

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

MARK MCCOOL, SHAWN  
MACDONALD, and WARREN HARLAN,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

AHS MANAGEMENT COMPANY, INC.,  
BOARD OF DIRECTORS OF AHS  
MANAGEMENT COMPANY, INC., and  
ARDENT HEALTH SERVICES  
BENEFITS PLAN ADMINISTRATION  
COMMITTEE,

Defendants.

No. 3:19-cv-1158

Hon. William L. Campbell, Jr.

Magistrate Judge Jeffery S. Frensley

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement is entered into between and among the Class Representatives, all Class Members, and the Defendants.

**1. ARTICLE 1 – DEFINITIONS**

As used in this Agreement, unless otherwise defined, the following terms have the meanings specified below:

- 1.1. “Action” means *McCool, et al. v. AHS Management Company, Inc., et al.*, No. 3:19-cv-1158, in the United States District Court for the Middle District of Tennessee.
- 1.2. “Active Account” means an individual investment account in the Plan with a balance greater than \$0 as of the time of calculation of the Final Entitlement Amount defined in the Plan of Allocation.
- 1.3. “Administrative Expenses” means expenses incurred in the administration of this Agreement, including (a) all fees, expenses, and costs associated with providing the Long Form and Short Form Postcard Settlement Notices to Class Members, including the fees of the Plan’s Recordkeeper to identify the names and addresses of Class Members; (b) related tax expenses (including taxes and tax expenses as

described in Section 4.3); (c) all expenses and costs associated with the distribution of funds under the Plan of Allocation, including the fees of the Plan's Recordkeeper associated with implementing the Agreement, facilitating the distribution of funds under the Plan of Allocation, and gathering the data necessary to prepare the Plan of Allocation; (d) all fees and expenses of the Settlement Administrator and Escrow Agent; (e) all fees and expenses of the Independent Fiduciary; and (f) all fees, expenses, and costs associated with providing CAFA Notices. Excluded from Administrative Expenses are the Settling Parties' respective legal fees and expenses. Administrative Expenses shall be paid from the Gross Settlement Amount.

- 1.4. "Agreed Confidentiality Order" means the agreed protective order entered by the Court on June 25, 2020 at Docket No. 57.
- 1.5. "Agreement" or "Settlement Agreement" means this agreement, including any modifications or amendments.
- 1.6. "AHS" or "Ardent" means AHS Management Company, Inc.
- 1.7. "Alternate Payee" means a Person other than a participant or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a qualified domestic relations order.
- 1.8. "Amended Complaint" means the First Amended Complaint filed on February 21, 2020 at Docket No. 22.
- 1.9. "Attorneys' Fees and Costs" means the amount awarded by the Court as compensation for the services of Class Counsel. The amount of attorneys' fees for Class Counsel shall not exceed one-third of the Gross Settlement Amount (a maximum amount of \$158,317.50) and shall be recovered from the Gross Settlement Amount. Class Counsel also will seek reimbursement for reasonable litigation costs and expenses they advanced during the Action which also shall be recovered from the Gross Settlement Amount.
- 1.10. "Authorized Administrator" means any entity, other than the Recordkeeper, with appropriate administrative authority under the Plan.
- 1.11. "Beneficiary" means any individual, trust, estate, or other recipient entitled to receive death benefits payable under the Plan, on either a primary or contingent basis, other than an Alternate Payee.
- 1.12. "CAFA" means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715.
- 1.13. "CAFA Notice" means notice of the proposed Settlement to the appropriate federal and state officials pursuant to CAFA, to be issued by Defendants.

- 1.14. “Case Contribution Awards” means the monetary amount awarded by the Court to each Class Representative in recognition of the Class Representative’s assistance in the prosecution of the Action, for which Class Counsel may seek an amount not exceeding \$10,000 per Class Representative payable from the Gross Settlement Amount. Any Case Contribution Award shall be subject to the approval of the Court.
- 1.15. “Class Counsel” means Capozzi Adler, P.C.
- 1.16. “Class Members” or “Settlement Class Members” means all individuals in the Settlement Class, including the Class Representatives.
- 1.17. “Class Period” means December 24, 2013 through the date of entry of the Preliminary Approval Order.
- 1.18. “Class Representatives” means Mark McCool, Shawn Macdonald, and Warren Harlan.
- 1.19. “Complaint” means the initial Complaint filed on December 24, 2019 at Docket No. 1 in this Action.
- 1.20. “Court” means the United States District Court for the Middle District of Tennessee.
- 1.21. “Defendants” means AHS Management Company, Inc., the Board of Directors of AHS Management Company, Inc., the Ardent Health Services Benefits Plan Administration Committee, and all of their respective past and present predecessors, successors, members, employees, officers, directors, trustees, and affiliates.
- 1.22. “Defense Counsel” means Sidley Austin LLP.
- 1.23. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*
- 1.24. “Escrow Agent” means Analytics LLC or another entity agreed to by the Settling Parties.
- 1.25. “Final Approval Hearing” means the hearing scheduled by the Court to consider (a) any objections by Class Members to the Settlement; (b) Class Counsel’s petition for Attorneys’ Fees and Costs and Class Representatives’ Case Contribution Awards; and (c) whether to finally approve the Settlement under Fed. R. Civ. P. 23(e). The Settling Parties agree that the Final Approval Hearing may be conducted telephonically or via videoconference.

- 1.26. “Final” means, with respect to any judicial ruling, order, or judgment, that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for certiorari, or the like (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of the judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. Absent an appeal or other attempted Review Proceeding, the period after which the Final Order becomes Final is 30 days after its entry by the Court, as calculated under Fed. R. Civ. P. 6(a).
- 1.27. “Final Order” means the entry of the order and final judgment approving the Agreement, implementing the terms of this Agreement, and dismissing the Action with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit E.
- 1.28. “Former Participant” means a member of the Settlement Class who does not have an Active Account as of the time of calculation of the Final Entitlement Amount defined in the Plan of Allocation.
- 1.29. “Gross Settlement Amount” means \$475,000, caused to be deposited into the Qualified Settlement Fund by Defendants and/or their insurer(s) in accordance with the Agreement. The Gross Settlement Amount shall be the sole payment to the Settlement Class, Plaintiffs, and Class Counsel made by or on behalf of Defendants in connection with the Settlement. Neither Defendants nor their insurer(s) will make any additional payment in connection with the Settlement of the Action.
- 1.30. “Independent Fiduciary” means an independent fiduciary who AHS selects to serve as a fiduciary to the Plan to approve and authorize the settlement of Released Claims on behalf of the Plan in accordance with Section 2.1. The Independent Fiduciary shall have no pre-existing relationship with or interest in any of the Settling Parties.
- 1.31. “Long Form Settlement Notice” means the notice, identical in all material respects to that attached as Exhibit B, to be made available on the Settlement Website (as defined in Section 1.47).
- 1.32. “Net Settlement Amount” means the Gross Settlement Amount minus (a) all Attorneys’ Fees and Costs paid to Class Counsel as authorized by the Court; (b) all Case Contribution Awards as authorized by the Court; (c) all Administrative Expenses; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties that is set aside by the Settlement Administrator for (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be

incurred after the Settlement Effective Date, and (3) an amount estimated for adjustments of data or calculation errors.

- 1.33. “Person” means an individual, partnership, corporation, governmental entity, or any other form of entity or organization.
- 1.34. “Plaintiffs” means the Class Representatives and each member of the Settlement Class.
- 1.35. “Plan” means the Ardent Health Services Retirement Savings Plan, and each of its predecessor plans, successor plans, merged and/or acquired plans, individually and collectively, and any trust created under such plans.
- 1.36. “Plan of Allocation” means the method of allocating settlement funds to Class Members. A proposed form of the Plan of Allocation is attached as Exhibit C.
- 1.37. “Preliminary Approval Order” means the order of the Court in substantially the form attached as Exhibit D.
- 1.38. “Qualified Settlement Fund” or “Settlement Fund” means the interest-bearing settlement fund account to be established and maintained by the Escrow Agent in accordance with Article 5 of the Agreement and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).
- 1.39. “Recordkeeper” means the entity that maintains electronic records of the Plan’s participants and their individual accounts.
- 1.40. “Released Claims” means any and all actual or potential claims (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement, litigation costs, injunction, declaration, contribution, indemnification, or any other type of legal or equitable relief), actions, suits, demands, rights, obligations, liabilities, expenses, costs, and causes of action that any Class Member ever had, now has, or will have in the future whether arising under federal, state, or local law, whether by statute, contract, or equity, whether brought directly or indirectly, in an individual or representative capacity, whether accrued or not, whether known or unknown, suspected or unsuspected, foreseen or unforeseen based in whole or in part on acts or failures to act through the date of the Final Order:
  - 1.40.1. That were asserted or could have been asserted in the Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, or could have been alleged, in the Complaint or Amended Complaint; and/or
  - 1.40.2. That arise out of, relate in any way to, are based on, or have any connection with (a) the selection, oversight, retention, monitoring,

compensation, fees, or performance of the Plan's investment options or service providers, including its recordkeeping and/or administrative service providers, its trustees, its auditors, and AHS in its role as a service provider to the Plan; (b) the selection, nomination, appointment, retention, monitoring, and removal of the Plan's fiduciaries; (c) fees, costs, or expenses charged to, paid by, or reimbursed by the Plan or any Class Member; (d) disclosures or failures to disclose information regarding the Plan's investment options, fees, or service providers; (e) the compensation received by the Plan's service providers; (f) the services provided to the Plan or the costs of those services; (g) the payment of compensation based on a percentage of total assets; (h) the management, oversight or administration of the Plan or its fiduciaries; (i) the use of Plan-related information by any of the Plan's service providers, including in marketing or selling any investment or wealth management products to the Plan's participants; (j) any use of the Plan's forfeiture account; or (k) alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions under ERISA; or

1.40.3. That would be barred by *res judicata* based on entry of the Final Order; or

1.40.4. That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any Class Member in accordance with the Plan of Allocation; or

1.40.5. That relate to the approval by the Independent Fiduciary of the Settlement, unless brought against the Independent Fiduciary alone; or

1.40.6. That relate to the Settlement Administrator's work or any acts or omissions by the Settlement Administrator, unless brought against the Settlement Administrator alone.

1.40.7. For the avoidance of doubt, "Released Claims" do not include any claims for vested benefits that may be asserted against the Plan that the Class Representatives or any member of the Settlement Class has or may have arising solely under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), to the extent such claims do not relate to the Released Claims in Section 1.40. However, other claims that were asserted, or which could have been asserted, in this action for breaches of fiduciary duty under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), or ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), are included within the definition of "Released Claims."

