

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs Jane Doe, Esther Burch, Elisabeth Schwab, Nicholas J. Smith and Tara F. Smith (“Plaintiffs” or “Class Representatives”), on behalf of themselves and all others similarly situated, and Defendant Siskiyou Hospital, Inc. d/b/a Fairchild Medical Center (“FMC” or “Defendant”) (collectively, the “Parties”), hereby enter into this Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), subject to Court approval. In consideration of the mutual promises, agreements, and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, the Parties stipulate and agree as follows:

I. RECITALS

WHEREAS, on January 19, 2021, Plaintiffs Jane Doe, Esther Burch, and Elisabeth Schwab were the first to file a Class Action Complaint (“Complaint”) against FMC concerning this data breach incident in Superior Court of the State of California, County of Siskiyou, Case No. CVCV21-49 (the “Action”). The Complaint alleges that FMC violated the Confidentiality of Medical Information Act, Civil Code § 56, et seq., the Unfair Competition Law, Business & Professions Code § 17200, et seq., and the California Consumer Records Act, Cal. Civ. Code § 1798.82. The Complaint defines the Class as “all patients of FMC who received treatment at one of FMC’s hospital, satellite, or urgent care locations between December 16, 2015 and July 31, 2020, and who received notice from FMC that their information was compromised.” In their Complaint, Plaintiffs are seeking equitable relief, statutory damages, actual damages, and other relief as allowable by law;

WHEREAS, on or about October 29, 2021, Plaintiffs filed an Amended Class Complaint for Damages and Injunctive Relief (“Amended Class Action Complaint”) in the Action asserting claims against FMC for (1) violations of the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56, *et seq.* (“CMIA”), and (2) violations of Business & Professions Code §§ 17200, *et seq.* (the “UCL”);

WHEREAS, in the Amended Class Complaint, Plaintiffs seek to certify a class of approximately 39,700 persons, defined as follows:

All persons who were mailed a letter sent on behalf of FMC entitled Notice of Data Breach, dated on or about November 25, 2020” (hereinafter the “Class” or “Class Members”). Officers and directors of FMC who received a Notice of Data Breach are excluded from the Class.

WHEREAS, in the Amended Class Complaint, Plaintiffs seeks the appointment of Potter & Handy, LLP and Keegan & Baker, LLP as Class Counsel to represent the Class Members.

WHEREAS, FMC denies liability, and Plaintiffs and FMC recognize the outcome of the Action and the claims asserted in the Amended Class Action Complaint are uncertain, and that pursuing the Litigation to judgment would entail substantial cost, risk, and delay;

WHEREAS, the Parties have explored and discussed at length the factual and legal issues in the Litigation and have participated in mediation with a well-respected former magistrate judge and mediator, Hon. Jay C. Gandhi (Ret.), concerning the issues raised by Plaintiffs in the

Litigation, and Defendant's defenses to the claims made in the Litigation, and have agreed to a global, final settlement of the Action that renders the need for further litigation unnecessary;

WHEREAS, the Parties desire to compromise and settle all issues, claims, and/or facts asserted in the Litigation, or that could have been asserted based upon the facts alleged in the Litigation, by or on behalf of Plaintiffs and the Class;

WHEREAS, Plaintiffs, by and through Class Counsel (as defined in section II.D, below), have: (a) made a thorough investigation of the facts and circumstances surrounding the allegations asserted in the Litigation; (b) engaged in investigation of the claims asserted in the Litigation, including informal discovery obtained by Plaintiffs in connection with the Action and prior to execution of this Agreement, and (c) evaluated and considered the law applicable to the claims asserted in the Litigation, including the defenses that FMC likely would assert;

WHEREAS, Class Counsel are experienced in this type of class litigation, recognize the costs and risks of prosecution of this Litigation, and believe that it is in Plaintiffs' interest, and the interest of all Class Members, to resolve this Action, and any and all claims against FMC arising from the conduct alleged in the Action, and in this Settlement Agreement;

WHEREAS, FMC does not believe Plaintiffs' claims are meritorious and has denied and continues to deny any and all claims alleged by Plaintiffs, and has denied and continues to deny that it is legally responsible or liable to Plaintiffs or any member of the Class for any of the matters and/or claims asserted in this Litigation, but has concluded that settlement is desirable to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of Plaintiffs and all members of the Class relating to claims which were or could have been asserted by Plaintiffs and the Class in this Litigation relating to the alleged practices and confidentiality breach at issue;

WHEREAS, the Parties agree that nothing in this Settlement Agreement, including the existence of the Agreement, may be construed as an admission that Defendant has violated any applicable laws or regulations;

WHEREAS, the Parties agree that the proposed settlement is fair, adequate, and reasonable;

WHEREAS, significant arm's-length settlement negotiations have taken place between the Parties and, as a result, this Settlement Agreement has been reached without collusion, subject to the Court-approval process set forth herein;

WHEREAS, the undersigned Parties believe this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate and in the best interest of Class Members; and

WHEREAS, this Settlement Agreement is made and entered into by and between Plaintiffs, individually and on behalf of the Class, and FMC;

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

II. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. “Action” means the case originally captioned as *Jane Doe, et al. v. Siskiyou Hospital, Inc. d/b/a Fairchild Medical Center; and Does 1-100*, Superior Court of the State of California, County of Siskiyou, Case No. CVCV21-49.

