

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22-CVS-3672

LELAND STANFORD DAVIS, on behalf )  
of himself and all others similarly situated, )

Plaintiff, )

v. )

MRO CORPORATION, )

Defendant. )

**SETTLEMENT AGREEMENT**

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This Settlement Agreement (the “Agreement” or “Settlement Agreement”) is entered into by Plaintiff Leland Stanford Davis (“Plaintiff”), individually and as the putative class representative, and Defendant MRO Corporation (“Defendant”) (collectively, “the Parties”) in the above-captioned action (“the Action”). This Settlement Agreement is subject to the approval of the Court under N.C. Gen. Stat. § 1A-1, Rule 23. If the Court fails to approve the settlement, the Parties may revise this Agreement or terminate the settlement.

**I. RECITALS.**

**A.** Plaintiff initiated this Action by filing a class action complaint against Defendant in the General Court of Justice, Superior Court Division, in Durham County on September 27, 2022 (the “Complaint”).

**B.** Plaintiff alleges that Defendant unlawfully charged fees for medical records (the “90-411 Fees”) that exceed the statutory amounts set by the North Carolina Medical Record Fee Act, N.C.G.S. § 90-411.

**C.** Plaintiff brought this Action individually on behalf of himself and a class of North Carolina residents who, during the Relevant Time Period (October 1, 2019 through March 31, 2023), requested medical records from a North Carolina medical provider, were sent an Invoice,

paid amounts, or had amounts paid on their behalf to Defendant in excess of those allowed by N.C.G.S. § 90-411 (the “Settlement Class”).

**D.** The Parties have conducted an investigation of the facts, including taking written discovery and multiple depositions. After carefully considering the circumstances of this Action, including the claims asserted and the associated legal and factual defenses, the Parties have concluded: (1) that entering into this Agreement would be in their best interests to avoid the uncertainties, burden, and risks of litigation; and (2) that this Agreement is fair, reasonable, adequate, and in the best interests of all putative Class Members.

**E.** The Parties have engaged in extensive, arm’s length negotiations regarding the settlement of this Action.

**F.** Defendant, despite its belief that it has strong defenses to the claims described herein, has agreed to enter this Agreement to reduce and avoid the further expense, burden, and inconvenience of protracted and uncertain litigation, and to resolve finally and completely the claims of Plaintiff and the putative class.

**G.** Defendant has agreed to a total Settlement Contribution, defined *infra*, in the amount of a Cash Fund of \$2,500,000.00.

**H.** The Settlement Contribution is not to be construed as an admission of liability on the part of the Released Persons. The Released Persons contend that the Settlement Contribution is made only in settlement of doubtful claims and liability or improper conduct of any kind on the part of the Released Persons being expressly denied.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff and Defendant, acting in good faith and subject to the approval of the Court, that all class and individual claims alleged against Defendant and those claims that could have been alleged are

hereby compromised, settled, fully released, wholly discharged, and dismissed with prejudice in accordance with the terms and conditions set forth *infra*.

## II. **DEFINITIONS.**

**A. 90-411 Fees** means the amount Defendant was charging Settlement Class Members for medical records that allegedly violated N.C.G.S. § 90-411.

**B. Agreement or Settlement Agreement** means this Settlement Agreement resolving the litigation and all attachments and exhibits, which the Parties understand and agree set forth all the terms and conditions of the settlement between them, and which is subject to Court approval.

**C. Cash Fund** means the amount of \$2,500,000.00 to be paid by the Released Persons to the Claims Administrator for the benefit of the Settlement Classes pursuant to this Agreement. The Parties understand and agree that this number reflects the total cash payment obligation regarding this settlement.

**D. Claims Administrator** means the qualified third-party administrator and agent who will administer the Settlement, including providing the Notice of Class Settlement, as agreed by the Parties and approved and appointed by the Court in the Preliminary Approval Order. The Parties agree to recommend that the Court appoint KCC, LLC as Claims Administrator to: (a) design, consult on, and implement the Notice Plan and related requirements of this Agreement; and (b) implement the Notice Plan, including the Settlement website [www.MRORecordSettlement.com](http://www.MRORecordSettlement.com) (or something similar if that domain is unavailable), and all related requirements of this Agreement, subject to the Court's approval.

**E. Class Counsel** means the following attorneys: Edward H. Maginnis and Karl S. Gwaltney of Maginnis Howard.

**F. Class Releasors** means each Settlement Class Member, as well as each Settlement

Class Member's predecessors, successors, heirs, executors, trustees, legal representatives, administrators, agents, and assigns.