1.41. "Released Parties" means (a) Defendants; (b) Defendants' insurers, co-insurers, and reinsurers; (c) AHS's direct and indirect past, present, and future affiliates, parents, subsidiaries, divisions, joint ventures, predecessors, successors,

successors-in-interest, assigns, boards of trustees, boards of directors, officers, trustees, directors, partners, stockholders, agents, managers, members, employees, or heirs (including any individuals who serve or served in any of the foregoing capacities, such as members of the boards of trustees or boards of directors that are associated with any of Defendants' past, present, and future affiliates), and each Person that controls, is controlled by, or is under common control with them; (d) the Plan and the Plan's current and past fiduciaries, administrators, recordkeepers (including Mercer HR Services LLC, Transamerica Retirement Solutions, LLC, and Fidelity Investments), service providers, investment advisors (including SageView Advisory Group), trustees, consultants, auditors, attorneys, agents, insurers, and parties-in-interest; and (e) Defendants' independent contractors, representatives, attorneys, administrators, insurers, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them.

- 1.42. "Review Proceeding" has the meaning set forth in Section 1.26.
- 1.43. "Settlement" means the settlement to be consummated under this Agreement and its exhibits, including any modifications or amendments adopted pursuant to Section 14.9.
- 1.44. "Settlement Administrator" means Analytics LLC, the entity selected and retained by Class Counsel to administer the Settlement and Plan of Allocation.
- 1.45. "Settlement Class" means all persons, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their immediate family members who were participants in or beneficiaries of the Plan at any time during the Class Period.
- 1.46. "Settlement Effective Date" means the date on which the Final Order is Final, as long as the Settlement has not been terminated by then in accordance with Article 12.
- 1.47. "Settlement Website" means the website established by the Settlement Administrator, at the direction of Class Counsel, on which will be posted the following documents or links to the following documents following the date of the Preliminary Approval Order: the Amended Complaint, Settlement Agreement and its Exhibits, Long Form and Short Form Postcard Settlement Notices, Plaintiffs' Motion for Attorneys' Fees and Costs and Class Representative Case Contribution Awards, Plaintiffs' Motion for Final Approval of the Settlement, any



Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the Settlement Parties. The Settlement Administrator will take down the Settlement Website ninety days after it sends notice to Class Counsel and Defense Counsel that it has completed all aspects of the Plan of Allocation.

- 1.48. “Settling Parties” or “Parties” means the Defendants and the Class Representatives, on behalf of themselves, the Plan, and each of the Class Members.
- 1.49. “Short Form Postcard Settlement Notice” means the notice, identical in all material respects to that attached as Exhibit A, to be delivered to Settlement Class Members (as defined in Section 1.16) pursuant to Section 2.4 and made available on the Settlement Website (as defined in Section 1.47).
- 1.50. “Transferor” means AHS, as the “transferor” within the meaning of Treas. Reg. § 1.468B-1(d)(1).

**2. ARTICLE 2 – REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY, PRELIMINARY SETTLEMENT APPROVAL, AND NOTICE TO THE CLASS**

- 2.1. Independent Fiduciary. The Independent Fiduciary, retained by Defendants on behalf of the Plan, shall have the following responsibilities, including whether to approve and authorize the settlement of Released Claims on behalf of the Plan.
  - 2.1.1. The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in making its determination.
  - 2.1.2. The Independent Fiduciary shall notify Defendants directly of its determination, in writing (with copies to Class Counsel and Defense Counsel), no later than 30 days before the Final Approval Hearing.
  - 2.1.3. All fees and expenses associated with the Independent Fiduciary’s determination and performance of its other obligations in connection with the Settlement will constitute Administrative Expenses to be deducted from the Gross Settlement Amount.
  - 2.1.4. Defendants, Defense Counsel, and Class Counsel shall respond to the Independent Fiduciary’s reasonable requests for information so the Independent Fiduciary can evaluate the Agreement.
  - 2.1.5. If Defendants conclude that the Independent Fiduciary’s determination does not comply with PTE 2003-39 or is otherwise deficient, Defendants



shall so inform the Independent Fiduciary within 14 days of receipt of the determination.

- 2.1.6. A copy of the Independent Fiduciary determination letter and report shall be provided to Class Counsel, who may file it with the Court in support of final approval of the Settlement.
- 2.2. Preliminary Approval. As soon as reasonably possible, the Class Representatives, through Class Counsel, shall move for preliminary approval of the Settlement and for entry of the Preliminary Approval Order in substantially the form attached as Exhibit D. Defendants will not object to this motion.
- 2.3. Settlement Administrator. Defendants and Defense Counsel shall use reasonable efforts to promptly respond to written requests, including by e-mail, from the Settlement Administrator for readily accessible data that is reasonably necessary to determine the feasibility of administering the Plan of Allocation or to implement the Plan of Allocation. The actual and reasonable expenses of any third party, including the Plan's Recordkeeper, that are necessary to perform such work shall be Administrative Expenses to be deducted from the Gross Settlement Amount.
  - 2.3.1. The Settlement Administrator must agree to be bound by the Agreed Confidentiality Order and any further non-disclosure or security protocol required by the Settling Parties.
  - 2.3.2. The Settlement Administrator shall use the data provided by Defendants and the Plan's Recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator.
  - 2.3.3. At the request of the Settling Parties, the Settlement Administrator shall provide a written protocol addressing how the Settlement Administrator will maintain and store information relating to the Settlement to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of that information.
- 2.4. Settlement Notice. By the date and in the manner set by the Court in the Preliminary Approval Order, and unless otherwise set forth below, the Settlement Administrator shall cause to be sent to each Class Member identified by the Settlement Administrator the Short Form Postcard Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached as Exhibit A or as otherwise agreed by the Settling Parties and approved by the Court. The Settlement Administrator shall use commercially reasonable efforts to locate Class Members whose Short Form Postcard Settlement Notice is returned and re-send the Short Form Postcard Settlement Notice one additional time if a new address is found.

- 2.5. CAFA Notice. No later than 10 days after the filing of the motion for preliminary approval of the Settlement, Defendants will serve the CAFA Notice on the Attorney General of the United States, the Secretary of the Department of Labor, and the attorneys general of all states in which Class Members reside, as specified by 28 U.S.C. § 1715.

### **3. ARTICLE 3 – FINAL SETTLEMENT APPROVAL**

- 3.1. No later than 30 days before the date for filing objections set in the Preliminary Approval Order, Class Counsel shall submit to the Court a motion for entry of the Final Order (Exhibit E) in the form approved by Class Counsel and Defense Counsel, which shall request the Court’s approval of the Settlement and entry of the Final Order.
- 3.2. The Final Order and judgment entered by the Court approving the Agreement shall provide that upon its entry, all Settling Parties, the Settlement Class, and the Plan shall be bound by the Agreement and the Final Order.

### **4. ARTICLE 4 – ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

- 4.1. No later than 14 days after the Preliminary Approval Order is issued, the Settlement Administrator shall establish the Qualified Settlement Fund with the Escrow Agent. The Qualified Settlement Fund is intended to be, and will be, an interest-bearing “qualified settlement fund” within the meaning of Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1. The Settlement Administrator shall timely make any elections that are necessary or advisable to carry out the provisions of this Section 4.1. If applicable, the Settlement Administrator (as the “administrator” pursuant to Section 4.2) and the Transferor shall fully cooperate in filing the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) to treat the Qualified Settlement Fund as coming into existence as a “qualified settlement fund” within the meaning of Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1 as of the earliest permitted date. Such elections shall comply with the procedures and requirements in those regulations. The Settlement Administrator shall prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties and cause the appropriate filing to be timely made.
- 4.2. The “administrator” within the meaning of Treas. Reg. § 1.468B-2(k)(3) shall be the Settlement Administrator. The Settlement Administrator shall timely and properly cause to be filed on behalf of the Qualified Settlement Fund all informational and other tax returns required by Treas. Reg. §§ 1.468B-2(k) and -2(l) with respect to the Gross Settlement Amount (including applying for a taxpayer identification number for the Qualified Settlement Fund pursuant to Internal Revenue Service Form SS-4 and in accordance with Treas. Reg. § 1.468B-2(k)(4)). These returns as well as any election described in Section 4.1 shall be consistent with this Article 4 and, in all events, shall reflect that all taxes

(including any estimated taxes, interest, or penalties) on the income earned by the Qualified Settlement Fund shall be deducted and paid from the Gross Settlement Amount as provided in Section 4.3.

- 4.3. Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including: (a) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed on Defendants with respect to any income earned by the Gross Settlement Amount for any period when the Gross Settlement Fund does not qualify as a “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1; and (b) all tax expenses and costs incurred in connection with the operation and implementation of this Article 4 (including expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 4). Such taxes and tax expenses shall be Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Gross Settlement Amount. The Settlement Administrator shall ensure compliance with withholding and reporting requirements in accordance with Treas. Reg. § 1.468B-2(l) and shall be obligated (notwithstanding anything in the Agreement to the contrary) to withhold from distribution to any Class Member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses. Neither the Released Parties, Defense Counsel, nor Class Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account. The Settling Parties agree to cooperate with the Settlement Administrator, Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 4.
- 4.4. Within 60 days after the later of (a) the entry of the Preliminary Approval Order, or (b) the date the Qualified Settlement Fund is established and the Settlement Administrator (or Class Counsel) has furnished to Defendants and/or Defense Counsel in writing the Qualified Settlement Fund name, IRS W-9 Form, and all necessary wiring instructions, the Transferor shall deposit \$100,000 into the Qualified Settlement Fund as the first installment of the Gross Settlement Amount.
- 4.5. Within 21 days after the Settlement Effective Date, the Transferor shall deposit the remainder of the Gross Settlement Amount (\$375,000) into the Qualified Settlement Fund.
- 4.6. The Settlement Administrator shall, at the written direction of Class Counsel, cause the Escrow Agent to invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the full faith and credit of the United States Government or one of its agencies, or fully insured by the United States Government or one of its agencies, and shall

cause the Escrow Agent to reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

- 4.7. The Settlement Administrator shall not disburse the Gross Settlement Amount or any portion of it from the Qualified Settlement Fund except as provided in this Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defense Counsel. Subject to the orders of the Court, the Settlement Administrator is authorized to execute transactions that are consistent with the terms of this Agreement.
- 4.8. The Settlement Administrator shall provide for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund, and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. The Released Parties, Defense Counsel, and Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.
- 4.9. No later than February 15 of the year following the calendar year in which Defendants, their insurer(s), or agents make any transfer to the Qualified Settlement Fund pursuant to this Article 4, Defendants, their insurer(s), or agents shall timely furnish a statement to the Settlement Administrator that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B-3(e)(2)(ii), and shall attach a copy of the statement to its federal income tax return filed for the taxable year in which Defendants, their insurer(s), or agents make a transfer to the Qualified Settlement Fund.