B. “FMC” means Siskiyou Hospital, Inc. d/b/a Fairchild Medical Center, the defendant in the Action.

C. “Class” means the class defined as “All persons who were mailed a letter sent on behalf of FMC entitled Notice of Data Breach, dated on or about November 25, 2020.” Officers and directors of Defendant who received a Notice of Data Breach are excluded from the Class.

D. “Class Counsel” means James M. Treglio of Potter Handy LLP and Patrick N. Keegan of Keegan & Baker LLP.

E. “Class Counsel’s Fees and Expenses” means the reasonable attorneys’ fees and expenses of Class Counsel, paid from the Settlement Fund, subject to approval of the Court.

F. “Claim Form” means the form a Final Settlement Class member must submit to receive a Settlement Share under this Agreement, substantially similar to Exhibit 2.

G. “Class Members” and “Settlement Class Members” have the same meaning as “Class,” as set forth in paragraph C above.

H. “Class Notice” means the Court-approved form of notice to the Class substantially similar to Exhibit 1 hereto, mutually prepared and agreed upon by the Parties, informing the Class of, among other things, (i) the preliminary approval of the Settlement; (ii) the scheduling of the Final Approval Hearing; (iii) the settlement benefits available to Class Members; and (iv) their opportunity to participate in, object to, or exclude themselves from, the Settlement.

I. “Class Notice Date” means the date by which the Settlement Administrator (as defined in section II.CC., below) completes the mailing of a copy of the Class Notice by first class mail, postage prepaid, to each Class Member.

J. “Class Representatives” mean Jane Doe, Esther Burch, Elisabeth Schwab, Nicholas J. Smith and Tara F. Smith.

K. “Court” means the Superior Court of the State of California, County of Siskiyou.

L. “Defendant’s Counsel” means Claudia D. McCarron and James F. Monagle of Mullen Coughlin LLC.

M. “Effective Date” means the date by when: (a) if there are no objections to the settlement submitted, or any timely objections have been submitted and then withdrawn before entry of the Final Approval Order, then the date the Court enters the Final Approval Order; or (b) if an objection to the settlement has been submitted by a member of the Final Settlement Class found by the Court to have standing to object, sixty-five (65) calendar days after the Court enters the Final Approval Order; or (c) if any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order has been filed by a member of the Final Settlement Class found by the Court to have standing to object, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Final Approval Order have been finally and conclusively dismissed with no right to pursue further remedies or relief.

N. “Final Approval Hearing” means the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order and at which the Court may or may not consider and finally decide approving payment of any Incentive Award and Class Counsel’s Fees and Expenses.

O. “Final Approval Order” means the order of the Court that approves this Settlement Agreement and makes such other final rulings as are contemplated by this Settlement Agreement, which may or may not include approving payment of any Incentive Award and Class Counsel’s Fees and Expenses.

P. “Final Settlement Class” refers to all members of the Settlement Class who do not timely and validly exclude themselves from the Class in compliance with the exclusion procedures set forth in this Agreement.

Q. “Identity Theft Protection Package” means three (3) years of Experian identity theft protection to be automatically provided to all Final Settlement Class members that is comparable to Experian IdentityWorksSM Premium product which is available to the public directly through Experian and includes Social Security Number Trace (For minor Final Settlement Class members, alerts of all names, aliases and addresses that become associated with a minor’s Social Security Number (SSN) on the Experian credit report); Internet Surveillance (Technology searches the web, chat rooms & bulletin boards 24/7 to identify trading or selling of personal information on the Dark Web); Credit Monitoring (For adult Final Settlement Class members, actively monitors Experian files for indicators of fraud); Identity Restoration (Identity Restoration specialists are immediately available to help address credit and non-credit related fraud); Experian IdentityWorks ExtendCARE (Identity Restoration support even after the Experian IdentityWorks membership has expired); and Up to \$1 Million Identity Theft Insurance (Provides coverage for certain costs and unauthorized electronic fund transfers).

R. “Incentive Award” means the amount to be paid to each Class Representative to compensate him or her for the time and effort on behalf of the Class, subject to approval of the Court, and which shall not exceed an amount of five thousand dollars (\$5,000.00) to each of the Class Representatives.

S. “Mailed Notice” means the Class Notice sent by U.S. Mail.

T. “Objection Date” means forty-five (45) days from the Class Notice Date, or a date otherwise ordered by the Court, for members of the Class to object to the Settlement Agreement’s terms or Class Counsel’s Fees and Expenses, and to submit any required statements, proof, or other materials and/or argument.

U. “Parties” means the Plaintiffs and Defendant.

V. “Plaintiffs” means the Class Representatives as defined above.

W. “Preliminary Approval Order” means the order of the Court preliminarily approving this Settlement Agreement.

X. “Released Claims” means the claims released by this Settlement Agreement, as set forth in Section X.

Y. “Released Parties” means FMC, and its parents, subsidiaries, predecessors, successors, divisions, joint ventures, affiliates and related entities and all of their respective past and present directors, officers, employees, partners, principals, agents, attorneys, insurers, reinsurers, assigns, and related or affiliated entities.

