Inc.*, No. 21-op-45038 (N.D. Ohio);

4 2. “Claim” means any past, present or future cause of action, claim for relief, cross-
 5 claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge,
 6 covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract,
 7 controversy, agreement, parens patriae claim, promise, performance, warranty, omission, or
 8 grievance of any nature whatsoever, whether filed or unfiled, alleged in any of the Actions or
 9 otherwise arising from the Covered Conduct, asserted or unasserted, known or unknown, accrued
 10 or unaccrued, foreseen, unforeseen or unforeseeable, discovered or undiscovered, suspected or
 11 unsuspected, fixed or contingent, existing or hereafter arising, including but not limited to any
 12 request for declaratory, injunctive, or equitable relief; compensatory, punitive, or statutory
 13 damages, absolute liability, strict liability, restitution, subrogation, contribution, indemnity,
 14 apportionment, disgorgement, reimbursement, attorney’s fees, expert fees, consultant fees, fines,
 15 penalties, expenses, costs or any other legal, equitable, or civil remedy whatsoever.

16 3. “Class” means

17 All entities that paid and/or reimbursed for (a) opioid prescription drugs
 18 manufactured, marketed, sold, or distributed by the Opioid Marketing
 19 Enterprise Members (Purdue, Johnson & Johnson, Janssen, Cephalon,
 20 Endo, and Mallinckrodt), for purposes other than resale, and/or (b) paid or
 21 incurred costs for treatment related to the misuse, addiction, and/or
 22 overdose of opioid drugs, on behalf of individual beneficiaries, insureds,
 23 and/or members, during the period June 1, 2009 to October 31, 2023 (“Class
 24 Period”). For clarity, included in the class are: (a) private contractors of
 25 Federal Health Employee Benefits plans, (b) plans for self-insured local
 26 governmental entities that have not settled claims in MDL 2804, (c) managed
 27 Medicaid plans, (d) plans operating under Medicare Part C and/or D, and (e)
 28 Taft Hartley plans.

Excluded from the class are (a) all federal and state governmental entities, (b)
 all tribal entities, (c) local governmental entities and school districts, (d)
 Pharmacy Benefit Managers (PBMs), (e) consumers, and (f) fully-insured
 plans. For the avoidance of doubt, entities that are otherwise members of the
 class are not excluded on the basis that they own an interest, including a
 controlling interest, in a PBM.

1 4. “Class Member” means an entity that falls within the definition of the Class and
2 does not elect to opt-out of the Class.

3 5. “Court” means the United States District Court for the Northern District of
4 California.

5 6. “Covered Conduct” means any and all actual or alleged acts, failures to act,
6 negligence, conduct, statements, errors, omissions, events, breaches of duty, services, advice,
7 work, deliverables, engagements, transactions, agreements, misstatements, or other activity of any
8 kind whatsoever, occurring up to and including the Effective Date (and any past, present, or
9 future consequence of any such acts, failures to act, negligence, conduct, statements, errors,
10 omissions, events, breaches of duty, services, advice, work, deliverables, engagements,
11 transactions, agreements, misstatements, or other activity of any kind whatsoever, occurring up to
12 and including the Effective Date) arising from or relating in any way to (a) the packaging,
13 repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution,
14 delivery, monitoring, reporting, supply, or sale of any Opioid Product or any system, plan, policy,
15 or advocacy relating to any Opioid Product or class of Opioid Products, including but not limited
16 to any unbranded promotion, marketing, programs, or campaigns relating to any Opioid Product
17 or class of Opioid Product; (b) the characteristics, properties, risks, or benefits of any Opioid
18 Product; (c) the reporting, disclosure, non-reporting or non-disclosure to federal or state
19 regulators of orders placed with any Released Entity; (d) diversion control programs or suspicious
20 order monitoring; (e) consulting advice McKinsey provided or failed to provide to any opioid
21 manufacturer or distributor or pharmacy or other entity in the opioid supply chain, or consulting
22 advice McKinsey provided or failed to provide to any government or government body with
23 authority to regulate prescription opioids in any manner, or consulting advice McKinsey provided
24 or failed to provide to any other third party concerning (i) the discovery, development,
25 manufacture, marketing, promotion, advertising, recall, withdrawal, distribution, monitoring,
26 supply, sale, prescribing, reimbursement, use, regulation, or abuse of any opioid, or (ii) the
27 treatment of opioid abuse or efforts to combat the opioid crisis, or (iii) the characteristics,
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1 properties, risks, or benefits of any opioid; or (f) the spoliation of any materials in connection
2 with or concerning any of the foregoing.

3 7. “Effective Date” means when all of the events and conditions specified in ¶ VII(1)
4 of this Agreement have occurred and have been met.

5 8. “Escrow Agent” means the agent jointly designated by Settlement Class Counsel
6 and Defendants, and any successor agent.

7 9. “Execution Date” means the date of the last signature set forth on the signature
8 pages below.

9 10. “Final” means, when used to describe the status of any order of a court, including,
10 without limitation, the Judgment, that such order represents a final and binding determination of
11 all issues within its scope and is not subject to further review on appeal or otherwise. Without
12 limitation, an order becomes “Final” when: (a) no appeal has been filed and the prescribed time
13 for commencing any appeal has expired; or (b) an appeal has been filed, and either (i) the appeal
14 has been dismissed and the prescribed time, if any, for commencing any further appeal has
15 expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for
16 commencing any further appeal has expired. For purposes of this Agreement, an “appeal”
17 includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving
18 writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other
19 proceeding pertaining solely to any order adopting or approving a Plan of Allocation and/or to
20 any order issued with respect to an application for attorneys’ fees and expenses consistent with
21 this Agreement shall not in any way delay or preclude the Judgment from becoming Final.

22 11. “Gross Settlement Fund” means the Settlement Amount plus any interest that may
23 accrue on the Settlement Amount from the date Defendants pay the Settlement Amount or any
24 portion thereof.

25 12. “Judgment” means the order of judgment and dismissal of the Actions with
26 prejudice.

27 13. “Net Settlement Fund” means the Gross Settlement Fund, less the payments set
28 forth in ¶ V(3).