## **5. PAYMENTS FROM THE QUALIFIED SETTLEMENT FUND**

- 5.1. Disbursements from Qualified Settlement Fund before the Settlement Effective Date. Class Counsel, subject to the approval of Defendants (which shall not be unreasonably withheld) shall direct the Escrow Agent to disburse money from the Qualified Settlement Fund as follows:
  - 5.1.1. Settlement Notice Expenses. After entry of the Preliminary Approval Order, the Escrow Agent shall be directed in writing to disburse from the Qualified Settlement Fund an amount sufficient for the payment of costs of the Long Form and Short Form Postcard Settlement Notices. Class Counsel has selected the Settlement Administrator to assist with Class Notice, and Defendants agreed to this selection. The Settlement Administrator shall abide by the Agreed Protective Order to protect information relating to the Settlement. Any costs, expenses, or fees incurred in connection with the administration of this Settlement shall be paid out of the Qualified Settlement Fund.

- 5.1.2. For taxes and expenses of the Qualified Settlement Fund as provided in Section 4.3.
  - 5.1.3. For fees and expenses of the Independent Fiduciary. The Escrow Agent shall be directed to disburse money from the Qualified Settlement Fund to pay the reasonable costs, fees, and expenses of the Independent Fiduciary. To the extent Defendants and/or their insurer(s) pay any costs, fees, or expenses to the Independent Fiduciary before proceeds from the Qualified Settlement Fund are available for distribution, the Escrow Agent shall be directed to reimburse Defendants and/or their insurer(s) for those amounts.
  - 5.1.4. For costs and expenses of the Settlement Administrator in implementing the Plan of Allocation and otherwise administering the Settlement.
  - 5.1.5. For costs and expenses incurred by the Recordkeeper (or Authorized Administrator) in implementing this Settlement. To the extent Defendants pay these costs, they will have the right to recover any sums paid from the Qualified Settlement Fund.
- 5.2. Following the payment of the second installment of the Gross Settlement Amount as set forth in Section 4.5, Class Counsel shall direct the Escrow Agent to disburse money from the Qualified Settlement Fund as follows:
- 5.2.1. For Attorneys' Fees and Costs, as approved by the Court, within 28 days of the Settlement Effective Date. The Court's failure to approve in part any application for Attorneys' Fees and Costs sought by Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Settlement. If the Agreement does not become effective, or the judgment or the order making the fee and cost award is reversed or modified, or the Agreement is canceled or terminated for any other reason, and the reversal, modification, cancellation, or termination becomes Final and not subject to review, and if the fee and cost award has been paid to any extent, then Class Counsel with respect to the entire fee and cost award shall within 30 days from receiving notice from Defense Counsel or from a court of appropriate jurisdiction, refund to the Qualified Settlement Fund the fees and expenses previously paid to it from the Qualified Settlement Fund plus interest at the same rate earned on the Qualified Settlement Fund in an amount consistent with such reversal or modification.
  - 5.2.2. For Class Representatives' Case Contribution Awards, as approved by the Court, no later than 28 days of the Settlement Effective Date.
  - 5.2.3. For costs and expenses of the Settlement Administrator in implementing the Plan of Allocation and otherwise administering the Settlement that were not previously paid.

- 5.2.4. For costs and expenses incurred by the Recordkeeper (or Authorized Administrator) in implementing this Settlement that were not previously paid. To the extent Defendants pay these costs, they will have the right to recover any sums paid from the Qualified Settlement Fund.
- 5.2.5. The Net Settlement Amount will be distributed in accordance with the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.
- 5.3. Implementation of the Plan of Allocation. Class Counsel shall propose to the Court a Plan of Allocation, in substantial conformity to the one attached as Exhibit C, which shall provide for the calculation, allocation, and distribution of the Net Settlement Amount. The Settlement Administrator shall be exclusively responsible and liable for calculating the amounts payable to Class Members pursuant to the Plan of Allocation. Upon the Settlement Effective Date, and after the amounts payable pursuant to Sections 5.1 and 5.2 have been disbursed, or, in the case of future estimated expenses set aside and withheld, Class Counsel shall direct the Escrow Agent to disburse the Net Settlement Amount as provided by this Agreement and the Plan of Allocation. The Recordkeeper or an Authorized Administrator shall allocate to the Plan accounts of Class Members who are not Former Participants any Net Settlement Amount as calculated by the Settlement Administrator according to the Plan of Allocation. Class Counsel shall direct the Settlement Administrator to provide to the Recordkeeper or Authorized Administrator the calculations made under the Plan of Allocation by no later than the date of the distribution of the Net Settlement Amount. The Settlement Administrator shall promptly notify Class Counsel as to the date(s) and amounts of allocations made to Class Members who are not Former Participants. The Settlement Administrator shall be responsible for distributing the Net Settlement Amount allocated to Former Participants as provided by the Plan of Allocation, as well as complying with all tax laws, rules, and regulations and withholding obligations with respect to Former Participants. The Defendants shall have no responsibility or liability related to the structure or taxability of any allocations made from the Net Settlement Amount pursuant to this Agreement. Nothing in this Agreement shall constitute approval or disapproval of the Plan of Allocation by Defendants, and Defendants shall have no responsibility or liability for the Plan of Allocation and shall take no position for or against the Plan of Allocation.
- 5.4. The Net Settlement Amount distributed pursuant to the Plan of Allocation shall constitute “restorative payments” within the meaning of Revenue Ruling 2002-45 for all purposes.
- 5.5. Final List of Class Members. Before the disbursement of the Net Settlement Amount to the Plan, the Settlement Administrator shall provide to Defense Counsel and Class Counsel a final list of Class Members, in electronic format, to whom the Net Settlement Amount will be distributed in accordance with the Plan



of Allocation. This list shall be final, and only persons on the list or their Beneficiaries or Alternate Payees shall be eligible to receive any recovery from the Settlement.

- 5.6. After the distribution of the Net Settlement Amount and allocation of the Net Settlement Amount pursuant to the Plan of Allocation, amounts allocable to Class Members who cannot be located or otherwise cannot receive their Settlement payment shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan that would otherwise be charged to the Plan's participants.

## **6. ARTICLE 6 – ATTORNEYS' FEES AND EXPENSES**

- 6.1. Application for Attorneys' Fees and Expenses and Class Representatives' Case Contribution Awards. Class Counsel intends to seek to recover attorneys' fees not to exceed \$158,317.50, and reasonable litigation costs and expenses advanced by Class Counsel during the Action, which shall be recovered from the Gross Settlement Amount. Class Counsel also intends to seek Class Representatives' Case Contribution Awards in an amount not to exceed \$10,000 each for Class Representatives Mark McCool, Shawn Macdonald, and Warren Harlan, which shall be recovered from the Gross Settlement Amount.
- 6.2. Class Counsel will file a motion for an award of Attorneys' Fees and Costs at least 30 days before the deadline set in the Preliminary Approval Order for objections to the proposed Settlement.

## **7. ARTICLE 7 – RELEASE AND COVENANT NOT TO SUE**

- 7.1. As of the Settlement Effective Date, the Plan (subject to Independent Fiduciary approval as required by Section 2.1) and each of the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and on behalf of the Plan, shall fully, finally, and forever settle, release, relinquish, waive, and discharge all Released Parties of and from all Released Claims, even if the Class Member discovers facts in addition to or different from those which the Class Member or Class Counsel now knows or believes to be true with respect to the Action and the Released Claims. This release will be effective whether or not each Class Member receives a monetary benefit from the Settlement, whether or not each Class Member actually receives the Long Form or Short Form Postcard Settlement Notices, and whether or not Class Members objected to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs.
- 7.2. As of the Settlement Effective Date, the Plan (subject to Independent Fiduciary approval as required by Section 2.1) and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners,



officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and on behalf of the Plan, expressly agree that they, acting individually or together, or in combination with others, shall not, directly or indirectly, sue or seek to file, initiate, institute, maintain, prosecute, argue, or assert in any action or proceeding (including an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission) any cause of action, demand, or claim (including third party claims, crossclaims, or counterclaims) on the basis of, connected with, or arising out of any of the Released Claims. Nothing in this Agreement shall preclude any action to enforce the terms of this Agreement in accordance with the procedures set forth in the Agreement. No Released Party shall be subject to liability or expense of any kind to any Class Member or their respective counsel related to the Released Claims except as provided in this Agreement.

- 7.3. Class Counsel, the Class Representatives, Class Members, or the Plan may later discover facts in addition to or different from those they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Nevertheless, each Class Member and the Plan shall expressly, upon the entry of the Final Order, be deemed to have, and, by operation of the Final Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Claims. The Class Representatives, Class Members, and the Plan acknowledge and shall be deemed by operation of the Final Order to have acknowledged that the foregoing waiver was bargained for separately and is a key and material element of the Settlement embodied in this Agreement of which this release is a part.
- 7.4. Each Class Representative, each Class Member, and the Plan hereby stipulate and agree with respect to any and all Released Claims that, upon the Settlement Effective Date, the Class Members shall be conclusively deemed to, and by operation of the Final Order shall, settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims pertaining specifically to Section 1542 of the California Civil Code, which 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.

Also, the Class Representatives, Class Members, and the Plan shall, upon entry of the Final Order with respect to the Released Claims, waive any and all provisions, rights, and benefits conferred by any law or of any State or territory in the United

States or any foreign country, or any principle of common law, which is similar, comparable, or equivalent in substance to Section 1542 of the California Civil Code.

- 7.5. Dismissal With Prejudice. The Action and all Released Claims shall be dismissed with prejudice.
- 7.6. No Impact on Prior Releases. The release of the Released Claims shall not invalidate or impair any prior release of claims by any Class Members against any of the Released Parties.

## **8. ARTICLE 8 – COVENANTS**

The Settling Parties covenant and agree as follows:

- 8.1. Taxation. Plaintiffs acknowledge that the Released Parties have no responsibility for any taxes due on funds deposited in or distributed from the Qualified Settlement Fund or that the Plaintiffs or Class Counsel receive from the Gross Settlement Amount. Plaintiffs further acknowledge that any such tax payments, and any professional, administrative, or other expenses associated with such tax payments, shall be paid out of the Qualified Settlement Fund. Nothing in this Agreement shall constitute an admission or representation that any such taxes will or will not be due.
- 8.2. Cooperation. AHS and Defense Counsel shall cooperate with Class Counsel by using reasonable efforts to provide, to the extent reasonably accessible, information to identify Class Members and to implement the Plan of Allocation.
- 8.2.1. AHS or Defense Counsel shall coordinate with the Recordkeeper to provide to the Settlement Administrator and/or Class Counsel within 30 days of entry of the Preliminary Approval Order: (1) the names and last known addresses (to the extent available) of Class Members, as compiled from reasonably accessible electronic records maintained by the Recordkeeper; (2) the Social Security numbers of Class Members to enable the Settlement Administrator to perform a National Change of Address search to update out-of-date addresses; and (3) Plan participant data necessary to perform calculations pursuant to the Plan of Allocation. With respect to the Plan of Allocation data, the Plan's Recordkeeper shall take commercially reasonable steps to ensure the data provided is complete as it exists in the Recordkeeper's systems. Neither Plaintiffs, Class Counsel, Defendants, nor Defense Counsel will be responsible or liable in any way for ensuring the completeness or accuracy of the information provided by the Recordkeeper pursuant to this Section.