Z. “Request for Exclusion” means a timely and valid request by any Class Member for exclusion from the Settlement. To the extent any Class Member delivers both a timely and valid Claim Form to the Settlement Administrator and a timely and valid request for exclusion, the request for exclusion will be deemed to be invalid and the Claim Form will be processed.

AA. “Request for Exclusion Deadline” means forty-five (45) days from the Class Notice Date, or a date otherwise ordered by the Court, for members of the Class to request exclusion from the Settlement.

BB. “Settlement” and “Settlement Agreement” means the agreement by the Parties to resolve this Litigation, the terms of which have been memorialized herein.

CC. “Settlement Administrator” means the ILYM Group, Inc.

DD. “Settlement Fund” means the sum of \$1,150,000, to be paid by FMC and to be used for payment of Class Counsel’s Fees and Expenses, the Incentive Award, purchase of the Identity Theft Protection Package, the Settlement Share, and payment of the costs and expenses of notice and administration of the Settlement by the Settlement Administrator.

EE. “Settlement Share” refers to the pro rata payment as calculated in Section IV.F. to which a member of the Final Settlement Class who timely submits a valid Claim Form becomes entitled pursuant to this Settlement. To be timely, a member of the Final Settlement Class must submit a timely and valid Claim Form within forty-five (45) days from the Class Notice Date, or a date otherwise ordered by the Court.

III. REQUIRED EVENTS

Promptly after execution of this Settlement Agreement by all Parties:

A. Class Counsel and Defendant's Counsel shall take all reasonable and necessary steps to obtain entry of the Preliminary Approval Order and obtain entry of the Final Approval Order. Class Counsel, with FMC's pre-filing review and approval, shall prepare and file all documents in connection with the Motion for Preliminary Approval and the Motion for Final Approval.

B. In the event that the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court. If, despite their best efforts, the Parties cannot cure said defects, the Settlement Agreement is voidable at the election of Plaintiffs or Defendant with each party returning to their respective pre-settlement posture and without prejudice or waiver to any party's pre-settlement position on any legal or factual issue.

C. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Agreement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

D. Upon Entry of the Final Approval Order, the Court shall enter Judgment in accordance with the terms of this Settlement Agreement, substantially as provided in the [Proposed] Final Order and Judgment attached to this Agreement as Exhibit 3. The Final Order and Judgment shall enjoin the prosecution of any litigation or class action by Plaintiffs or any Class Member related to or arising out of the Complaint and Action.

IV. SETTLEMENT TERMS

A. **Cash Payment:** FMC agrees to pay the sum of one million, one hundred and fifty thousand dollars (\$1,150,000.00) for the creation of the "Settlement Fund." No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendant will advance to the Settlement Administrator the estimated cost of preparing and mailing the Notice of Class Action Settlement to Class Members. The balance of the amount required by Defendant to be paid to the Settlement Administrator in connection with the Final Approval Order will be due within fourteen (14) calendar days of the Effective Date of Class Settlement. The Settlement Administrator shall establish a Qualified Settlement Fund (QSF), as defined by 26 C.F.R. 1.468B-1, for the deposit of the payment of the balance of the Settlement Fund. Under no circumstances will FMC have any further monetary payment obligation other than the payment of the Settlement Fund. There will be no reversion of the Settlement Fund to FMC. A portion of the Settlement Fund may be allocated for the purchase of the Identity Theft Protection Package.

B. **Identity Theft Protection Package:** All Final Settlement Class members shall automatically receive, free of charge, three (3) years of the Identity Theft Protection Package (as defined in Section II above), from the date of activation. Within thirty (30) days of the Effective

Date, each Final Settlement Class member shall be sent (via U.S. mail) a code to allow them to activate their Identity Theft Protection Package subscription. Members of the Final Settlement Class will have ninety (90) days after the code is sent to activate their Identity Theft Protection Package subscription. The retail price of the Identity Theft Protection Package for three years is approximately \$719.64. Class Counsel estimates, and Defendant agrees not to dispute, that, if fully utilized, this portion of the settlement may amount to approximately \$28,569,708.00 of value to the Class. This value was estimated by multiplying the number of Class Members (39,700) by the retail price to consumers of approximately \$19.99 per month for the identity theft and credit monitoring package (*see* <https://www.experian.com/consumer-products/identity-theft-and-credit-protection.html>).

C. Payments from Settlement Fund: The cost of the Identity Theft Protection Package, settlement administration, including notice and distributions to members of the Final Settlement Class, the costs of administrating the Settlement Fund, and reasonable fees of the Settlement Administrator, Class Counsel’s Fees and Expenses and Class Representatives’ Incentive Awards shall be paid exclusively from the Settlement Fund. There will be no reversion of the Settlement Fund to FMC.