1 14. “Notice and Administrative Costs” means the reasonable sum of money to be paid
2 out of the Gross Settlement Fund to pay for notice to the Class and related administrative costs,
3 including any taxes.

4 15. “Notice and Claims Administrator” means the claims administrator(s) to be
5 selected by Settlement Class Counsel and approved by the Court.

6 16. “Notice Order” means the Court order authorizing the dissemination of notice to
7 the Class.

8 17. “Opt-Out Period” means the period of time between entry of the Notice Order and
9 the deadline set by the Court for Class Members to exclude themselves from the Settlement.

10 18. “Plaintiffs” means the Third Party Payors that filed cases against Defendants in
11 federal court which cases are coordinated as part of MDL No. 2996, and the Third Party Payors
12 that filed cases against Defendants which cases are pending in State Court, if any.

13 19. “Plan of Allocation” means any plan or formula of allocation of the Gross
14 Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the
15 future be distributed to Class Members. Any Plan of Allocation is not part of this Agreement.

16 20. “Released Claims” means any and all Claims, including Unknown Claims, that (a)
17 directly or indirectly are based on, arise out of, or in any way relate to or concern Covered
18 Conduct, or (b) in any way relate to or concern allegations that have been asserted in any of the
19 Actions, or that could have been alleged in any of the Actions, or (c) result from or relate to a
20 continuation or continuing effect of any such conduct, acts, transactions, events, occurrences,
21 statements, omissions, or failures to act in any of the Actions. The Parties intend that “Released
22 Claims” be interpreted broadly. Released Claims are only released against Released Parties.

23 21. “Released Parties” means McKinsey & Company, Inc., McKinsey Holdings, Inc.,
24 McKinsey & Company, Inc. United States, and McKinsey & Company, Inc. Washington D.C.,
25 and each of their respective past or present owners, parents, subsidiaries, divisions, and related
26 or affiliated entities of any nature whatsoever, whether direct or indirect, as well as each of
27 Defendants’ and these entities’ respective predecessors, successors, directors, officers,
28 shareholders, employees, servants, representatives, principals, agents, advisors, consultants,

1 partners, contractors, attorneys, insurers, reinsurers, and subrogees, and any other entity bearing
2 the McKinsey name which any member of the Class may claim is responsible for the Covered
3 Conduct. Publicis Group, ZS Associates, Practice Fusion, Inc. and Practice Fusion's successor in
4 interest, Veradigm, Inc. f/k/a Allscripts Healthcare Solutions, Inc. are not “Released Parties.”
5 Opioid manufacturers are not “Released Parties.”

6 22. “Releasers” means with respect to Released Claims, each Class Member and
7 without limitation and to the maximum extent of the power of each Class Member to release
8 Claims, the Class Member’s past and present owners, parents, subsidiaries, divisions, and related
9 or affiliated entities of any nature whatsoever, whether direct or indirect, directors, officers,
10 employees, agents, attorneys, servants, representatives (and the owners’ parents’, subsidiaries’,
11 divisions’, and related or affiliated entities’ past and present officers, directors, employees,
12 agents, attorneys, servants, and representatives), and their predecessors, successors, heirs,
13 executors, administrators, and representatives. The inclusion of a specific reference to a type of
14 entity in this definition shall not be construed as meaning that the entity may not be a Class
15 Member.

16 23. “Settlement” means the settlement of the Released Claims set forth herein.

17 24. “Settlement Amount” means seventy-eight million U.S. Dollars (\$78,000,000.00).

18 25. “Settlement Class Counsel” means those counsel who will serve as Third Party
19 Payor Settlement Class Counsel, namely, Paul Geller of Robbins Geller Rudman & Dowd
20 LLP. Elizabeth Cabraser of Lief Cabraser Heimann & Bernstein, LLP signs this Settlement
21 Agreement as Court-appointed Plaintiffs’ Lead Counsel.

22 26. “Settling Parties” means, collectively, the Third Party Payor Plaintiffs listed in
23 ¶ I(1) (on behalf of themselves and the Class) and Defendants.

24 27. “Third Party Payor” means an entity as defined in the Third Party Payor Class
25 definition, in ¶ I(3).

26 28. “Unknown Claims” means any Released Claim that a Class Member does not
27 know or suspect to exist in their favor at the time of the release of the Released Parties that if
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1 known by them might have affected their settlement with and release of the Released Parties, or
2 might have affected their decision not to object to this Settlement.

3 **II. Notice and Approval**

4 1. **Reasonable Best Efforts to Effectuate This Settlement.** The Settling Parties:
5 (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate
6 to the extent reasonably necessary to effectuate and implement the terms and conditions of this
7 Agreement and to exercise their best efforts to accomplish the terms and conditions of this
8 Agreement. Consistent with these objectives, Defendants will not oppose Plaintiffs' motions for
9 preliminary and final settlement approval. The Settling Parties will continue to work
10 cooperatively to complete and submit promptly to the Court for approval such additional
11 documentation as may be necessary for the Court to determine whether this Agreement and
12 Settlement should be communicated to the Class and ultimately approved and to address any
13 concerns regarding the Settlement identified by the Court or any court of appeal.

14 2. **Motion for Preliminary Approval.** Following the execution of this Agreement
15 by all parties, Settlement Class Counsel shall file with the Court a motion for preliminary
16 approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e) ("Motion for
17 Preliminary Approval"). It is expressly agreed that any certification of the Class shall be for
18 settlement purposes only. The Parties agree to take all actions and steps reasonably necessary to
19 obtain a preliminary approval order from the Court and to fully implement and effectuate this
20 class action settlement under the provisions of Federal Rule of Civil Procedure 23(e).

21 3. The motion for preliminary approval shall request the entry of a preliminary
22 approval order that includes: (i) the findings required by Federal Rule of Civil Procedure
23 23(e)(1)(B); (ii) approval of the notice and proposed notice plan; (iii) a schedule for a hearing by
24 the Court after the notice period has expired to certify the Class for settlement purposes, to
25 approve the Settlement, and to consider Settlement Class Counsel's application for attorneys' fees
26 and reimbursement of costs and expenses; and (iv) continuing the stay of all proceedings in the
27 Plaintiffs' Actions until the Court renders a final decision regarding the approval of the
28 Settlement.