- 8.2.2. The Settlement Administrator shall use the information provided through this Section to compile a preliminary list of Class Members for purposes of sending the Class Notice and calculating payments pursuant to the Plan of Allocation.
- 8.2.3. Class Counsel and their agents will use any information provided by Defendants, Defense Counsel, and/or the Recordkeeper pursuant to Section 8.2 solely for the purpose of providing notice and administering this Settlement, and will take reasonable and necessary steps as required by law to maintain the security and confidentiality of this information.
- 8.3. The Settling Parties shall reasonably cooperate with each other to effectuate this Settlement, including with respect to the Plan of Allocation, and shall not do anything or take any position inconsistent with obtaining a prompt Final Order approving the Settlement unless expressly permitted by this Agreement. The Settling Parties shall suspend any and all efforts to prosecute and to defend the Action pending entry of the Final Order or termination of the Agreement.

## **9. ARTICLE 9 – REPRESENTATION AND WARRANTIES**

- 9.1. Settling Parties’ Representations and Warranties. The Settling Parties represent and warrant as follows, and each Settling Party acknowledges that each other Settling Party is relying on these representations and warranties in entering into this Agreement:
  - 9.1.1. That they have diligently prepared the case pursuant to the Court’s orders; that they are voluntarily entering into this Agreement as a result of arm’s length negotiations; that in executing this Agreement they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, about the nature, extent, and duration of their rights and claims and about all matters relating to the subject matter of this Agreement; and that, except as provided in this Agreement, they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Settling Party or by any Person representing any Settling Party. Each Settling Party assumes the risk of mistake as to facts or law. Each Settling Party further recognizes that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement.
  - 9.1.2. That they have read the contents of this Agreement, and this Agreement is signed freely by each Person executing it on behalf of each of the Settling Parties. Each Settling Party further represents and warrants to

the others that he or it has investigated the facts pertaining to the Settlement and this Agreement to the extent he or it deems necessary.

- 9.2. Signatories' Representations and Warranties. Each Person executing this Agreement on behalf of any other Person personally represents and warrants to the other Settling Parties that he or she has the authority to execute this Agreement on behalf of, and fully bind, each principal he or she represents or purports to represent.

## **10. ARTICLE 10 – NO ADMISSIONS**

- 10.1. This Agreement embodies a compromise of disputed claims, and, whether approved or not approved, nothing in this Agreement, nor any document, appendix, or instrument delivered pursuant to this Agreement, including the furnishing of consideration as described in the Agreement, shall be deemed to constitute any finding, admission, or suggestion, or give rise to any inference, in this or any other proceeding (i) of the truth of any of the allegations contained in the Complaint or the Amended Complaint, (ii) of any wrongdoing or admission of wrongdoing or liability by any Defendant, or (iii) that any particular party had a fiduciary status under ERISA.
- 10.2. Defendants specifically deny any liability or wrongdoing and state that they are entering into this Agreement to eliminate the burden and expense of further litigation. Further, the Class Representatives, while believing that the claims brought in the Action have merit, have concluded that the terms of this Agreement are fair, reasonable, and adequate to the Plan, themselves, and members of the Settlement Class given, among other things, the inherent risks, difficulties, and delays in complex ERISA litigation. Neither the fact nor the terms of this Agreement shall be used or offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement or proceedings arising out of or relating to the Final Order.

## **11. ARTICLE 11 – CONDITIONS TO FINALITY OF SETTLEMENT**

This Settlement shall be contingent upon each of the following conditions in this Article 11 being satisfied. The Settling Parties agree that if any of these conditions are not satisfied, then this Agreement is terminated (subject to Defendants' right to waive the condition set forth in Section 11.4) and the Action will, for all purposes with respect to the Settling Parties, revert to its status as of September 8, 2024. If that happens, Defendants will not be deemed to have consented to the class certification order referenced in Section 11.1, the agreements and stipulations in this Agreement concerning the class definition or class certification shall not be used as evidence or argument to support class certification in the Court or in any appellate proceedings, and Defendants will retain all rights with respect to challenging class certification.

- 11.1. Court Approval and Class Certification for Settlement Purposes. The Court shall have maintained certification of the Settlement Class for settlement purposes, the

Settlement shall have been approved by the Court, the Court shall have entered the Final Order substantially in the form attached as Exhibit E, and the Settlement Effective Date shall have occurred.

- 11.2. Finality of Settlement. The Settlement shall have become Final.
- 11.3. Resolution of CAFA Objections (If Any). If any government officials object to and request modifications to the Settlement, Class Representatives and Class Counsel agree to cooperate and work with Defendants and Defense Counsel to overcome or resolve any objections and requested modifications. If any objections or requested modifications are not overcome or resolved, Defendants shall have the right to terminate the Agreement pursuant to Article 12.
- 11.4. Settlement Authorized by Independent Fiduciary. At least 30 days before the Final Approval Hearing, the Independent Fiduciary shall have approved and authorized the Settlement in writing, and shall have given a release to all of the Released Parties in its capacity as fiduciary of the Plan for and on behalf of the Plan in accordance with PTE 2003-39. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to execute the release on behalf of the Plan, then Defendants shall have the option to waive this condition within 14 days after the Settling Parties' receipt of the Independent Fiduciary's written determination.

## **12. ARTICLE 12 – TERMINATION, CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

- 12.1. The Agreement shall automatically terminate, and thereby become null and void with no further force or effect, if:
  - 12.1.1. Under Section 2.1, (a) either the Independent Fiduciary does not approve the Agreement or disapproves the Agreement for any reason, or Defendants reasonably conclude that the Independent Fiduciary's approval does not include the determinations required by PTE 2003-39; and (b) the Settling Parties do not agree to modify the terms of this Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39; and (c) AHS does not exercise its option to waive this condition as provided in Section 11.4;
  - 12.1.2. The Preliminary Approval Order or the Final Order is not entered by the Court in substantially the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;
  - 12.1.3. The Settlement Class is not maintained as defined in this agreement or in a form which is otherwise agreed to by the Settling Parties;

- 12.1.4. This Agreement is disapproved by the Court or fails to become effective and the Settling Parties do not agree to modify the Agreement to obtain the Court's approval or otherwise effectuate the Settlement; or
- 12.1.5. The Preliminary Order or Final Order is finally reversed on appeal, or is modified on appeal, and the Settling Parties do not agree to those modifications.
- 12.2. If the Agreement is terminated, the Action shall revert to its status as of September 8, 2024, and as though the Settling Parties never executed the Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned on them, shall be returned to Defendants or their insurer(s) within 30 days after the Agreement is terminated.
- 12.3. It shall not be deemed a failure to approve the Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs and/or Class Representatives' Case Contribution Awards and/or modifies any of the proposed orders relating to Attorneys' Fees and Costs and/or Class Representatives' Case Contribution Awards.

**13. ARTICLE 13 – CONFIDENTIALITY OF THE SETTLEMENT NEGOTIATIONS AND PERMITTED SETTLEMENT-RELATED COMMUNICATIONS**

- 13.1. Except as explicitly set forth below, the Settling Parties, Class Counsel, and Defense Counsel agree to keep confidential all positions, assertions, and offers made during settlement negotiations relating to the Action and the Agreement, except that they may discuss the negotiations with Class Members, the Independent Fiduciary, and the Settling Parties' tax, legal, and regulatory advisors and auditors, provided that they do so pursuant to agreements that those persons or entities shall not further disclose such information and shall comply with this Article 13.
- 13.2. Defendants, Class Representatives, Class Counsel, and Defense Counsel agree that they will not at any time make (or encourage or induce others to make) any public statement regarding the Action or the Settlement that disparages any Released Party; provided, however, that this prohibition does not preclude Class Counsel from restating the allegations made in the Complaint or Amended Complaint for purposes of the motion for preliminary approval of the Settlement, motion for final approval of the Settlement, or the request for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Case Contribution Awards. This prohibition does not prohibit any Settling Party from making any statements pursuant to valid legal process or in response to a request or inquiry by a regulatory agency, or as required by law.
- 13.3. Defendants, Class Representatives, Class Counsel, and Defense Counsel agree that they will not issue any press release regarding the Settlement, advertise the

Settlement, or affirmatively contact any media sources regarding the Settlement, unless required by any applicable disclosure requirements or conventions or otherwise required by law.

- 13.4. Defendants, Class Representatives, Class Counsel, and Defense Counsel agree that they will not publicly disclose the terms of the Settlement until the motion for preliminary approval of the Settlement has been filed with the Court, other than as necessary to administer the Settlement, or unless disclosure is made pursuant to valid legal process, in response to a request or inquiry by a regulatory agency, or as required by any applicable disclosure requirements or conventions or otherwise required by law.

#### **14. ARTICLE 14 – GENERAL PROVISIONS**

- 14.1. The Settling Parties agree to cooperate fully with each other in seeking Court approvals of the Preliminary Approval Order and the Final Order, and to do anything reasonably necessary to effectuate preliminary and final approval and the implementation of this Agreement. The Settling Parties agree to provide each other with copies of draft filings necessary to effectuate this Settlement reasonably in advance of filing.
- 14.2. Defendants deny all allegations of wrongdoing. Defendants believe the Plan has been managed, operated, and administered reasonably and prudently, in the best interest of the Plan's participants, and in accordance with ERISA, including the fiduciary duty and prohibited transaction provisions of ERISA.
- 14.3. Neither the Settling Parties, Class Counsel, nor Defense Counsel shall have any responsibility for or liability whatsoever with respect to (a) any act, omission, or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (b) the determination of the Independent Fiduciary; (c) the management, investment, or distribution of the Qualified Settlement Fund; (d) the Plan of Allocation as approved by the Court; (e) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (f) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (g) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor Defense Counsel shall have any responsibility for or liability with respect to any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.
- 14.4. The Released Parties shall not have any responsibility for or liability with respect to the Plan of Allocation, including the determination of the Plan of Allocation or the reasonableness of the Plan of Allocation.



- 14.5. The Settling Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants, Defense Counsel, Class Counsel, and Class Representatives will provide no tax advice to the Class Members and make no representation about the tax consequences of any of the payments described in the Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Settling Parties.
- 14.6. Each Class Member who receives a payment under this Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold the Released Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Agreement, and shall hold the Released Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit) related to any tax liability.
- 14.7. This Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent federal law does not govern, Tennessee law.
- 14.8. The Settling Parties agree solely for purposes of this Action that the Court has personal jurisdiction over the Settlement Class and Defendants and shall maintain personal and subject matter jurisdiction for purposes of resolving any disputes between the Settling Parties concerning compliance with this Agreement. Any motion or action to enforce this Agreement, including by way of injunction, may be filed in the U.S. District Court for the Middle District of Tennessee, or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of the Agreement.
- 14.9. Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Fiduciary, the Agreement may be modified or amended only if the modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent Fiduciary approves the modification or amendment in writing. Following entry of the Preliminary Approval Order, the Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and by the Court.