D. Incentive Awards to the Class Representatives: Each Class Representative will request an Incentive Award payment from the Settlement Fund in an amount not to exceed five thousand dollars (\$5,000.00) in recognition of the risks taken by Plaintiffs as the Class Representatives in commencing the Action, both financial and otherwise. Defendant will not oppose Plaintiffs’ requests for Incentive Award payments from the Settlement Fund in these amounts. The incentive awards shall be in addition to the other benefits provided by the Settlement to Final Settlement Class members.

E. Payment of Plaintiffs’ Attorneys’ Fees and Costs: Plaintiffs will request for reasonable attorneys’ fees and litigation costs from the Settlement Fund in an amount not to exceed six hundred and sixty thousand dollars (\$660,000.00), which is less than two and one-third percent (2⅓%) of value of Identity Theft Protection Package subscription (\$28,569,708.00). Defendant will not oppose Plaintiffs’ request for reasonable attorneys’ fees and litigation costs from the Settlement Fund in this amount.

F. Payment of Settlement Share to Class Members: Each member of the Final Settlement Class who submits a timely and valid Claim Form shall be entitled receive to a pro rata cash distribution payment from the Settlement Fund referred to as the “Settlement Share.” The Settlement Administrator shall calculate the Settlement Share by (i) taking the Settlement Fund; (ii) subtracting the amounts to be paid for cost of the Identity Theft Protection Package; and settlement administration, including notice to Class Members and reasonable fees of the Settlement Administrator, Class Counsel’s Fees and Expenses and Class Representatives’ Incentive Awards, as approved by the Court (= Z); and (iii) dividing the sum of such number by the number of Class Members who do not opt out of the Settlement and who submit a timely and valid Claim Form within forty-five (45) days from the Class Notice Date (= X) as represented in the following formula:

$$\text{Settlement Share} = \frac{\text{Settlement Fund} - Z}{X}$$

G. Remedial Measures: Together with the data security measures Defendant had employed prior to the alleged confidentiality breach, which Defendant contends were adequate, reasonable and legally compliant, Defendant has provided or will provide additional remedial measures and Defendant values these measures at approximately One Hundred and Forty Five Thousand Dollars (\$145,000). Defendant will provide a declaration in support of the Settlement, acknowledging and stipulating that Defendant's data security measures include or will include:

- a. Efforts by FMC's IT Department, key IT Staff, and third-party forensic specialists to ensure remediation of servers determined to be affected by the Data Security Incident;
- b. Purchase of additional servers and storage space;
- c. Completion of a Penetration Test to ensure the security of the FMC network;
- d. Purchase and installation of additional endpoint protection software to protect against unauthorized access to the FMC network.

H. Settlement Value: As a result of the forgoing value, the Parties agree that the Settlement Benefits to the Class are valued at approximately \$30 million, as consideration to settle this matter on a class-wide basis.

V. REQUESTS FOR CASH PAYMENTS BY CLASS MEMBERS

A. Members of the Final Settlement Class will be required to submit a Claim Form to receive a pro rata cash distribution payment from the Settlement Fund referred to as the "Settlement Share." Each Final Settlement Class member is limited to the submission of one Claim Form and in no event shall a Final Settlement Class member receive more than one Settlement Share. The Settlement Administrator will issue Settlement Share checks only to Final Settlement Class members who submit timely and valid Claim Forms. To be entitled to receive a Settlement Share under this Agreement, Class Members must properly complete a Claim Form and timely deliver it to the Settlement Administrator within forty-five (45) days from the Class Notice Date. The delivery date for submission of a Claim Form is deemed to be the date (a) the form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. Mail, or (b) in the case of submission electronically through the settlement website, the date the Settlement Administrator receives the form, as evidenced by the transmission receipt. Any Class Member who fails to submit a valid and timely Claim Form will not receive a Settlement Share under this Agreement but will still be able to obtain other benefits provided by the Settlement.

B. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a weekly report informing them of any and all Claim Forms received by the Settlement Administrator during each week following the Class Notice Date. The Settlement Administrator must file a Declaration identifying the number of Claim Forms received no later than seven (7) days after the deadline for submission of Claim Forms.

C. Amount of Settlement Share Checks sent to Class Members: The amount of each Settlement Share check sent to members of the Final Settlement Class who submit a timely and valid Claim Form will be determined by the Settlement Administrator by making a calculation of a pro rata cash distribution payment from the Settlement Fund to all members of the Final

Settlement Class who submit a timely and valid Claim Form pursuant to Section IV.F and V.A. If the Court approves the amounts to be requested for the cost of the Identity Theft Protection Package, and settlement administration, including notice to Class Members and reasonable fees of the Settlement Administrator, Class Counsel's Fees and Expenses and Class Representatives' Incentive Awards, a Settlement Share check is estimated to be fifty dollars (\$50.00) if the total number of timely and valid Claim Forms received equals 4,600.

D. Disbursement of Settlement Share Checks: Within thirty (30) days of Effective Date, the Settlement Administrator will disburse Settlement Share checks to each Final Settlement Class member who submits a timely and valid Claim Form pursuant to Section IV.F and V.A. For any Settlement Share check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator will make reasonable efforts to find a valid address, including skip tracing, and resend any returned Settlement Share check within thirty (30) days after the Settlement Share check is returned to the Settlement Administrator as undeliverable.