1 4. **Notice to the Class**

2 a. Settlement Class Counsel shall move, as part of the Motion for Preliminary
3 Approval, for entry of an order directing notice to the Class (“Notice Order”). Settlement Class
4 Counsel shall also submit to the Court for approval a proposed form of, method for, and schedule
5 for dissemination of notice to the Class. The motion shall recite and ask the Court to find that the
6 proposed form of and method for dissemination of notice to the Class constitutes valid, due, and
7 sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and
8 complies fully with the requirements of Federal Rule of Civil Procedure 23.

9 b. Settlement Class Counsel shall seek an order authorizing and ordering the
10 Notice and Claims Administrator: (i) to request from any Third Party Payor that seeks to exclude
11 any other entity from the certified settlement class, documentation and declarations supporting
12 any purported authority to opt-out other entities; and (ii) to submit a report (“Exclusion Report”)
13 to the Court setting forth all members of the Class that properly request to be excluded from the
14 Certified Settlement Class.

15 c. Settlement Class Counsel shall provide Defendants with a draft of their
16 Motion for Preliminary Approval, together with any accompanying memorandum of law, and
17 proposed form of notice at least five days in advance of filing and shall consider in good faith any
18 suggestions that Defendants express. Settlement Class Counsel shall not file such motion without
19 Defendants’ consent, which consent shall not be unreasonably withheld.

20 d. Defendants shall be responsible at their own cost, separate from the
21 Settlement Amount, for providing such notices as may be required by the Class Action Fairness
22 Act of 2005.

23 e. The notice and notice administration costs shall be paid from the Gross
24 Settlement Fund. If the Settlement does not become final for any reason, McKinsey shall not
25 recover the notice and notice administration costs, including any costs of providing notice
26 pursuant to the Class Action Fairness Act of 2005.

27 5. **Motion for Final Approval and Entry of Final Judgment.** After the Opt-Out
28 Period and not less than thirty-five (35) days prior to the date set by the Court to consider whether

1 this Settlement should be finally approved pursuant to Federal Rule of Civil Procedure 23(e)(2),
2 Settlement Class Counsel shall file a motion for final approval (“Final Approval”) of the
3 Settlement. Settlement Class Counsel shall provide Defendants with draft proposed motion
4 papers for final approval of the Settlement at least five days in advance of filing and shall not file
5 such motion without Defendants’ consent, which consent shall not be unreasonably withheld.
6 Settlement Class Counsel shall also provide Defendants with a draft proposed final approval order
7 (“Final Approval Order”) and Judgment, in advance of filing. The Final Approval Order and
8 Judgment shall contain provisions:

9 a. certifying the Class for settlement purposes; fully and finally approving the
10 Settlement contemplated by this Agreement and its terms as being fair, reasonable, and adequate
11 within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation
12 pursuant to its terms and conditions; finding that the notice given to the Class Members
13 constituted the best notice practicable under the circumstances and complies in all respects with
14 the requirements of Federal Rule of Civil Procedure 23 and due process;

15 b. directing that the Actions be dismissed with prejudice as to Defendants
16 and, except as provided for herein, without costs;

17 c. discharging and releasing the Released Parties from all Released Claims;

18 d. permanently barring and enjoining the institution and prosecution by Class
19 Members of any other action against the Released Parties in any forum asserting any claims
20 related in any way to the Released Claims;

21 e. reserving continuing and exclusive jurisdiction over the Settlement,
22 including all future proceedings concerning the administration, consummation, and enforcement
23 of this Agreement;

24 f. determining pursuant to Federal Rule of Civil Procedure 54(b) that there is
25 no just reason for delay and directing entry of a Final Judgment as to Plaintiffs and Defendants;
26 and

27 g. containing such other and further provisions consistent with the terms of
28 this Agreement to which the Settling Parties expressly consent in writing.

1 Settlement Class Counsel also will request that the Court approve the proposed Plan of
2 Allocation and application for attorneys' fees and reimbursement of expenses (as described
3 below).

4 **III. Releases.**

5 1. **Released Claims.** Upon the Effective Date, the Releasors (regardless of whether
6 any such Releasor ever seeks or obtains any recovery by any means) shall be deemed to have, and
7 by operation of the Judgment shall have fully, finally, and forever released, relinquished, and
8 discharged all Released Claims against the Released Parties.

9 2. **No Future Actions Following Release.** The Releasors shall not, after the
10 Effective Date, seek (directly or indirectly) to commence, institute, maintain, or prosecute any
11 suit, action, or complaint, or collect from or proceed against Defendants or any other Released
12 Party (including pursuant to the Action) based on any Released Claim in any forum worldwide,
13 whether on his, her, or its own behalf, or as part of any putative, purported, or certified class of
14 purchasers or consumers. Other than as set forth herein this Settlement Agreement does not
15 include any provisions for injunctive relief. Class Members shall look solely to the Settlement
16 Fund for settlement and satisfaction against Defendants of all claims that are released hereunder.

17 3. **Covenant Not to Sue.** Releasors hereby covenant not to sue the Released Parties
18 with respect to any such Released Claims. Releasors shall be permanently barred and enjoined
19 from instituting, commencing, or prosecuting against the Released Parties any Released Claims or
20 claims related to the Released Claims. The Settling Parties contemplate and agree that this
21 Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing
22 any action from being initiated or maintained in any case sought to be prosecuted on behalf of any
23 Releasors with respect to the Released Claims.

24 4. **Waiver of California Civil Code § 1542 and Similar Laws.** The Releasors
25 acknowledge that, by executing this Agreement, and for the consideration received hereunder, it
26 is their intention to release, and they are releasing, all Released Claims, even Unknown Claims.
27 In furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent
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1 permitted by law, any rights or benefits conferred by the provisions of California Civil Code
2 § 1542, which provides:

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

9 Releasors expressly waive and relinquish, to the fullest extent permitted by law, any rights or
10 benefits conferred by or equivalent, similar, or comparable laws or principles of law. The
11 Releasors acknowledge that they have been advised by Settlement Class Counsel of the contents
12 and effects of California Civil Code § 1542, and hereby expressly waive and release with respect
13 to the Released Claims any and all provisions, rights, and benefits conferred by California Civil
14 Code § 1542 or by any equivalent, similar, or comparable law or principle of law in any
15 jurisdiction. The Releasors may hereafter discover facts other than or different from those which
16 they know or believe to be true with respect to the subject matter of the Released Claims, but the
17 Releasors hereby expressly waive and fully, finally, and forever settle and release any known or
18 unknown, suspected or unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or
19 non-contingent, and accrued or unaccrued claim, loss, or damage with respect to the Released
20 Claims, whether or not concealed or hidden, without regard to the subsequent discovery or
21 existence of such additional or different facts. The release of unknown, unanticipated,
22 unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is not a mere recital.