- 14.10. The provisions of this Agreement may be waived only in a writing executed by the waiving party. The waiver of any breach of this Agreement by any party shall not be deemed to be or construed as a waiver of any other breach or a waiver by any other party.
- 14.11. Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement, that he or it will in good faith execute and deliver documents and take actions reasonably necessary to effectuate this Agreement.
- 14.12. All of the attached exhibits are incorporated by reference. The exhibits shall be: Exhibit A – Short Form Postcard Settlement Notice; Exhibit B – Long Form Settlement Notice; Exhibit C – Plan of Allocation; Exhibit D – Proposed Preliminary Approval Order; Exhibit E – Proposed Final Order.
- 14.13. No provision of the Agreement or its exhibits shall be construed against or interpreted to the disadvantage of any party to the Agreement because that party is deemed to have drafted or requested the provision.
- 14.14. Principles of Interpretation. The following principles of interpretation apply to this Agreement:
- 14.14.1. Singular and Plural. Definitions apply to the singular and plural forms of each defined term.
  - 14.14.2. Gender. Definitions apply regardless of and equally to any gender of each defined term.
  - 14.14.3. References to a Person. References to a Person are also to the Person's permitted successors and assigns, except as otherwise provided in this Agreement.
  - 14.14.4. Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."
- 14.15. Survival. All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Agreement are contained in this Agreement. No Party is relying on any oral representations or oral agreements. All covenants, representations, and warranties in this Agreement shall be deemed continuing and shall survive the Settlement Effective Date.
- 14.16. Notices. Any notice, demand, or other communication under this Agreement (other than the Long Form and Short Form Postcard Settlement Notices, CAFA Notice, or other notices given at the direction of the Court) shall be in writing and shall be addressed as set forth below and personally delivered, sent by registered

or certified mail postage prepaid, or delivered by reputable express overnight courier or via e-mail:

IF TO CLASS REPRESENTATIVES:

Mark K. Gyandoh  
CAPOZZI ADLER, P.C.  
312 Old Lancaster Road  
Merion Station, PA 19066  
Tel.: 610.890.0200  
Fax: 717.233.4103  
markg@capozziadler.com

IF TO DEFENDANTS:

Eric S. Mattson  
SIDLEY AUSTIN LLP  
One South Dearborn Street  
Chicago, IL 60603  
Tel: 312.853.7000  
Fax: 312.853.7036  
emattson@sidley.com

Any Settling Party may change the address at which it is to receive notice by written notice delivered to the other Settling Parties in the manner described above.

14.17. Entire Agreement. This Agreement and the attached exhibits constitute the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Agreement. This Agreement supersedes any settlement terms or settlement agreements that were previously agreed upon, orally or in writing, by any of the Settling Parties in connection with this Action.

14.18. Counterparts. The Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement. The Agreement may be executed in counterparts, and each counterpart shall for all purposes be deemed an original, and all counterparts shall together constitute the same instrument.

14.19. Binding Effect. This Agreement binds and inures to the benefit of the Settling Parties and their assigns, heirs, administrators, executors, and successors.

14.20. Dispute Resolution. If a dispute arises about compliance with this Agreement after it has been approved and executed, the dispute will be mediated by a neutral

party to be agreed upon by the Settling Parties, who will make a non-binding decision regarding the dispute. The cost of any such mediation shall be split equally between Plaintiffs and Defendants.

14.21. Extensions of Time. The Settling Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of this Agreement.

14.22. Communication with Participants. Nothing in this Agreement or the Settlement shall prevent or inhibit Defendants' ability to communicate with current or former participants of the Plan.

14.23. Destruction/Return of Confidential Information. Within 30 days after the Settlement Effective Date, Class Representatives and Class Counsel shall fully comply with the Agreed Confidentiality Order entered in this case. Further, the Settling Parties agree that the preliminary and final lists of Class Members are deemed Confidential. The Settling Parties shall have the right to continue to designate documents provided to any party in connection with this Agreement as Confidential pursuant to this paragraph or pursuant to the Agreed Confidentiality Order entered in this case.


The Settling Parties have executed this Agreement on the dates set forth below.

Date: October 15, 2024

Date: 10/14/24

On Behalf of Plaintiffs, Individually and as  
Representatives of the Settlement Class:

On Behalf of Defendants:



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CAPOZZI ADLER, P.C.  
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sdhanoa@sidley.com  
Counsel for Defendants

## EXHIBIT A

<p><i>McCool vs. AHS Management Co., Inc.</i> c/o Analytics Consulting, LLC <b>[address]</b></p> <p><b><i>COURT-ORDERED LEGAL NOTICE</i></b> <i>This Notice may affect your legal rights.</i> <i>Please read carefully.</i></p> <p>Important Legal Notice Authorized by the United States District Court for the Middle District of Tennessee</p> <p><b>If you were a participant or beneficiary of the Ardent Health Services Retirement Savings Plan between December 24, 2013 and [date of preliminary approval order], your rights may be impacted by a proposed settlement of a class action lawsuit.</b></p>	<p>[Postage Prepaid]</p> <p>Name Address City, State Zip</p>
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***THIS CARD PROVIDES ONLY LIMITED INFORMATION ABOUT THE CLASS ACTION.***

A federal court has authorized this notice. This is not a solicitation from a lawyer. You are receiving this Notice of Class Action Settlement because the records of the Ardent Health Services Retirement Savings Plan (the “Plan”) indicate that you were a participant in the Plan between December 24, 2013 and [the date of the Preliminary Approval Order] (the “Class Period”). This Notice advises you of basic information about your options. More information is available at [www. ].

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
<b>YOU ARE NOT REQUIRED TO FILE A CLAIM IF YOU ARE ENTITLED TO A PAYMENT UNDER THE SETTLEMENT AGREEMENT</b>	If the Settlement is approved by the Court and you are a member of the Settlement Class, you will not need to file a claim to receive a Settlement payment if you are entitled to one.
<b>HOW SETTLEMENT PAYMENTS WILL BE DISTRIBUTED</b>	If you currently have money in the Plan and are a Settlement Class Member, any share of the Net Settlement Amount to which you are entitled will be deposited in your Plan account. If you are a Former Participant (no longer a participant in the Plan) and are a Settlement Class Member, any money you are entitled to will be paid to you by check. Not all Settlement Class Members will receive a payment, and it may take several months for the payments to be made.
<b>YOU MAY OBJECT TO THE SETTLEMENT BY</b> [redacted]	If you want to object to any part of the Settlement, you may write to the Court to explain why you object. Address your objection to Clerk of the Court, United States District Court for the Middle District of Tennessee, Fred D. Thompson U.S. Courthouse and Federal Building, 719 Church Street, Suite 1300, Nashville, TN 37203.
<b>YOU MAY ATTEND THE FINAL APPROVAL HEARING TO BE HELD ON</b> [redacted]	You may (but do not have to) attend the Final Approval Hearing about the Settlement. If you submitted a timely written objection, you may talk to the Court about your objection at that hearing. You may attend the Final Approval Hearing even if you do not file a written objection, but you will be allowed to speak at the Final Approval Hearing only if you file a written objection by the Court-approved deadline AND you file a notice of intention to appear, as described in the answers to Question No. 16 in the Long Form Settlement Notice available on the website.

**Do not contact the Court or Ardent for information about the Settlement. If you have questions, call (xxx) xxx-xxxx, email [settlement@capozziadler.com](mailto:settlement@capozziadler.com) (writing “Ardent settlement” in the subject line), or visit [www.](http://www.) [redacted].**



## EXHIBIT B

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**If you were a participant in the Ardent Health Services Retirement Savings Plan at any time between December 24, 2013 and [the date of the Preliminary Approval Order], you may benefit from this class action settlement.**

***The case is McCool v. AHS Management Co., Inc.,  
No. 3:19-cv-1158 (M.D. Tennessee).***

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

This notice advises you of a settlement (the “Settlement”) of a lawsuit against AHS Management Company, Inc., the Board of Directors of AHS Management Company, Inc., and the Ardent Health Services Benefits Plan Administration Committee (collectively, “Ardent”). In the lawsuit, Plaintiffs challenge the operation of the Ardent Health Services Retirement Savings Plan (the “Plan”). Plaintiffs say the Plan fiduciaries should not have offered certain funds as investment options in the Plan. They also say the Plan fiduciaries allowed the Plan to pay higher recordkeeping and administrative fees than necessary. Plaintiffs also alleged that AHS Management Company, Inc. and its Board of Directors failed to monitor the Plan’s fiduciaries. Ardent denies all the allegations in the lawsuit and says its conduct was entirely proper. You should read this entire notice carefully because your legal rights will be affected whether you act or not.

This notice explains your rights and options, including the deadline for you to object if you are opposed to the Settlement.

## BASIC INFORMATION

### 1. Why did I get a notice about the Settlement?

You received a notice about the Settlement because the Plan's records indicate that you were a participant in the Plan at some point between December 24, 2013 and [the date of the Preliminary Approval Order]. Your rights will be affected by the Settlement of this lawsuit.

**Please read the following information carefully to find out what the lawsuit is about, what the terms of the proposed Settlement are, what rights you have to object to the proposed Settlement, and the deadline to object.**

### 2. What is this lawsuit about?

A lawsuit was filed in the United States District Court for the Middle District of Tennessee. The lawsuit alleges that Ardent violated ERISA—the federal law that governs most retirement plans in the United States. The people who are pursuing the lawsuit (“Plaintiffs”) claim that Ardent should not have selected and maintained certain funds as investment options in the Plan, and that the Plan paid higher recordkeeping and administrative fees than necessary. Plaintiffs also alleged that AHS Management Company, Inc. and its Board of Directors failed to monitor the Plan’s fiduciaries.

Ardent denies the allegations in the lawsuit and contends that its conduct was entirely proper. Ardent has asserted, and would assert if the lawsuit continues, a number of defenses.

### 3. What is a class action lawsuit?

In a class action lawsuit, one or more people called “class representatives” sue on their own behalf and on behalf of other people who have similar claims. One court resolves all the issues for all class members in a single lawsuit. Three participants in the Plan are the class representatives in this lawsuit.

### 4. Why is there a Settlement?

The Parties have agreed to the Settlement after extensive negotiations. By agreeing to the Settlement, the Parties avoid the costs and risks of further litigation, and Plaintiffs and other members of the Settlement Class will receive compensation. Class Counsel have reviewed the evidence in the case and the risks and benefits of continued litigation, and they believe the Settlement is in the best interest of the class. The Court has not decided that Ardent has done anything wrong.

The Plan has hired an independent fiduciary to evaluate the fairness of the Settlement. The independent fiduciary is [REDACTED].