E. Failure to Cash Settlement Share Checks: Absent a demonstration of reasonable circumstances for excuse, any Settlement Share check not cashed within ninety (90) days of issuance (based on the date of the check) will be deemed expired. Any member of the Final Settlement Class who does not cash their Settlement Share check within the aforementioned time period may petition the Settlement Administrator within thirty (30) days of the expiration of their uncashed check to reissue their Settlement Share check, and the Settlement Administrator will issue a new check. Members of the Final Settlement Class are entitled to only one petition on this basis, and any Settlement Share check reissued for such reasonable circumstances will expire within thirty (30) days of issuance (based on the date of the check). Final Settlement Class members who do not timely cash their Settlement Share checks and fail to petition for a reissuance of the uncashed Settlement Share check will be considered as having waived any right to a cash payment under the Settlement Agreement but will still be able to obtain other benefits provided by the Settlement. In no event will a Final Settlement Class member be permitted to cash a check once the value of uncashed checks has been paid to a *cy pres* organization (pursuant to Section V.F.).

F. Payment of Uncashed Checks to a Cy Pres Organization (if necessary): The total amount of uncashed Settlement Share checks will be paid to a charitable organization to be agreed upon by FMC and Class Counsel, and approved by the Court, for the provision of services to victims of identity theft and fraud-related crimes or, alternatively, to a charitable organization that conducts services the Court deems appropriate given the facts underlying the Litigation.

VI. IDENTITY THEFT PROTECTION PACKAGE ACTIVATION

A. Disbursement of Activation Codes for Identity Theft Protection Package: Within fourteen (14) days following entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator a list of all Class Members in Excel format that also includes each Class Member's Date of Birth information which is necessary for the processing of Identity Theft Protection Package benefits. FMC agrees that the Settlement Administrator can disclose the total number of Class Members who will be eighteen (18) years old through the end of the activation period with Class Counsel. No later than thirty (30) days after the Effective Date, the

Settlement Administrator will send to Experian (i) payment to Experian for Identity Theft Protection Package for all Final Settlement Class members and (ii) a list of Final Settlement Class members, in order to allow Experian to send the Settlement Administrator activation codes for each member of the Final Settlement Class to activate their Identity Theft Protection Package subscription.

B. Activation of Identity Theft Protection Package Subscription: Final Settlement Class members will have ninety (90) days after the code is sent to them by the Settlement Administrator to activate their Identity Theft Protection Package subscription. Any member of the Final Settlement Class who fails to activate their Identity Theft Protection Package subscription by the activation deadline will be considered as having waived any right to activate their Identity Theft Protection Package subscription, but will still be able to obtain other benefits provided by the Settlement.

VII. SETTLEMENT ADMINISTRATION

A. Engagement of Settlement Administrator. Promptly upon entry of the Preliminary Approval Order (if not sooner), the Parties shall engage ILYM Group, Inc. as the Settlement Administrator, which shall be paid reasonable fees, estimated not to exceed \$100,000.00, and who has agreed not to seek a payment in excess of \$100,000.00, exclusively from the Settlement Fund.

B. Duties of Settlement Administrator. In addition to other duties as set forth in this Agreement, the Settlement Administrator shall be solely responsible for the following:

1. Preparing, printing, and disseminating the Class Notice to Class Members.
2. Not later than twenty (20) days after the Court's entry of a Preliminary Approval Order, sending by First Class Mail the Class Notice to all known Class Members. The Parties agree to use their best efforts and to work cooperatively to obtain the best practicable Class Member contact information prior to the date of the first Mailed Notice.
3. From the date of the first Mailed Notice, and thereafter for six (6) months after the Effective Date, maintaining (i) the settlement website, www.FMCprivacyclassaction.com, that will include information about how to contact Class Counsel and how to submit a Claim Form, a copy of the Class Notice, and a copy of the Settlement Agreement; and (ii) an 800 number with recorded answers to commonly asked settlement questions and reference to the settlement website.
4. Keeping track of Requests for Exclusion, including maintaining the original mailing envelope in which each request was mailed.
5. Keeping track of Claim Forms, including maintaining the original mailing envelope in which each form was mailed.