23 **5. Claims Excluded from Release.** Notwithstanding the foregoing, the releases
24 provided herein shall not release claims of entities that are outside the Class; claims or damages
25 arising solely from conduct by Defendants that occurs after the Class Period described in this
26 Agreement; claims against Defendants other than the Released Claims; or claims to enforce the
27 terms of this Agreement. Releasors are not releasing claims against any other entity or person
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1 other than Released Parties asserted in, or which they may assert in, *In Re: National Prescription*
2 *Opiate Litigation*, MDL No. 2804, or in any related cases.

3 **IV. Settlement Fund**

4 1. **Settlement Payment.** Defendants shall pay the Settlement Amount in
5 consideration of the covenants, agreements, and releases set forth herein.

6 2. Defendants shall pay by wire transfer a portion of the Settlement Amount
7 sufficient to cover the Notice and Administrative Costs, but in no event greater than
8 \$1,000,000.00, into an escrow account at the Escrow Agent (the “Escrow Account”) within
9 fourteen calendar days of the later of (i) Preliminary Approval of the Settlement Agreement, or
10 (ii) Defendants’ receipt of the information and instructions required to effectuate the wire
11 transfer. Defendants shall pay by wire transfer the remainder of the Settlement Amount
12 (\$78,000,000 less any amount previously transferred into the Escrow Account to cover Notice
13 and Administrative Costs) into the Escrow Account within fourteen calendar days of Final
14 Approval of the Settlement Agreement.

15 3. The Settlement Amount constitutes the total amount of payment that Defendants
16 are required to make in connection with this Agreement subject to ¶ VII(4). This amount shall not
17 be subject to reduction, and, upon the occurrence of the Effective Date, no funds may be returned
18 to Defendants.

19 4. All settlement payments are subject to the Court’s common benefit-related orders,
20 including disbursements prior to final approval of the Class Settlement.

21 5. **No Additional Payments by Defendants.** Under no circumstances will
22 Defendants be required to pay more than the Settlement Amount pursuant to this Agreement and
23 the Settlement set forth herein. For purposes of clarification, the payment of taxes (as set out in
24 ¶ IV(5) below), any Fee and Expense Award (as defined in part VI), the Notice and
25 Administrative Costs, and any other costs associated with the implementation of this Agreement
26 shall be exclusively paid from the Settlement Amount.

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1 6. **Escrow Account & Taxes**

2 a. Plaintiffs shall arrange for the Escrow Account to be established at
3 Citibank, with such bank serving as the Escrow Agent subject to an escrow agreement, and such
4 escrow to be administered under the Court’s continuing supervision and control. To the extent
5 that there is any ambiguity or inconsistency when this Settlement Agreement and the escrow
6 agreement are read together, the terms of this Settlement Agreement shall control.

7 b. The Escrow Agent shall cause the funds deposited in the Escrow Account
8 to be invested in short-term instruments backed by the full faith and credit of the United States
9 Government or fully insured in writing by the United States Government, or money market funds
10 rated Aaa and AAA, respectively, by Moody’s Investor Services and Standard and Poor’s, or an
11 interest-bearing deposit account, insured by the Federal Deposit Insurance Corporation (“FDIC”)
12 to the applicable limits, and shall reinvest any income from these instruments and the proceeds of
13 these instruments as they mature in similar instruments at their then-current market rates. All
14 interest and dividends earned in the Escrow Account shall become and remain part of the Escrow
15 Account. Any losses in the Escrow Account shall be borne by the Escrow Account and shall not
16 be recoverable from Defendants. Defendants shall have no liability, obligation, or responsibility
17 of any kind in connection with the investment, disbursement, or other oversight of the Escrow
18 Account.

19 c. All funds held in the Escrow Account shall be deemed and considered to be
20 in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such
21 time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the
22 Court. The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund as
23 being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.
24 The Escrow Agent shall timely make such elections as necessary or advisable to carry out the
25 provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg.
26 § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with
27 the procedures and requirements contained in such regulations. It shall be the responsibility of
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1 the Escrow Agent to prepare and deliver timely and properly the necessary documentation for
2 signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

3 d. For the purpose of § 468B of the Internal Revenue Code of 1986, as
4 amended, and the regulations promulgated thereunder, the “administrator” shall be Miller Kaplan
5 Arase LLP (the “Escrow Administrator”). The Escrow Administrator shall satisfy the
6 administrative requirements imposed by Treas. Reg. § 1.468B-2 by, *e.g.*: (i) obtaining a taxpayer
7 identification number, (ii) satisfying any information reporting or withholding requirements
8 imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing
9 applicable federal, state, and local tax returns necessary or advisable with respect to the Gross
10 Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-
11 2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in
12 this paragraph) shall be consistent with the provisions of this paragraph and in all events shall
13 reflect that all Taxes as defined in ¶ IV(5)(e) below on the income earned by the Gross Settlement
14 Fund shall be paid out of the Gross Settlement Fund as provided in ¶ IV(5)(e) hereof.

15 e. The following shall be paid out of the Gross Settlement Fund: (i) all taxes
16 (including any estimated taxes, interest, or penalties) arising with respect to the income earned by
17 the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be
18 imposed upon Defendants, their counsel, or any Released Party with respect to any income earned
19 by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not
20 qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively,
21 “Taxes”), and (ii) all expenses and costs incurred in connection with the operation and
22 implementation of this paragraph, including, without limitation, expenses of tax attorneys and/or
23 accountants (including the Escrow Administrator) and mailing and distribution costs and
24 expenses relating to filing (or failing to file) the returns described in this paragraph (collectively,
25 “Tax Expenses”).