### 5. How do I get more information about the Settlement?

This notice is only a summary of the lawsuit and the proposed Settlement. You can read the pleadings and other papers that have been filed in this lawsuit at the office of the Clerk of the United States District Court for the

QUESTIONS? VISIT [www.] OR CALL TOLL-FREE XXX-XXX-XXXX.  
DO NOT CONTACT THE COURT OR ARDENT WITH YOUR QUESTIONS.

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Middle District of Tennessee, which is located at the Fred D. Thompson U.S. Courthouse and Federal Building, 719 Church Street, Nashville, TN 37203. You can also read documents electronically through Public Access to Court Records, which is available as [www.pacer.gov](http://www.pacer.gov). The settlement website, \_\_\_\_\_, includes some of the key documents about the Settlement, including the Settlement Agreement.

If you have questions about this notice or the proposed Settlement, you may contact Class Counsel (see answer to Question 10 for contact information).

*Do not contact the Court or the Defendants for information about the Settlement. The Settlement Administrator or Class Counsel can answer any questions you may have about the proposed Settlement.*

## **THE SETTLEMENT BENEFITS – WHAT YOU MAY GET**

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

Plaintiffs and Ardent have agreed to a settlement that involves payments to participants. These and other terms of the Settlement are described in the Settlement Agreement dated [date] and described briefly below.

As part of the Settlement, Ardent has agreed to make a one-time payment of \$475,000 (the “Settlement Amount”). After deduction of any amounts the Court approves to pay settlement-related expenses (including Attorneys’ Fees and Expenses to Class Counsel, fees for hiring an Independent Fiduciary, Administration Costs, and Taxes and Tax-Related Costs), and any amounts to the Class Representatives as case contribution awards, the remaining amount (known as the “Net Settlement Amount”) will be paid to Settlement Class Members. Settlement Class Members are people (except Defendants and their immediate family members) who were participants in or beneficiaries of the Plan from December 24, 2013 through [the date of preliminary approval]. The Parties have agreed that no distribution will be made to Settlement Class Members who are no longer participants in the Plan and would otherwise be entitled to a payment of \$5 or less. Settlement Class Members who are current participants in the Plan are **not** subject to this restriction. The Plan of Allocation is posted on the Settlement Website.

### **7. If I am entitled to a distribution, how will I receive it?**

Settlement Class Members who have money in their Plan account at the time of the distribution will receive any distribution through a deposit into their Plan account. To the extent feasible, that money will be invested in accordance with each Settlement Class Member’s instructions for investment of new contributions at the time the distribution is made, or, if no such instructions are in effect, to the applicable qualified default investment option. Settlement Class Members who do not have money in their Plan account as of the date of distribution (“Former Participants”) will receive a check from the Settlement Administrator.

### **8. What are the Class Representatives receiving from the Settlement?**

The Class Representatives will be entitled to receive benefits of the Settlement because they are Settlement Class Members. In addition, each of the three Plaintiffs will apply to the Court for an award of case contribution awards not to exceed \$10,000 each for their service in the Action. It is up to the Court to decide whether to grant any or all of the requested amount.

QUESTIONS? VISIT [www.] OR CALL TOLL-FREE XXX-XXX-XXXX  
DO NOT CONTACT THE COURT OR ARDENT WITH YOUR QUESTIONS.

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## THE SETTLEMENT– WHAT YOU GIVE UP

### 9. What do I give up in the Settlement?

All Settlement Class Members will release any claims they have related to the lawsuit and will be prohibited from bringing or pursuing any other lawsuits or other actions against Ardent and other Released Parties based on those claims.

## THE LAWYERS REPRESENTING YOU

### 10. Do I have a lawyer in this case?

Yes. In granting preliminary approval of the proposed Settlement, the Court appointed the Plaintiffs' lawyers to serve as "Class Counsel" for the Settlement Class. The attorneys for the Settlement Class are as follows:

Mark K. Gyandoh  
Capozzi Adler P.C.  
312 Old Lancaster Road  
Merion Station, PA 19066  
Telephone: (610) 890-0200  
markg@capozziadler.com

You will not be charged separately for the work of these lawyers; their compensation will come from the Settlement Amount and will be determined by the Court. If you want to be represented by a different lawyer in this case, you may hire one at your own expense.

### 11. How will the lawyers (Class Counsel) be paid?

Class Counsel will file a motion with the Court seeking approval of their compensation, which will consist of (a) attorneys' fees and (b) reimbursement of the expenses they incurred in prosecuting the case. Class Counsel intend to seek attorneys' fees equal to one-third of the Settlement Amount plus expenses. The motion and supporting papers will be filed on or before [date]. After that date, you may review the motion and supporting papers at [website]. Any attorneys' fees and expenses will be paid from the Settlement Amount.

## OBJECTING TO THE SETTLEMENT

### 12. What does it mean to object?

Objecting is simply telling the Court that you do not like something about the Settlement. Objecting will not affect your right to receive the benefits of the Settlement if it is approved by the Court.

### 13. What is the procedure for objecting to the Settlement?

Settlement Class Members can object to the Settlement and give reasons why they believe that the Court should not approve it. To object, you must send your objection to U.S. District Court, Middle District of Tennessee, Fred D. Thompson U.S. Courthouse and Federal Building, 719 Church Street, Suite 1300, Nashville, TN 37203.

Objections must be filed with the Court Clerk on or before [date]. Objections filed after that date will not be considered. Any Settlement Class Member who fails to submit a timely objection will be deemed to have waived any objection, and any untimely objection will be barred absent an order from the Court. Objections must include:

QUESTIONS? VISIT [www.] OR CALL TOLL-FREE XXX-XXX-XXXX  
DO NOT CONTACT THE COURT OR ARDENT WITH YOUR QUESTIONS.

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(1) the case name and number; (2) your full name, current address, telephone number, and signature; (3) a statement that you are a Settlement Class Member and an explanation of why you claim to be a Settlement Class Member; (4) all grounds for the objection, accompanied by any legal support known to you or your counsel; (5) a statement as to whether you or your counsel intends to personally appear at the Final Approval Hearing; and (6) a list of anyone you or your counsel may call to testify at the Final Approval Hearing.

**14. What if I do not want to be part of the lawsuit and want to exclude myself?**

The Settlement does not allow Settlement Class Members to exclude themselves from the settlement or decide not to be a part of the Settlement. While some class action settlements allow class members to “opt out” of the settlement, because of the nature of the claims Plaintiffs have asserted in this lawsuit, Settlement Class Members do not have a right to opt out. If you dislike some portion of the Settlement, your only recourse is to object to the Settlement.

**THE COURT’S FINAL APPROVAL HEARING**

**15. What is a final approval hearing?**

The Court has granted preliminary approval of the proposed Settlement, finding that it is sufficiently reasonable to warrant preliminary approval, and has approved delivery of this notice to Settlement Class Members. But the Settlement will not take effect unless it receives final approval from the Court following an opportunity for Settlement Class Members to object. The Court will hold a Final Approval Hearing on [date] at [time] to consider any objections. The Final Approval Hearing will take place at the United States District Court for the Middle District of Tennessee, located at Fred D. Thompson U.S. Courthouse and Federal Building, Courtroom 6B, 719 Church Street, Nashville, TN 37203. The date and location of the Final Approval Hearing is subject to change by order of the Court, which will appear on the Court’s docket for this case and on the settlement website.

**16. Can I attend the Final Approval Hearing?**

Yes, anyone can attend the Final Approval Hearing. But the Court will only allow those who file a timely written objection to speak at the Final Approval Hearing either in person or through counsel retained at his or her own expense. Anyone intending to speak at the Final Approval Hearing must file their notice of intention to do so with the Court Clerk by no later than [date]. The notice must include: (1) the name, address, and telephone number of the Settlement Class Member, and (2) if applicable, the name, address, and telephone number of that Settlement Class Member’s attorney. Anyone who does not timely file a notice of intention to appear will not be permitted to speak at the Final Approval Hearing, except by Order of the Court. Any objection that is timely filed will be considered by the Court even without a personal appearance by the Settlement Class Member or that Settlement Class Member’s counsel.

**17. Where can I get more information?**

You can visit the website at [URL] where you will find the full Settlement Agreement, the Court’s order granting preliminary approval, this notice, and other relevant pleadings and documents. If you cannot find the information you need on the website, you may also contact Class Counsel for more information. Do not contact the Court or Ardent to get additional information.

Dated: October \_\_, 2024

By: \_\_\_\_\_  
United States District Court District Judge William L.  
Campbell, Jr.

QUESTIONS? VISIT [www.ardent.com](http://www.ardent.com) OR CALL TOLL-FREE 800-XXX-XXXX  
DO NOT CONTACT THE COURT OR ARDENT WITH YOUR QUESTIONS.

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## EXHIBIT C

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

MARK MCCOOL, SHAWN  
MACDONALD, and WARREN HARLAN,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

AHS MANAGEMENT COMPANY, INC.,  
BOARD OF DIRECTORS OF AHS  
MANAGEMENT COMPANY, INC., and  
ARDENT HEALTH SERVICES  
BENEFITS PLAN ADMINISTRATION  
COMMITTEE,

Defendants.

No. 3:19-cv-1158

Hon. William L. Campbell, Jr.

Magistrate Judge Jeffery S. Frensley

**PLAN OF ALLOCATION**

**I. DEFINITIONS**

Except as indicated below, the capitalized terms used in this Plan of Allocation shall have the meanings ascribed to them in the Settlement Agreement.

**II. CALCULATION OF ALLOCATION AMOUNTS**

A. Per paragraph 8.2.1 of the Settlement Agreement, Defendants shall direct the Recordkeeper for the Plan to provide the Settlement Administrator with the data reasonably necessary to determine the amount of the Net Settlement Amount to be distributed to each Settlement Class Member in accordance with this Plan of Allocation.

B. The data used to perform calculations under this Plan of Allocation shall

include the year-end balances of each Settlement Class Member's account for each year of the Class Period. For Settlement Class Members who had a balance in their accounts at the beginning of the Class Period, but liquidated their account before the end of the Class Period, the balance in their account at the time of their last quarterly statement before distribution (or the last available statement that shows a balance) will be the balance used for purposes of calculating an award under this Plan of Allocation.

C. Each Settlement Class Member's allocable portion of the Net Settlement Amount will be calculated as follows:

1. Calculate the sum of each Settlement Class Member's account balances for each year of the Class Period based on the data referenced in Section II(B) of this Plan of Allocation. This amount shall be that Settlement Class Member's "Balance."
2. Sum the Balance for all Settlement Class Members.
3. Allocate each Settlement Class Member a share of the Net Settlement Amount in proportion to the sum of that Settlement Class Member's Balance as compared to the sum of the Balance for all Settlement Class Members, *i.e.*, where the numerator is the Settlement Class Member's Balance and the denominator is the sum of all Settlement Class Members' Balances.