6. Keeping track of objections, including maintaining the original mailing envelope in which each objection was mailed.
7. Keeping track of all other communications from Class Members, including maintaining the original mailing envelope in which any communication was mailed.
8. Maintaining adequate records of its activities, including the dates of each mailing of Class Notices, returned mail and other communications and attempted written or electronic communications with Class Members.
9. Promptly furnishing to counsel for the Parties (i) copies of any Requests for Exclusion from Class Members; (ii) copies of objections by Class Members; and (iii) all other written or electronic communications received from Class Members.
10. Determining whether Requests for Exclusion comply with the terms of this Agreement and are timely and valid and effective to exclude the submitting Class Member from the Class.
11. Determining whether Claim Forms comply with the terms of this Agreement and are timely and valid.
12. Promptly preparing and distributing any revocation of a Request for Exclusion to the submitting Class Member. Revocations shall set forth the reasons for revocation, including the reason(s) the Request for Exclusion fails to comply with the terms of this Agreement.
13. Promptly preparing and distributing any revocation of a Claim Form to the submitting Class Member. Revocations shall set forth the reasons for revocation, including the reason(s) the Claim Form fails to comply with the terms of this Agreement.
14. Delivering to the Parties' counsel in a reasonably timely manner, but in no event later than ten (10) court days before the Final Approval Hearing, a written report concerning all Requests for Exclusion, all Claim Forms, all revocations of Requests for Exclusion and Claim Forms, and all objections.
15. Establishing a Qualified Settlement Fund (QSF), as defined by 26 C.F.R. 1.468B-1, for the deposit of the payment of the Settlement Fund, ensuring that all taxes associated with the administration of the Settlement Fund are timely paid to the appropriate tax authorities and all tax filings are timely filed, which shall be paid from the Settlement Fund.
16. Determining the Settlement Share of each member of the Final Settlement Class in accordance with this Agreement.
17. Preparing a list of Final Settlement Class members.

18. Not later than thirty (30) days after the Effective Date, distributing the Settlement Share of each Final Settlement Class member who submitted a timely and valid Claim Form by sending a check by First Class Mail to each such member in the amount of the Settlement Share.
19. Not later than thirty (30) days after the Effective Date, sending payment to Experian for Identity Theft Protection Package for all members of the Final Settlement Class.
20. Not later than thirty (30) days after the Effective Date, distributing the activation codes to each Final Settlement Class member by First Class Mail.
21. Not later than thirty (30) days after the Effective Date, distributing any Incentive Award approved by the Court by sending a check by First Class Mail in the amount of the award approved by the Court, to each Class Representative.
22. Not later than thirty (30) days after the Effective Date, preparing and distributing, in accordance with this Agreement and Final Approval Order, or Final Approval Order on Fees, Class Counsel's reasonable attorneys' fees and costs.
23. Confirming in writing its completion of the administration of the Settlement.

C. **Costs of Settlement Administration.** All expenses incurred in administering this Settlement Agreement, including, without limitation, the cost of the Class Notice, settlement website, 800 number, the cost of distributing and administering the benefits of the Settlement Agreement, and the Settlement Administrator's reasonable fees, up to \$100,000.00, shall be paid to the Settlement Administrator from the Settlement Fund, subject to approval of the Court.

VIII. REQUESTS FOR EXCLUSION BY CLASS MEMBERS

A. Any Class Member may make a Request for Exclusion by mailing such request in writing to the Settlement Administrator at the address set forth in the Class Notice. Any Request for Exclusion must be postmarked not later than forty-five (45) days after the date of Mailed Notice or such other date specified in the Court's Preliminary Approval Order. The Request for Exclusion shall (i) state the Class Member's full name and current address, and be personally signed, and (ii) specifically state his or her desire to be excluded from the Settlement and from the Class. Failure to comply with these requirements and to timely submit the Request for Exclusion will result in the Class Member being bound by the terms of the Settlement.

B. Any Class Member who submits a timely Request for Exclusion may not make any objections to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

C. The Settlement Administrator shall provide Class Counsel and Defendant's counsel with a weekly report informing them of any Requests for Exclusion received by to the Settlement

Administrator during each week following the Class Notice Date. The Settlement Administrator must file a Declaration attaching all Requests for Exclusion received with the Court and serve copies on Defendant's counsel and Class Counsel no later than seven (7) days after the deadline for submission of the Requests for Exclusion.

D. No party will solicit or encourage Requests for Exclusion. Any attempt to do so by Plaintiffs or Defendant will be deemed a breach of this Settlement Agreement.

IX. OBJECTIONS TO SETTLEMENT BY CLASS MEMBERS

A. Any Class Member may make an objection to the proposed Settlement by mailing a letter to the Settlement Administrator at the address set forth in the Class Notice. Any objection to be considered valid must be mailed and postmarked no later than the Objection Date, i.e. forty-five (45) days from the date of Mailed Notice or such date as otherwise ordered by the Court. Any Class Member who has submitted a Request for Exclusion may not submit any objections or speak at the Final Approval Hearing.

B. To state a valid objection to the Settlement, an objecting Class Member must mail a letter to a designate member of Class Counsel, Defendant's Counsel, and the Settlement Administrator setting forth all of the following information in writing: (i) the objector's full name, current address, current telephone number, and be personally signed; (ii) documentation sufficient to establish membership in the Class, such as a copy of the Class Notice he or she received; (iii) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (iv) provide copies of any other documents that the objector wishes to submit in support of his/her position; (v) whether the objecting Class Member intends to appear at the Final Approval Hearing; and (vi) whether the objecting Class Member is represented by counsel and if so, the name, address, and telephone number of his/her counsel.

C. Subject to approval of the Court, any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, but must file a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") at least fifteen days prior to the Final Approval Hearing or such other date set by the Court. By this provision, the Parties are not waiving and are expressly preserving their right to contest any appearance by an objector on any grounds, or from asserting any and all other potential defenses and privileges to any such appearance. The Notice of Intention to Appear should include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing.