26 f. In all events, neither Defendants nor any other Released Party nor their
27 counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds
28 from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless

1 Defendants and any other Released Party and their counsel for Taxes and Tax Expenses
2 (including, without limitation, Taxes payable by reason of any such indemnification). Further,
3 Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the
4 Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross Settlement
5 Fund without prior order from the Court, and the Escrow Agent shall be obligated
6 (notwithstanding anything herein to the contrary) to withhold from distribution to Class Members
7 any funds necessary to pay such amounts, including the establishment of adequate reserves for
8 any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under
9 Treas. Reg. §1.468B-2(1)(2)); neither Defendants nor any Released Party nor their counsel is
10 responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to
11 cooperate with the Escrow Agent, each other, their tax attorneys, and their accountants to the
12 extent reasonably necessary to carry out the provisions of this paragraph.

13 **V. Administration and Distribution of Gross Settlement Fund**

14 1. **Time to Appeal.** The time to appeal from Final Approval of the Settlement shall
15 commence upon the Court's entry of the Judgment regardless of whether or not either the Plan of
16 Allocation or an application for attorneys' fees and expenses has been submitted to the Court or
17 resolved.

18 2. **Disbursements Prior to Effective Date.** No amount may be disbursed from the
19 Gross Settlement Fund until the Effective Date, except that: (a) Notice and Administrative Costs,
20 to the extent authorized by the Court, may be paid from the Gross Settlement Fund as they
21 become due; (b) Taxes and Tax Expenses (as defined in ¶ IV(5)(e) above) may be paid from the
22 Gross Settlement Fund as they become due; and (c) attorneys' fees and reimbursement of
23 litigation costs and expenses may be paid, as may be ordered by the Court after Final Approval
24 (and may be disbursed during the pendency of any appeals which may be taken).

25 3. **Distribution of Gross Settlement Fund.** Upon further orders of the Court, the
26 Notice and Claims Administrator, subject to such supervision and direction of the Court and/or
27 Settlement Class Counsel, as may be necessary or as circumstances may require, shall administer
28 the claims submitted by Class Members and shall oversee distribution of the Gross Settlement

1 Fund, including distribution of the Net Settlement Fund to Class Members pursuant to the Plan of
2 Allocation. Subject to the terms of this Agreement and any order(s) of the Court, the Gross
3 Settlement Fund shall be applied as follows:

4 a. To pay all costs and expenses reasonably and actually incurred in
5 connection with providing notice to the Class in connection with administering and distributing
6 the Net Settlement Fund to Class Members, and in connection with paying escrow fees and costs,
7 if any;

8 b. To pay all costs and expenses, if any, reasonably and actually incurred in
9 soliciting claims and assisting with the filing and processing of such claims;

10 c. To pay the taxes and tax expenses as defined herein;

11 d. To pay any fee and expense award, and any service awards to class
12 representatives, that is allowed by the Court, subject to and in accordance with the Agreement;
13 and

14 e. To distribute the balance of the Net Settlement Fund to Class Members as
15 allowed by the Agreement, the Plan of Allocation, or order of the Court.

16 4. **Distribution of Net Settlement Fund.**

17 a. Upon the Effective Date and thereafter, and in accordance with the terms of
18 this Agreement, the Plan of Allocation, and any further order(s) of the Court as may be necessary
19 or as circumstances may require, the Net Settlement Fund shall be distributed to Class Members.

20 b. The Net Settlement Fund shall be distributed to Class Members in
21 accordance with Plan of Allocation to be approved by the Court. No funds from the Net
22 Settlement Fund shall be distributed until after the Effective Date.

23 c. All Class Members shall be subject to and bound by the provisions of this
24 Agreement, the releases contained herein, and the Judgment with respect to all Released Claims.

25 5. **No Liability for Distribution of Settlement Funds.** Neither the Released Parties
26 nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect
27 to the distribution of the Gross Settlement Fund; the Plan of Allocation; the determination,
28 administration, or calculation of claims; the Gross Settlement Fund's qualification as a "qualified

1 settlement fund”; the payment or withholding of taxes or tax expenses; the distribution of the Net
2 Settlement Fund; or any losses incurred in connection with any such matters. The Releasors
3 hereby fully, finally, and forever release, relinquish, and discharge the Released Parties and their
4 counsel from any and all such liability. No Person shall have any claim against Settlement Class
5 Counsel or the Notice and Claims Administrator based on the distributions made substantially in
6 accordance with the Agreement and the Settlement contained herein, the Plan of Allocation or
7 further orders of the Court.

8 6. **Balance Remaining in Net Settlement Fund.** If there is any balance remaining
9 in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise),
10 such balance shall be distributed in accordance with the Plan of Allocation or further order of the
11 Court. Except as provided in ¶ VII(8), in no event shall the Net Settlement Fund revert to
12 Defendants.

13 7. **Plan of Allocation Not Part of Settlement.** It is understood and agreed by the
14 Settling Parties that any Plan of Allocation, including any adjustments to any Class Member’s
15 claim, is not part of this Agreement and is to be considered by the Court separately from the
16 Court’s consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in
17 this Agreement; and any order or proceeding solely relating to the Plan of Allocation shall not
18 operate to terminate or cancel this Agreement or affect the finality of the Judgment, the Final
19 Approval Order, or any other orders entered pursuant to this Agreement.

20 **VI. Attorneys’ Fees and Reimbursement of Expenses**

21 1. **Fee and Expense Application.** Settlement Class Counsel may submit an
22 application or applications (the “Fee and Expense Application”) for distributions from the Gross
23 Settlement Fund for: (a) an award of attorneys’ fees, (b) reimbursement of expenses incurred in
24 connection with prosecuting the Action, and (c) any interest on such attorneys’ fees and expenses
25 (until paid) at the same rate and for the same periods as earned by the Gross Settlement Fund, as
26 appropriate, and as may be awarded by the Court.

27
28

1 2. **Payment of Fee and Expense Award.** Any amounts that are awarded by the
2 Court pursuant to the above paragraph (the “Fee and Expense Award”) shall be paid from the
3 Gross Settlement Fund consistent with the provisions of this Agreement.