**G. Class Representative** means Plaintiff Leland Stanford Davis.

**H. Invoice Letter** means any invoice sent by Defendant to Settlement Class Members during the Relevant Time Period that violates N.C.G.S. § 90-411.

**I. Court** means the General Court of Justice, Superior Court Division, Durham County, North Carolina, where the Action is pending. This Court shall retain jurisdiction to effectuate and resolve any disputes concerning the Settlement.

**J. Effective Date** is the first day after all the following events have occurred:

- (1) Entry of the Order Preliminarily Approving Class Settlement;
- (2) Final approval by the Court of this Settlement, following notice to Settlement Class Members and a Final Fairness Hearing. The Parties recognize that all relief contemplated by this Agreement is expressly contingent upon the Court's Final Approval;
- (3) Entry by the Court of a Final Order and Judgment; and,
- (4) The Action is dismissed with prejudice.
- (5) However, if any Settlement Class Member objects to the Settlement, the Effective Date shall not occur until the time to appeal or seek permission to appeal from the Court's Final Judgment and Order has expired, or, if appealed, the Final Judgment and Order has been affirmed by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to appeal or further review.

**K. Long Form Notice** means the long form notice of settlement, substantially in the

form attached hereto as Exhibit B.

**L. Monetary Relief** means the \$2,500,000.00 Cash Fund.

**M. Notice Period** means the period of time running from the date the Claims Administrator commences the Notice Plan until such Notice Plan is complete. The Notice Period must commence within twenty-one (21) calendar days after the entry of the Preliminary Approval Order and should be substantially complete no later than sixty (60) days after the entry of the Preliminary Approval Order.

**N. Notice Plan** means the plan for dissemination of the notice of this Agreement. The Notice Plan shall commence no later than thirty (30) calendar days after the date of the entry of the Preliminary Approval Order.

**O. Notice of Class Settlement** means notices, including the Long Form Notice, the Postcard Notices, the Summary E-mail Notices, the settlement website, and toll-free telephone number, provided to the Settlement Class pursuant to the Notice Plan.

**P. Postcard Notice** means the postcard notice to be sent to Settlement Class Members who do not have a facially valid e-mail address or for whom the Claims Administrator has received two undeliverable return messages, substantially in the form of the notice attached hereto as Exhibit B.

**Q. Released Claims** means any and all claims, demands, actions, allegations, suits, causes of action, theories of liability, damages whenever incurred, and the liabilities of any nature whatsoever, including costs, expenses, restitution, punitive damages, exemplary damages, compensatory damages, incidental damages, pecuniary damages, fines, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, whether past, present or future, in law or in equity, in tort or in contract, that Class Releasers, whether or not they object to this Settlement or

make a claim upon or participate in the Settlement, ever had, now has, or hereafter can, shall, or may have, directly, indirectly, representatively, derivatively, or in any capacity, arising out of or relating in any way to the charging, threatening to charge, collecting, or attempting to collect amounts for medical records in excess of those allowed under N.C.G.S. § 90-411, as outlined in the Complaint.

**R. Released Persons** means MRO Corporation and its (i) past, present, and future related entities, parents, subsidiaries, affiliates, suppliers, distributors, contractors, agents, and assigns, and (ii) their respective past, present and future officers, directors, affiliates, employees, shareholders, contractors, predecessors, agents, assigns, heirs, executors, estate administrators, counsel, servants, insurers, and personal representatives (or the equivalent thereto).

**S. Relevant Time Period** means the period of time between October 1, 2019, through March 31, 2023.

**T. Settlement** means the settlement embodied in this Agreement, including all exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference).

**U. Settlement Class or Settlement Class Members** are defined as those natural persons who meet the requirements for the below defined Settlement Class.

**V. Summary E-mail Notice** means and includes the notice to be sent to Settlement Class Members who have a facially valid e-mail address, substantially in the form contained in subsection IV(C)(3) below.

### **III. SETTLEMENT TERMS.**

#### **A. Certification of Settlement Class.**

The Parties agree and consent, for settlement purposes only, to the certification of the following class in the Action:

Settlement Class: All North Carolina residents who, during the Relevant Time Period, (a) requested medical records from a North Carolina medical provider, (b) were sent an Invoice, and (c) paid amounts, or had amounts paid on their behalf to MRO in excess of those allowed under the North Carolina Medical Record Fee Act, N.C.G.S. § 90-411 (“Excess Fees”).