D. The agreed-upon procedures and requirements for submitting objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement Agreement, in accordance with the due process rights of all Class Members. The Preliminary Approval Order and Class Notice will require all Class Members who have any objections to submit the objections to the Settlement Administrator at the address set forth in the Class Notice, by no later than the Objection Date.

E. Class Counsel will defend the Court's Final Approval Order, Final Approval Order on Fees, Judgment, and any related orders, in the event of an appeal.

X. RELEASE OF CLAIMS

A. Plaintiffs and Class Members who fail to timely make a Request for Exclusion from the Settlement release Defendant and Released Parties from any and all claims or causes of action alleged in the Action or which could have been alleged based on the legal theories, legal authorities, or facts asserted regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including all claims under the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56, *et seq.*; Business & Professions Code §§ 17200, *et seq.*; and the California Consumer Records Act, Cal. Civ. Code § 1798.82, as well as any and all claims, causes of action, damages, penalties, attorneys' fees, costs, and any other form of relief or remedy in law, equity, of whatever kind or nature and for any relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect, whether under federal law or the law of any state, local law and/or regulation, which the Plaintiffs or any Class Member has against Defendant or any of the Released Parties for any acts that were pled or could have been pled in the Action based on the facts, subject matter, or the factual or legal allegations in the Consolidated Amended Class Action Complaint ("Released Claims"). For avoidance of doubt, the Action and the Released Claims do not include any general negligence or professional medical negligence claims of any Class Members. The scope of the Released Claims is limited to claims in connection with the Notification Letter that were pled or could have been pled in the Action based on the facts, subject matter, or the factual or legal allegations in the Consolidated Amended Class Action Complaint.

B. Plaintiffs and Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California Civil Code with respect to the Released Claims. Section 1542 of the California Civil Code provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.."

C. This Settlement Agreement does not affect the rights of Class Members who submit a timely and valid Request for Exclusion from the Settlement Agreement.

D. Upon issuance of the Final Approval Order: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have opted out in accordance with the terms and provisions hereof; (ii) Defendant and Released Parties shall not be subject to liability or expense of any kind to any Class Member(s) for reasons related to the Litigation except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all Released Claims against Defendant and Released Parties.

XI. REPRESENTATIONS, WARRANTIES, AND COVENANTS

A. Class Counsel represent and warrant that they have the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal, valid, and binding obligation.

B. FMC, through its undersigned attorneys, represents, and warrants that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by FMC of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of FMC. This Settlement Agreement has been duly and validly executed and delivered by FMC and constitutes its legal, valid, and binding obligation.

C. **Final Settlement Class Member Signatures.** It is agreed that it is impossible or impractical to have each Final Settlement Class Member execute this Agreement. The Notices will advise all potential Class Members of the binding nature of the Releases, Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order; and each of those documents shall have the same force and effect as if each Final Settlement Class Member executed this Settlement Agreement.

XII. MISCELLANEOUS PROVISIONS

A. **Entire Agreement.** This Agreement and associated Exhibits constitute the entire agreement among the Parties and supersede any prior agreements among the Parties with respect to the subject matter hereof. All of the Exhibits referred to herein shall be incorporated by reference as though fully set forth herein. No representations, warranties, or inducements have been made to or relied upon by any Party concerning this Agreement or its Exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.

B. This Settlement Agreement is not to be used in evidence (except in connection with obtaining approval of this Settlement Agreement and enforcing its terms) and shall not at any time be construed or deemed to be any admission or concession by FMC with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. FMC specifically denies all of the allegations made in connection with the Action. Neither this Settlement Agreement nor any class certification pursuant to it shall constitute, in this or in any other proceeding, an admission by FMC, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Action, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' express understanding and agreement that if for any reason this Settlement is not approved by the Court, FMC may continue to contest and deny that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction.

C. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Final Approval Order is not entered or a Final Approval Order is subsequently reversed on appeal, the Parties agree to use their best efforts to cure any defect(s) identified by the Court. If, despite their best efforts, the Parties cannot cure said defects, this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation, and all Parties shall be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

D. Class Counsel recognizes that the Settlement Class includes current and former patients/customers of FMC and may include current and former FMC employees. Class Counsel consents to FMC communicating with and/or responding to inquiries from any Settlement Class Member, including in connection with the subject matter of this Settlement Agreement, provided the communication is not to discourage participation in the Settlement.

E. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Class Notice, Settlement Fund, and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

F. **Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of California, without regard to its choice of law principles.

G. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

H. Capitalized words, terms and phrases are used as defined in Section II, above.

I. This Settlement Agreement may not be modified or amended except in writing and signed by all of the Parties.

J. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic copies of this Settlement Agreement and the signatures hereto may be used with the same force and effect as an original.

K. Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his, her, or its own costs of the Litigation.

L. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers.

M. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the release. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to the Settlement Agreement as provided herein, and allowing for discovery related to objectors, if any.

N. The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. The Parties were represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

O. This Settlement Agreement constitutes the entire, fully integrated agreement among the Parties and cancels and supersedes all prior written and unwritten agreements and understandings pertaining to the Settlement of the Litigation.