4 3. **Award and Allocation of Attorneys’ Fees and Costs.** The award, payment, and
5 allocation of attorneys’ fees and costs to all claimants and participants (and their counsel) under
6 this Agreement and/or the Plan of Allocation are subject to Court approval under Federal Rule of
7 Civil Procedure 23(h) and to the Court’s common benefit-related Orders.

8 4. **Award of Fees and Expenses Not Part of Settlement.** The procedure for, and
9 the allowance or disallowance by the Court of, the Fee and Expense Application are not part of
10 the Settlement set forth in this Agreement. Any order or proceeding solely relating to the Fee and
11 Expense Application, including any appeal from any Fee and Expense Award or any other order
12 relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this
13 Agreement, or affect or delay the finality of the Judgment and the Settlement of the Action as set
14 forth herein. No order of the Court or modification or reversal on appeal of any order of the
15 Court solely concerning any Fee and Expense Award or Plan of Allocation shall constitute
16 grounds for cancellation or termination of this Agreement.

17 5. **No Liability for Fees and Expenses of Settlement Class Counsel.** Neither the
18 Released Parties nor their counsel shall have any responsibility for or liability whatsoever with
19 respect to any payment(s) to Settlement Class Counsel pursuant to this Agreement and/or to any
20 other Person who may assert some claim thereto or any Fee and Expense Award that the Court
21 may make in the Action, other than as set forth in this Agreement.

22 **VII. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

23 1. **Effective Date.** The Effective Date of this Agreement shall be conditioned on the
24 occurrence of all of the following events:

25 a. Defendants no longer have any right under ¶ VII(4) to terminate this
26 Agreement or, if Defendants do have such right, it has given written notice to Settlement Class
27 Counsel that they will not exercise such right;

28

1 b. the Court has finally approved the Settlement as described herein,
2 following notice to the Class and a hearing, as prescribed by Federal Rule of Civil Procedure 23,
3 and has entered the Judgment; and

4 c. the Judgment has become Final as defined in ¶ I(10).

5 2. **Occurrence of Effective Date.** Upon the occurrence of all of the events
6 referenced in the above paragraph, any and all remaining interest or right of Defendants in or to
7 the Gross Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross
8 Settlement Fund (less any Notice and Administrative Costs, Taxes, Tax Expenses, or Fee and
9 Expense Award paid) shall be transferred from the Escrow Agent to the Notice and Claims
10 Administrator as successor Escrow Agent within ten (10) days after the Effective Date.

11 3. **Failure of Effective Date to Occur.** If any of the conditions specified in ¶ VII(1)
12 are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance
13 with ¶ VII(8), unless the Settling Parties mutually agree in writing to proceed with this
14 Agreement.

15 4. **Exclusions and Rights to Terminate**

16 a. No later than seven days following the deadline set by the Court for Class
17 Members to exclude themselves, Settlement Class Counsel shall provide Defendants' counsel
18 with a list of entities that elected to exclude themselves from the Class. With the motion for Final
19 Approval of the Settlement, Settlement Class Counsel will file with the Court a list of requests for
20 exclusion from the Class (including only the name, city, and state of the entity requesting
21 exclusion) and the Exclusion Report of the Notice and Claims Administrator.

22 b. With respect to any member of the Class that requested exclusion and is
23 therefore not a member of the Class, Defendants reserve all of their legal rights and defenses.

24 c. Defendants shall have the option, in their sole discretion, to terminate this
25 Agreement, including because of the number of Class Members that validly requested exclusion
26 from the Settlement Class. After meeting and conferring with Settlement Class Counsel,
27 Defendants may, in their sole discretion, elect to terminate this Agreement by serving written
28 notice on Settlement Class Counsel by email and overnight courier, and by filing a copy of such

1 notice with the Court no later than fifteen days after receiving the Exclusion Report, unless such
2 date is extended by mutual agreement of the parties.

3 5. Upon the failure of Defendants to make any payment owed under this Agreement's
4 terms, Defendants will make any such payment within five business days of receiving notice from
5 Plaintiffs of such failure, and in addition pay 10% annual interest on the amount owed, prorated
6 based on the delay from the date of receipt of notice of the failure until such payment is made.

7 6. **No Court Approval.** If the Court does not enter the Notice Order, the Final
8 Approval Order, or the Judgment, or if the Court enters the Final Approval Order and the
9 Judgment, and appellate review is sought and, on such review, the Final Approval Order or the
10 Judgment is finally vacated, modified, or reversed, then this Agreement and the Settlement
11 incorporated therein shall be cancelled and terminated.

12 7. No Settling Party shall have any obligation whatsoever to proceed under any terms
13 other than substantially in the form provided and agreed to herein; provided, however, that no
14 order of the Court solely concerning any Fee and Expense Application or Plan of Allocation, or
15 any modification or reversal on appeal of such order, shall constitute grounds for cancellation or
16 termination of this Agreement by any Settling Party. Defendants shall have, in their sole and
17 absolute discretion, the option to terminate the Settlement in its entirety in the event that the
18 Judgment, upon becoming Final, does not provide for the dismissal with prejudice of all of the
19 Actions against it.

20 8. **Effect of Termination or No Court Approval.** Unless otherwise ordered by the
21 Court, in the event that the Effective Date does not occur or this Agreement should terminate, or
22 be canceled or otherwise fail to become effective for any reason, including, without limitation, in
23 the event that this Agreement is terminated pursuant to ¶ VII(4), the Settlement as described
24 herein is not finally approved by the Court or the Judgment is finally reversed or vacated
25 following any appeal taken therefrom, then:

26 a. within ten business days after written notification of such event is sent by
27 counsel for Defendants to the Escrow Agent, the Gross Settlement Fund—including the
28 Settlement Amount and all interest earned on the Settlement Amount while held in escrow,

1 excluding only Notice and Administrative Costs (including any necessary payments to the
2 Escrow Agent for its services) that either have been properly disbursed or are due and owing,
3 Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some
4 later date, and attorneys' fees and costs that have been disbursed pursuant to Court order—will be
5 refunded, reimbursed, and repaid by the Escrow Agent to Defendants within five business days; if
6 said amount or any portion thereof is not returned within such five-day period, then interest shall
7 accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is
8 returned;

9 b. within ten business days after written notification of such event is sent by
10 counsel for Defendants to Settlement Class Counsel, all attorneys' fees and costs which have been
11 disbursed to Settlement Class Counsel pursuant to Court order shall be refunded, reimbursed, and
12 repaid by Settlement Class Counsel to Defendants;