D. The amounts resulting from this initial calculation shall be known as the Preliminary Entitlement Amount. Current Participants with a Preliminary Entitlement Amount of \$0 shall not receive a distribution from the Net Settlement Amount. Former Participants who are entitled to a distribution of \$5 or less (the Former Participant De Minimis Amount) will not receive a distribution from the Net Settlement Amount. The Settlement Administrator shall then recalculate the entitlement amount excluding the participants described in the preceding two sentences. The resulting calculation shall be the "Final Entitlement Amount" for each Settlement

Class Member entitled to a distribution. The sum of the Final Entitlement Amount for each remaining Settlement Class Member must equal the Net Settlement Amount.

E. **Settlement Class Members With Accounts In The Plan.** For a Settlement Class Member whose account in the Plan has a positive balance as of the calculation of the Final Entitlement Amount, the Class Member's Final Entitlement Amount will be deposited into his or her account in the Plan (unless that account has been closed between the calculation of the Final Entitlement Amount and the payment date, in which case that Settlement Class Member will receive his or her allocation in accordance with Section II.F, below).

As promptly as reasonably possible after deposit of the Net Settlement Amount into the Plan, the Settlement Administrator shall forward to the current recordkeeper for the Plan the information needed to allocate into each Settlement Class Member's account his or her Final Entitlement Amount. The deposited amount shall be invested pursuant to the Settlement Class Member's investment elections on file for new contributions. If the Class Member has no election on file, the deposited amount shall be invested in the default investment option designated by the Plan.

F. **Settlement Class Members Without Accounts Under The Plan.** Former Participants with a Final Entitlement Amount shall be paid by check from the Settlement Administrator. All such payments are intended to be "restorative payments" in accordance with Internal Revenue Service Revenue Ruling 2002-45. Checks issued to Former Participants shall be valid for 90 days from the date of issue.

G. The Settlement Administrator shall utilize the calculations required to be performed in this Plan of Allocation for making the required distributions of the Final Entitlement Amount, less any required tax withholdings or penalties, to each Settlement Class Member. The Settlement

Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.

H. If the Settlement Administrator concludes that it is impracticable to implement any provision of the Plan of Allocation, it shall be authorized to change the methodology as necessary to implement as closely as possible the terms of the Settlement Agreement, so long as the total amount of distributions does not exceed the Net Settlement Amount.

I. No sooner than fourteen days after the expiration of all undeposited checks issued pursuant to this Plan of Allocation, any amount remaining in the Escrow Account shall be paid to the Plan for the purpose of defraying administrative fees and expenses that would otherwise be charged to participants.

J. Neither the Released Parties, Defense Counsel, nor Class Counsel shall have any responsibility for or liability whatsoever with respect to any tax advice given to Settlement Class Members.

### **III. QUALIFICATIONS AND CONTINUING JURISDICTION**

The Court will retain jurisdiction over the Plan of Allocation to the extent necessary to ensure it is fully and fairly implemented.

## EXHIBIT D

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

MARK MCCOOL, SHAWN  
MACDONALD, and WARREN HARLAN,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

AHS MANAGEMENT COMPANY, INC.,  
BOARD OF DIRECTORS OF AHS  
MANAGEMENT COMPANY, INC., and  
ARDENT HEALTH SERVICES  
BENEFITS PLAN ADMINISTRATION  
COMMITTEE,

Defendants.

No. 3:19-cv-1158

Hon. William L. Campbell, Jr.

Magistrate Judge Jeffery S. Frensley

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, MAINTAINING CLASS CERTIFICATION FOR SETTLEMENT  
PURPOSES, APPROVING FORM AND MANNER OF SETTLEMENT NOTICE,  
PRELIMINARILY APPROVING PLAN OF ALLOCATION, AND  
SCHEDULING A DATE FOR A FINAL APPROVAL HEARING**



This Action involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”), with respect to the Ardent Health Services Retirement Savings Plan (the “Plan”).<sup>1</sup> The terms of the Settlement are set out in the Settlement Agreement, fully executed as of \_\_\_\_\_, 2024, by counsel on behalf of the Plaintiffs, all Class Members, and Defendants, respectively.

Pursuant to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, Maintaining Class Certification for Settlement Purposes, Approving Form and Manner of Settlement Notice, Preliminarily Approving Plan of Allocation, and Scheduling a Date for a Final Approval Hearing filed on **October 15, 2024**, the Court preliminarily considered the Settlement to determine, among other things, whether the Settlement warrants the issuance of notice to Settlement Class Members. Upon reviewing the Settlement Agreement and the matter having come before the Court at the \_\_\_\_\_ hearing, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. **Certification of the Settlement Class** – The Court previously granted Plaintiffs’ Motion for Class Certification (ECF Nos. 98 and 99) on March 30, 2023 (ECF No. 129) and appointed Class Representatives and Class Counsel. For purposes of settlement, and pursuant to Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure, this Court modifies the previously certified Class Period as follows. The Court makes no other modifications to the certified class. The “Settlement Class” shall be defined as:

All persons, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period (December 24, 2013 through the date of this Order), and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their

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<sup>1</sup> All capitalized terms not otherwise defined in this Order shall have the same meanings ascribed to them in the Settlement Agreement.

immediate family members who were participants in or beneficiaries of the Plan at any time during the Class Period.

2. The Court appoints Plaintiffs Mark McCool, Shawn Macdonald, and Warren Harlan as Class Representatives for the Settlement Class, and Capozzi Adler, P.C. as Class Counsel for the Settlement Class.

3. **Preliminary Approval of Proposed Settlement** – The Settlement Agreement is preliminarily approved as fair, reasonable, and adequate. The Court preliminarily finds that:

- a) The Settlement was negotiated vigorously and at arm's length by Defense Counsel, on the one hand, and Plaintiffs and Class Counsel on behalf of the Settlement Class, on the other hand;
- b) Plaintiffs and Class Counsel had sufficient information to evaluate the settlement value of the Action and have concluded that the Settlement is fair, reasonable, and adequate;
- c) If the Settlement had not been achieved, Plaintiffs and the Settlement Class faced the expense, risk, and uncertainty of protracted litigation;
- d) The amount of the Settlement (\$475,000) is fair, reasonable, and adequate, taking into account the costs, risks, and delay of litigation, trial, and appeal. The method of distributing the settlement proceeds is efficient, relying on Defendants' or the Recordkeeper's records and requiring no filing of claims. The Settlement terms related to attorneys' fees do not raise questions about the fairness of the Settlement, and there are no agreements, apart from the Settlement Agreement, required to be considered under FED. R. CIV. P. 23(e)(2)(C)(iv). The settlement amount is within the range of settlement values obtained in similar cases;

- e) At all times, Plaintiffs and Class Counsel have acted independently of the Defendants and in the interest of the Settlement Class; and
- f) The proposed Plan of Allocation is fair, reasonable, and adequate.

4. **Establishment of Qualified Settlement Fund** – A common fund is agreed to by the Settling Parties in the Settlement Agreement and shall be known as the “Settlement Fund.” The Settlement Fund shall be a “qualified settlement fund” within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The Settlement Fund shall be funded and administered in accordance with the terms of the Settlement. Defendants shall have no withholding, reporting, or tax reporting responsibilities with regard to the Settlement Fund or its distribution. Moreover, Defendants shall have no liability, obligation, or responsibility for administration of the Settlement Fund or the disbursement of any money from the Settlement Fund except for: (1) their obligation to cause the Gross Settlement Amount to be paid; and (2) their agreement to cooperate in providing information necessary for settlement administration as set forth in the Settlement Agreement. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court. The Settlement Fund shall expire after the Settlement Administrator distributes all assets of the Settlement Fund in accordance with the Settlement Agreement, provided, however, that the Settlement Fund shall not terminate until its liability for any government fees, fines, taxes, charges, and excises of any kind, including income taxes, and any interest, penalties, or additions to such amounts are, in the Settlement Administrator’s sole discretion, finally determined and all such amounts have been paid by the Settlement Fund. The Court and the Settlement Administrator recognize that there may be tax payments, withholding, and reporting requirements in connection with the administration of the Settlement Fund. The Settlement Administrator shall, in accordance

with the Settlement Agreement, determine, withhold and pay to the appropriate taxing authorities any taxes due with respect to any distribution from the Settlement Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes. The Settlement Administrator, in its discretion, may request expedited review and decision by the IRS or the applicable state or local taxing authorities with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to ensure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as a fiduciary of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions. The Settlement Administrator shall have all the necessary powers, and take all necessary ministerial steps, to effectuate the terms of the Settlement Agreement, including the payment of all distributions. These powers include investing, allocating, and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements, and other transactions of the Settlement Fund. All accounts, books, and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person; the nature and status of any payment from the Settlement Fund; and other information which the Settlement Administrator considers relevant to showing

that the Settlement Fund is being administered, and awards are being made, in accordance with the Settlement Agreement, this Order, and any future Court orders.

5. **Final Approval Hearing** – A hearing is scheduled for \_\_\_\_\_, 2025 [at least 120 days after preliminary approval] to make a final determination concerning, among other things:

- Any objections to the Settlement or any aspects of it;
- Whether the Settlement merits final approval as fair, reasonable, and adequate;
- Whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement;
- Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement;
- Whether the proposed Plan of Allocation should be granted final approval; and
- Whether Class Counsel's application for Attorneys' Fees and Costs and Case Contribution Awards to the Class Representatives are fair and reasonable, and should be approved.

6. **Settlement Notice** – The Court approves the Long Form and Short Form Postcard Settlement Notices ("Notices") in the forms attached as Exhibits A and B, respectively, to the Settlement Agreement. The Parties may make non-substantive changes to the Notices, such as filling in the applicable dates and correcting typographical errors. The Court finds that the Notices, taken together, fairly and adequately (a) describe the terms of the Agreement, the Settlement, and the Plan of Allocation; (b) notify the Class Members that Class Counsel will seek attorneys' fees and litigation costs from the Settlement Fund, payment of the costs of administering the Settlement out of the Settlement Fund, and Case Contribution Awards for the Class Representatives; (c) notify

the Settlement Class of the time and place of the Final Approval Hearing; and (d) describe how the recipients of the Notices may object to any of the relief requested.

7. **Settlement Administrator** – The Court approves the appointment of Analytics LLC (“Analytics”) as the Settlement Administrator for the Settlement. The Settlement Administrator shall:

- By no later than \_\_\_\_\_ (forty-five days after entry of this Order), cause the Short Form Postcard Settlement Notice, with any non-substantive modifications agreed upon by the Parties, to be sent by first-class mail, postage prepaid, to the last known address of each Class Member who can be identified through reasonable effort. Before mailing the Short Form Settlement Notice, Analytics shall conduct address research (via skip-trace databases) to identify current mailing address information for Class Members. Additionally, Analytics must update the Class Member address information using data from the National Change of Address (“NCOA”) database. After mailing the Short Form Postcard Settlement Notice, Analytics shall use commercially reasonable efforts to locate any Class Member whose Short Form Postcard Settlement Notice is returned and re-send it one additional time.
- By no later than \_\_\_\_\_ (thirty days after entry of this Order), cause the Long Form Settlement Notice to be published on the website identified in the Short Form Postcard Settlement Notice, which will also host and make available copies of Settlement-related documents, including the Settlement Agreement.