P. The Parties agree that any disputes regarding the meaning of the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or as to any disagreement regarding the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, shall be submitted to the Court for resolution.

Q. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this agreement or by order of the Court, the day of the act, or default, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this agreement, and to modify or supplement any notice contemplated hereunder.

R. Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this agreement shall not be deemed a waiver of any

provision of this agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions herein.

S. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

For Class Counsel:



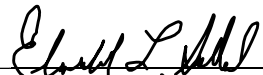
James M. Treglio
jim@potterhandy.com
Potter Handy LLP
8033 Linda Vista Rd. Ste. 200
San Diego, California 92111

Patrick N. Keegan
pkeegan@keeganbaker.com
Keegan & Baker, LLP
2292 Faraday Avenue, Suite 100
Carlsbad, CA 92008

For FMC:

Claudia D. McCarron
James F. Monagle
cmccarron@mullen.law
jmonagle@mullen.law
Mullen Coughlin LLC
426 W. Lancaster Avenue, Suite 200
Devon, PA 19333

IN WITNESS WHEREOF, Plaintiffs and FMC, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

| | |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Dated: <u>11/02/2021</u> |  _____ Jane Doe Plaintiff |
| Dated: <u>11/02/2021</u> |  _____ Esther Burch Plaintiff |
| Dated: <u>11/02/2021</u> |  _____ Elisabeth Schwab Plaintiff |
| Dated: _____ | _____ Nicholas J. Smith Plaintiff |
| Dated: _____ | _____ Tara F. Smith Plaintiff |

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For Class Counsel:

James M. Treglio
jim@potterhandy.com
Potter Handy LLP
8033 Linda Vista Rd. Ste. 200
San Diego, California 92111

Patrick N. Keegan
pkeegan@keeganbaker.com
Keegan & Baker, LLP
2292 Faraday Avenue, Suite 100
Carlsbad, CA 92008

For FMC:

Claudia D. McCarron
James F. Monagle
cmccarron@mullen.law
jmonagle@mullen.law
Mullen Coughlin LLC
426 W. Lancaster Avenue, Suite 200
Devon, PA 19333

IN WITNESS WHEREOF, Plaintiffs and FMC, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: _____

Jane Doe
Plaintiff

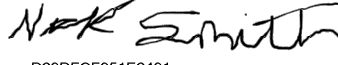
Dated: _____

Esther Burch
Plaintiff

Dated: _____

Elisabeth Schwab
Plaintiff

Dated: 11/4/2021

DocuSigned by:

D69DECF951E6491

Nicholas J. Smith
Plaintiff

Dated: _____

Tara F. Smith
Plaintiff

provision of this agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions herein.

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For Class Counsel:

James M. Treglio
jim@potterhandy.com
Potter Handy LLP
8033 Linda Vista Rd. Ste. 200
San Diego, California 92111

Patrick N. Keegan
pkeegan@keeganbaker.com
Keegan & Baker, LLP
2292 Faraday Avenue, Suite 100
Carlsbad, CA 92008

For FMC:

Claudia D. McCarron
James F. Monagle
cmccarron@mullen.law
jmonagle@mullen.law
Mullen Coughlin LLC
426 W. Lancaster Avenue, Suite 200
Devon, PA 19333

IN WITNESS WHEREOF, Plaintiffs and FMC, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: _____

Jane Doe
Plaintiff

Dated: _____

Esther Burch
Plaintiff

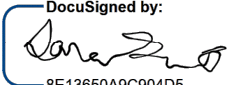
Dated: _____

Elisabeth Schwab
Plaintiff

Dated: _____

Nicholas J. Smith
Plaintiff

Dated: 11/10/2021 _____

DocuSigned by:


Tara F. Smith
Plaintiff

Dated: _____

James M. Treglio, Esq.
Potter Handy LLP
Attorneys for Plaintiffs

Dated: 11/5/2021

DocuSigned by:
Patrick Keegan
53D893559F5348F...

Patrick N. Keegan, Esq.
Keegan & Baker, LLP
Attorneys for Plaintiffs

Dated: _____

Print Name: _____
As the Duly Authorized Corporate Representative of
Defendant Siskiyou Hospital, Inc. d/b/a Fairchild
Medical Center

Dated: _____

James F. Monagle, Esq.
Mullen Coughlin, LLC
Attorneys for Defendant
Siskiyou Hospital, Inc. d/b/a Fairchild Medical
Center

Dated: _____

James M. Treglio, Esq.
Potter Handy LLP
Attorneys for Plaintiffs

Dated: _____

Patrick N. Keegan, Esq.
Keegan & Baker, LLP
Attorneys for Plaintiffs

Dated: 11/2/2021

DocuSigned by:
Jonathon Andrus
96524B30418B46C...

Jonathon Andrus, MHA, MBA
Chief Executive Officer
As the Duly Authorized Corporate Representative of
Defendant Siskiyou Hospital, Inc. d/b/a Fairchild
Medical Center

Dated: _____

James F. Monagle, Esq.
Mullen Coughlin, LLC
Attorneys for Defendant
**Siskiyou Hospital, Inc. d/b/a Fairchild Medical
Center**

Exhibit 1