13 c. the Escrow Agent or the Escrow Administrator shall apply for any tax
14 refund owed to the Gross Settlement Fund within ten business days after written notification of
15 such event is sent by counsel for Defendants to the Escrow Agent and pay the proceeds to
16 Defendants within ten business days of receipt, after deduction of any fees or expenses reasonably
17 incurred in connection with such application(s) for refund, pursuant to such written request;

18 d. the Settling Parties shall be restored to their respective positions in the
19 Action as of the Execution Date, with all of their respective claims and defenses preserved as they
20 existed on that date;

21 e. the terms and provisions of this Agreement, with the exception of ¶ II(5)(e)
22 (which shall continue in full force and effect), shall be null and void and shall have no further
23 force or effect with respect to the Settling Parties, and neither the existence nor the terms of this
24 Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to,
25 or in furtherance of, this Agreement) shall be used in the Action or in any other action or
26 proceeding for any purpose (other than to enforce the terms remaining in effect); and

27 f. any judgment or order entered by the Court in accordance with the terms of
28 this Agreement shall be treated as vacated, *nunc pro tunc*.

1 **VIII. No Admission of Liability**

2 1. **Final and Complete Resolution.** The Settling Parties intend the Settlement as
3 described herein to be a final and complete resolution of all disputes between them with respect to
4 the Action and Released Claims and to compromise claims that are contested, and it shall not be
5 deemed an admission by any Settling Party as to the merits of any claim or defense or any
6 allegation made in the Action.

7 2. **Federal Rule of Evidence 408.** The Settling Parties agree that this Agreement, its
8 terms and the negotiations surrounding this Agreement shall be governed by Federal Rule of
9 Evidence 408 and shall not be admissible or offered or received into evidence in any suit, action,
10 or other proceeding, except as provided in this Agreement, upon the written agreement of the
11 Settling Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be
12 necessary to give effect to, or to declare or enforce the rights of the Settling Parties with respect
13 to, any provision of this Agreement.

14 3. **Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor
15 any act performed, statement made, or document executed pursuant to or in furtherance of this
16 Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or
17 evidence of, the validity of any Released Claims, any allegation made in the Action, or any
18 wrongdoing or liability of Defendant; or (b) is or may be deemed to be or may be used as an
19 admission of, or evidence of, any liability, fault, or omission of the Released Parties in any civil,
20 criminal, or administrative proceeding in any court, administrative agency, or other tribunal.
21 Neither this Agreement nor the Settlement, nor any act performed, statement made, or document
22 executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in
23 any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the
24 Released Parties may file this Agreement and/or the Judgment in any action for any purpose,
25 including, but not limited to, in order to support a defense or counterclaim based on principles of
26 *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any
27 other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The
28 limitations described in this paragraph apply whether or not the Court enters the Notice Order, the

1 Final Approval Order, or the Judgment. Notwithstanding anything to the contrary in this
2 Agreement or otherwise, Defendants may file or use this Agreement and related materials in any
3 action: (i) involving a determination regarding insurance coverage; (ii) involving a determination
4 of the taxable income or tax liability of any Defendants; (iii) to support a claim for contribution
5 and/or indemnification; or (iv) to support any argument or defense by a Defendant that the
6 Settlement Amount provides a measure of compensation for asserted harms or otherwise satisfies
7 the relief sought.

8 **IX. Miscellaneous Provisions**

9 1. **Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and
10 the other terms of the Settlement as described herein were negotiated in good faith by the Settling
11 Parties and reflect a settlement that was reached voluntarily, without any degree of duress or
12 compulsion, after consultation with competent legal counsel.

13 2. **Consent to Jurisdiction.** Defendants and each Class Member hereby irrevocably
14 submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action,
15 proceeding, or dispute arising out of or relating to the enforcement of this Agreement or the
16 applicability of this Agreement. Solely for purposes of such suit, action, or proceeding, to the
17 fullest extent that they may effectively do so under applicable law, Defendants and the Class
18 Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise,
19 any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is
20 in any way an improper venue or an inconvenient forum. Without limiting the generality of the
21 foregoing, it is hereby agreed that any dispute concerning the provisions of ¶ I(21) and part III
22 hereof, including, but not limited to, any suit, action, or proceeding in which the provisions of
23 ¶ I(21) and part III hereof are asserted as a defense in whole or in part to any claim or cause of
24 action or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of
25 or relating to this Agreement. In the event that the provisions of ¶ I(21) and part III hereof are
26 asserted by any Released Party as a defense in whole or in part to any claim or cause of action or
27 otherwise raised as an objection in any suit, action, or proceeding, it is hereby agreed that such
28 Released Party shall be entitled to a stay of that suit, action, or proceeding until the Court has

1 entered a Final Judgment no longer subject to any appeal or review determining any issues
2 relating to the defense or objection based on the provisions of ¶ I(21) and part III. Nothing herein
3 shall be construed as a submission to jurisdiction for any purpose other than any suit, action,
4 proceeding, or dispute arising out of or relating to this Agreement or the applicability of this
5 Agreement. For the avoidance of doubt, nothing herein shall be construed as a submission to
6 jurisdiction in any action involving a determination regarding insurance coverage.

7 3. **Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes
8 between or among Defendants and any Class Members concerning matters contained in this
9 Agreement, including the Plan of Allocation shall, if they cannot be resolved by negotiation and
10 agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the
11 implementation and enforcement of this Agreement.

12 4. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit
13 of, the successors and assigns of the parties hereto. Without limiting the generality of the
14 foregoing, each and every covenant and agreement entered into herein by Plaintiffs and
15 Settlement Class Counsel shall be binding upon all Class Members.

16 5. **Authorization to Enter Settlement Agreement.** The undersigned representative
17 of Defendants represents that they are fully authorized to enter into and to execute this Agreement
18 on behalf of Defendants. Settlement Class Counsel, on behalf of Plaintiffs, represent that they
19 are, subject to Court approval, expressly authorized to take all action required or permitted to be
20 taken by or on behalf of the Class pursuant to this Agreement to effectuate its terms and to enter
21 into and execute this Agreement and any modifications or amendments to the Agreement on
22 behalf of the Class that they deem appropriate.