The Court finds that the contents of the Notices and the process described in this order and in the Agreement are the best notice practicable under the circumstances, and satisfy the requirements of Rule 23(c) and due process.

**8. Petition for Attorneys' Fees, Litigation Costs, and Case Contribution Awards**

– Any petition by Class Counsel for attorneys' fees, litigation costs, and Case Contribution Awards to the Class Representatives, and all briefs in support of those requests, shall be filed no later than \_\_\_\_\_ (thirty days before the date for filing objections specified in this Order).

**9. Briefs in Support of Final Approval of the Settlement** – Briefs and other documents in support of final approval of the Settlement shall be filed no later than \_\_\_\_\_ (thirty days before the date for filing objections specified in this Order).

**10. Objections to Settlement** – Any member of the Settlement Class or authorized recipient of any Class Action Fairness Act ("CAFA") notice may file an objection to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the Plan of Allocation, to the proposed award of attorneys' fees and litigation costs, to the payment of costs of administering the Settlement out of the Settlement Fund, or to the request for Case Contribution Awards for the Class Representatives. An objector must file with the Court a statement of his, her, or its objection, specifying the reasons for each objection, including any legal support and evidence the objector wishes to bring to the Court's attention or introduce in support of the objection. The address and case information for filing objections with the Court are as follows:

United States District Court for the Middle District of Tennessee  
Fred D. Thompson U.S. Courthouse and Federal Building  
719 Church Street  
Suite 1300



Nashville, TN 37203.

Re: *McCool v. Ardent Health Services, LLC*, No. 3:19-cv-1158

The objector or his, her, or its counsel (if any) must file any objection and supporting materials with the Court no later than \_\_\_\_\_ (thirty days before the date of the Final Approval Hearing specified in this Order). If an objector hires an attorney to object, the attorney must also file a notice of appearance with the Court no later than \_\_\_\_\_ (thirty days before the date of the Final Approval Hearing specified in this Order). Any member of the Settlement Class or other Person who does not timely file a written objection complying with this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred. Any responses to objections shall be filed with the Court no later than \_\_\_\_\_ (seven days before the date of the Final Approval Hearing specified in this Order). There shall be no reply briefs.

11. Any additional briefs the Parties wish to file in support of the Settlement shall be filed no later than \_\_\_\_\_ (seven days before the date of the Final Approval Hearing).

12. **Appearance at Final Approval Hearing** – Any objector who files a timely, written objection may appear and be heard at the Final Approval Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Final Approval Hearing must file a notice of intention to appear (and, if applicable, the name, address, and telephone number of the objector's attorney) with the Court by no later than \_\_\_\_\_ (seven days before the date of Final Approval Hearing). Any objector, or their counsel, who does not timely file a notice of intention to appear in accordance with this

paragraph shall not be permitted to speak at the Final Approval Hearing, except for good cause shown.

13. **Notice Expenses** – The expenses of printing, mailing, and publishing the Settlement Notices shall be paid exclusively from the Qualified Settlement Fund.

14. **Parallel Proceedings** – Pending final determination of whether the Settlement Agreement should be approved, the Class Representatives, every Class Member, and the Plan are prohibited and enjoined from directly, through representatives, or in any other capacity commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against any Released Party.

15. **Continuance of Final Approval Hearing** – The Court reserves the right to reschedule the Final Approval Hearing without further written notice to the Class Members and also may schedule the hearing to be conducted by telephone or video conference.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2024.

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Hon. Judge William L. Campbell, Jr.  
United States District Judge

## EXHIBIT E

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

MARK MCCOOL, SHAWN  
MACDONALD, and WARREN HARLAN,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

AHS MANAGEMENT COMPANY, INC.,  
BOARD OF DIRECTORS OF AHS  
MANAGEMENT COMPANY, INC., and  
ARDENT HEALTH SERVICES  
BENEFITS PLAN ADMINISTRATION  
COMMITTEE,

Defendants.

No. 3:19-cv-1158

Hon. William L. Campbell, Jr.

Magistrate Judge Jeffery S. Frensley

**[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

This Action came before the Court for hearing on \_\_\_\_\_ to determine the fairness of the proposed Settlement. Due notice having been given and the Court having fully considered the matters before it,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

Capitalized terms used in this Final Approval Order and Judgment shall have the same meanings ascribed to them in the Settlement Agreement (ECF No. \_\_\_\_).

1. The Court has jurisdiction over the subject matter of the Action and over all Settling Parties, including all members of the Settlement Class.

2. The Court previously granted Plaintiffs' Motion for Class Certification (ECF No. 130) and appointed Class Representatives and Class Counsel. The Court modified the previously certified class period in its Preliminary Approval Order and now finally approves the Settlement

Class as modified. For purposes of Settlement, and pursuant to Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure, the Settlement Class is defined as:

All persons, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period (December 24, 2013 through the date of the Preliminary Approval Order), and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their immediate family members who were participants in or beneficiaries of the Plan at any time during the Class Period.

3. The Court maintains the appointment of Plaintiffs Mark McCool, Shawn Macdonald, and Warren Harlan as Class Representatives for the Settlement Class, and Capozzi Adler, P.C., as Class Counsel for the Settlement Class.

4. The Settlement Class has received proper and adequate notice of the Settlement, the Fairness Hearing, Class Counsel's application for attorneys' fees and reimbursement of litigation costs and for Case Contribution Awards to the Class Representatives, and the Plan of Allocation. Notice was given in accordance with the Preliminary Approval Order (ECF No. \_\_\_\_). Notice included individual notice to all members of the Settlement Class who could be identified through reasonable efforts, as well as notice through a dedicated website, and provided due notice of the matters set forth in this Final Approval Order and Judgment, and included sufficient information about the procedure for making objections. That notice constitutes the best notice practicable under the circumstances and fully satisfies the requirements of FED. R. CIV. P. 23 and due process.

5. The Court approves the Settlement and orders that the Settlement shall be consummated and implemented.

6. Pursuant to FED. R. CIV. P. 23(e), the Court finds that the Settlement embodied in the Settlement Agreement is fair, reasonable, and adequate to the Plan and the Settlement Class, and more particularly finds that:

(a) The Settlement was negotiated vigorously and at arm's length by Defense Counsel, on the one hand, and Plaintiffs and Class Counsel on behalf of the Settlement Class, on the other hand;

(b) Plaintiffs and Defendants had sufficient information to evaluate the settlement value of the Action;

(c) If the Settlement had not been achieved, Plaintiffs and the Settlement Class faced the expense, risk, and uncertainty of extended litigation;

(d) The amount of the Settlement (\$475,000) is fair, reasonable, and adequate, taking into account the costs, risks, and delay of litigation, trial, and appeal. The method of distributing the Class Settlement Amount is efficient and requires no filing of claims. The Settlement terms related to attorneys' fees do not raise any questions concerning fairness of the Settlement, and there are no agreements, apart from the Settlement, required to be considered under FED. R. CIV. P. 23(e)(2)(C)(iv). The Class Settlement Amount is within the range of settlement values obtained in similar cases;

(e) At all times, Plaintiffs and Class Counsel have acted independently of Defendants and in the interest of the Settlement Class; and

(f) The Court has considered and overruled any objections to the Settlement to the extent there were any.

7. The Plan of Allocation is finally approved as fair, reasonable, and adequate. The Settlement Administrator shall distribute the Net Settlement Amount in accordance with the Plan

of Allocation and the Settlement Agreement. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Class Member in accordance with the Plan of Allocation approved by the Court.

8. All requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, have been met.

10. The releases and covenants not to sue set forth in the Settlement Agreement, including Article 7 of the Settlement Agreement, together with the definitions in the Settlement Agreement relating to those releases and covenants, are expressly incorporated into this order and judgment. The releases are effective as of the Effective Date. As of the Effective Date, the Plan and each of the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) fully, finally, and forever settle, release, relinquish, waive, and discharge all Released Parties (including Defendants) from all Released Claims, even if the Class Member discovers facts in addition to or different from those which the Class Member or Class Counsel now knows or believes to be true with respect to the Action and the Released Claims, and regardless of whether each Class Member receives a monetary benefit from the Settlement, whether each Class Member actually received the Settlement Notice, and whether Class Members objected to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs.

11. The Class Representatives, Class Members, and the Plan settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including Section 1542 of the California Civil Code, which 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.” The Class Representatives, Class Members, and the Plan with respect to the Released Claims also waive any and all provisions, rights, and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable, or equivalent in substance to Section 1542 of the California Civil Code.

12. The Class Representatives, the Class Members, and the Plan, acting individually or together, or in combination with others, are permanently enjoined from suing any Released Party in any action or proceeding alleging any of the Released Claims.

13. Every Class Member releases the Released Parties, Defense Counsel, and Class Counsel for any claims, liabilities, and attorneys’ fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys’ fees and expenses.

14. The operative complaint and all claims asserted in the Action are dismissed with prejudice and without costs to any of the Settling Parties and Released Parties other than as provided for in the Settlement Agreement.

15. The Court shall retain exclusive jurisdiction to resolve any disputes or challenges that arise as to performance under the Settlement Agreement or any challenges to the performance, validity, interpretation, administration, enforcement, or enforceability of the Settlement Notice, Plan of Allocation, this Final Approval Order and Judgment, or the Settlement Agreement. The Court shall also retain exclusive jurisdiction and rule by separate Order with respect to applications for awards of attorneys’ fees and Case Contribution Awards to the Class Representatives, and reimbursement of litigation costs.



16. Any motion to enforce this Final Approval Order and Judgment or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Approval Order and Judgment may also be asserted by way of an affirmative defense or counterclaim in response to any action involving alleged violation of the Settlement Agreement or the assertion of any Released Claim.

17. If the Settlement Agreement is terminated, this Final Approval Order and Judgment shall be rendered null and void and shall be vacated, and this Action shall for all purposes with respect to the Settling Parties revert to its status as of the day immediately before the day the Settlement was reached. The Parties shall be afforded a reasonable opportunity to negotiate a new case management schedule.

18. With respect to distributions to Class Members who have an Active Account (after allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan administrator or other fiduciaries of the Plan, in accordance with applicable law and the governing terms of the Plan.

19. Within 21 days following the distribution of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a list of each person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of the payment or contribution.

20. Upon entry of this Order, all Settling Parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and this Final Approval Order and Judgment.

SO ORDERED on \_\_\_\_\_, 2025.

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Hon. Judge William L. Campbell, Jr.  
United States District Judge