23 6. **Notices.** All notices from or between the parties to this Agreement shall be in
24 writing. Each such notice shall be given either by: (a) e-mail; (b) hand delivery; (c) registered or
25 certified mail, return receipt requested, postage pre-paid; or (d) FedEx or similar overnight
26 courier, and, if directed to any Class Member, shall be addressed to Settlement Class Counsel at
27 their addresses set forth below, and, if directed to Defendants, shall be addressed to their
28 attorneys at the addresses set forth below or such other addresses as Settlement Class Counsel or

1 Defendants may designate, from time to time, by giving notice to all parties hereto in the manner
2 described in this paragraph. If directed to the Plaintiffs or any Class Member(s), address notice
3 to:

4
5 Elizabeth J. Cabraser
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
6 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
7 Telephone: (415) 956-1000

8 Paul J. Geller
9 ROBBINS GELLER RUDMAN & DOWD, LLP
225 NE Mizner Boulevard, Suite 720
10 Boca Raton, FL 33432
11 Telephone: (561) 750-3000

12 If directed to Defendants, address notice to:

13 HOGAN LOVELLS LLP
James L. Bernard
14 390 Madison Avenue
New York, NY 10017
15 Telephone: (212) 918-3000

16 MORRISON & FOERSTER LLP
Mark David McPherson
17 250 W. 55th St.
New York, NY 10019
18 Telephone: +(212) 468-8263
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20 7. **Headings.** The headings used in this Agreement are intended for the convenience
21 of the reader only and shall not affect the meaning or interpretation of this Agreement.

22 8. **No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed
23 to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case
24 law, or rule of interpretation or construction that would or might cause any provision to be
25 construed against the drafter hereof.

26 9. **Choice of Law.** This Agreement shall be construed and enforced in accordance
27 with, and governed by, the internal, substantive laws of the State of California without giving
28 effect to that state's choice of law principles.

1 10. **Amendment; Waiver.** This Agreement shall not be modified in any respect
2 except by a writing executed by Defendants and Settlement Class Counsel, and the waiver of any
3 rights conferred hereunder shall be effective only if made by written instrument of the waiving
4 party. The waiver by any party of any breach of this Agreement shall not be deemed or construed
5 as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this
6 Agreement.

7 11. **Execution in Counterparts.** This Agreement may be executed in one or more
8 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
9 instrument. Counsel for the Settling Parties to this Agreement shall exchange among themselves
10 original signed or scanned counterparts, and a complete set of executed counterparts shall be filed
11 with the Court.

12 12. **Integrated Agreement.** This Agreement constitutes the entire agreement between
13 the Settling Parties, and no representations, warranties, or inducements have been made to any
14 party concerning this Agreement other than the representations, warranties, and covenants
15 contained and memorialized herein. It is understood by the Settling Parties that, except for the
16 matters expressly represented herein, the facts or law with respect to which this Agreement is
17 entered into may turn out to be other than or different from the facts now known to each party or
18 believed by such party to be true. Each party therefore expressly assumes the risk of the facts or
19 law turning out to be so different and agrees that this Agreement shall be in all respects effective
20 and not subject to Termination by reason of any such different facts or law. Except as otherwise
21 provided herein, each party shall bear its own costs and attorneys' fees.

22 13. **Return or Destruction of Confidential Materials.** The Settling Parties agree to
23 comply with the relevant provisions of the Protective Order entered in the Actions, except the
24 Settling Parties agree to discuss in good faith the Releasors using documents produced in these
25 Actions in MDL No. 2804 and in any related actions.

26 14. **Confidentiality.** The terms of this Settlement shall remain confidential until
27 Plaintiffs move for an order directing notice to the Class, unless Defendants and Settlement Class
28 Counsel agree otherwise, provided that the Settling Parties may disclose the terms of this

1 Settlement to accountants, lenders, auditors, legal counsel, tax advisors, insurers, or consultants;
 2 or as part of any security or other disclosure required by law (as determined by a Settling Party
 3 and its counsel); or in response to a request by any governmental, judicial, or regulatory authority
 4 or otherwise required by applicable law or court order; and Plaintiffs may disclose the terms of
 5 the Settlement to any entity that has applied to serve as Notice and Claims Administrator, Escrow
 6 Administrator, or Escrow Agent, who shall abide by the terms of this paragraph. Any formal
 7 press release by a Settling Party regarding this Settlement prior to entry of the Final Approval
 8 Order shall be shared in advance with the other Settling Party, with a reasonable opportunity for
 9 comments and suggested changes. No such press release shall be made prior to the Plaintiffs
 10 moving for an order directing notice to the Class.

11 **15. Duty Not to Encourage Exclusion or Objection.** Plaintiffs, Settlement Class
 12 Counsel, and Defendants agree that they shall not in any way encourage, promote, or solicit any
 13 Entity within the definition of the Class, or their counsel, to request exclusion from the Class, to
 14 object to this Settlement, or to seek any relief inconsistent with this Settlement.

15 IN WITNESS WHEREOF, the parties hereto, through their fully authorized
 16 representatives, have executed this Agreement as of the date last written below.

17
 18 Dated: December 18, 2023 SETTLEMENT CLASS COUNSEL, on behalf of Third Party
 19 Payor Plaintiffs individually and on behalf of the Third Party
 Payor Class

20 DocuSigned by:
 21 *Paul Geller*
 By: _____
 033204F802274A3...
 Paul J. Geller

22 Paul J. Geller
 23 ROBBINS GELLER RUDMAN & DOWD, LLP
 24 225 NE Mizner Boulevard, Suite 720
 Boca Raton, FL 33432
 Telephone: (561) 750-3000

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DocuSigned by:
By: Elizabeth Cabraser
Elizabeth J. Cabraser

Elizabeth J. Cabraser
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000

Signing as Court-Appointed Plaintiffs' Lead Counsel

Dated: December 18, 2023

McKinsey & Company, Inc., McKinsey Holdings, Inc., McKinsey & Company, Inc. United States, and McKinsey & Company, Inc. Washington D.C.

DocuSigned by:
By: Veronica Ip
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Print Name: Veronica Ip

Title: Associate General Counsel