Excluded from the proposed Class are: (a) any Judge or Magistrate presiding over this Action and members of their families; (b) MRO Corporation, and any entity in which it has a controlling interest and its legal representatives, assigns and successors; and (c) all persons and entities who properly execute and file a timely request for exclusion from the proposed Class.

Defendants agree and consent to certification of the Settlement Class for settlement purposes only, and subject to the conditions of this Agreement only. Defendants’ agreement is contingent upon execution of this Agreement by the Parties and entry of a Final Order and Judgment.

#### **B. Settlement Class Members.**

After completing a detailed investigation, Class Counsel has provided Defendant a list of all Request IDs for each Settlement Class Member (“Preliminary Settlement Class Member List”)<sup>1</sup>. This Preliminary Settlement Class Member List was compiled from the business records of Defendant.

Defendant has further provided the Affidavit of Johan Flostrand, its V.P., Controller,

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<sup>1</sup> Because the Preliminary Settlement Class Member List contains confidential health related information, it is not being made published. To the extent necessary, it can be provided to the presiding judge to review *in camera*.

attached hereto as Exhibit C, which further confirms that the Preliminary Settlement Class Member List is an accurate listing of Class Members. There are 6,858 unique Request IDs that paid \$164,835.19 in Excess Fees. The number of unique Request IDs and amount of Excess Fees are material terms of this Agreement.

MRO shall use best efforts to provide Class Counsel and the Settlement Administrator with all contact information maintained for each Settlement Class Member on the Preliminary Settlement Class Member List including a last known address and e-mail address (if maintained) (“Settlement Class Member information”), designated as Confidential pursuant to the Stipulated Confidentiality and Protective Order entered in this Action, within twenty-one (21) calendar days of the entry of the Court Order granting preliminary approval of the settlement and approving a form of Notice of Proposed Settlement Class Action, and the Claims Administrator’s execution of the Acknowledgment and Agreement to be Bound by the Stipulated Confidentiality and Protective Order entered in this Action.

### **C. Settlement Class Relief and Compensation.**

In consideration of a full, complete, and final settlement of the Action, dismissal of the Action with prejudice, the full execution of this Settlement Agreement, and subject to the Court’s approval and the terms of this Settlement Agreement, the Parties agree that Defendant shall provide the total Monetary Relief of \$2,500,000.00. Under no circumstances will Defendant be required to pay anything more than the Settlement Amount in connection with this settlement.

#### **1. Monetary Relief.**

The amount of each Settlement Class Member’s allocation may be determined by Class Counsel, the Claims Administrator, a special master, or any other qualified individual. The Settlement Class Member’s respective allocation amount is that Settlement Class Member’s



“Individual Allocated Amount.”

Class Counsel will ensure that \$164,835.19 in Excess Fees are reimbursed to Settlement Class Members. In addition, Class Counsel anticipates that Class Members will receive approximately \$190-\$200 per violation (in other words, for each Request ID in which Excess Fees were charged, that Class Member shall receive, in addition to the Excess Fees, an additional amount of \$190-\$200).

No 1099s shall be issued to Settlement Class Members.

a. Defendant Has No Responsibility for Allocating the Monetary Payment.

The Parties expressly agree that Defendant has no responsibility or liability for any allocations or any distributions of the Monetary Payment among the Settlement Class Members or for reporting requirements related thereto that are imposed on Settlement Claimants or Claimants Counsel by applicable state or federal laws.

Defendant and its counsel shall have no role or involvement in, responsibility for, or liability for any aspect of the process relating to the allocation or distribution of the Monetary Payment among the Settlement Class Members and shall not participate in or provide any information to Settlement Class Members or the Claims Administrator in connection with this process other than the information identified in Paragraph B above. Defendant and its counsel take no position concerning what amount, if any, should be distributed to any Settlement Class Member, or what formula should be used for making such allocations. Defendant and its counsel further have no responsibility for any communications with Settlement Class Members. Defendant shall not be liable for any claims arising out of the allocation, distribution, or other process relating to any payments to Settlement Class Members pursuant to the Parties’ Memorandum of Understanding and this Settlement Agreement.

**D. Administrative Expenses, Attorneys' Fees, and Costs.**

Within seven (7) calendar days of the entry of the Preliminary Approval Order, Defendant shall pay the first installment (totaling \$60,000 to \$75,000) to the Claims Administrator for implementation of the court-approved Notice Plan. This amount shall be subtracted from the Cash Fund.

Defendant shall pay the remainder of the Settlement Amount to the Claims Administrator, including any amounts awarded to Settlement Class Members and any amounts approved and ordered by the Court for attorneys' fees, costs, and service to Class Counsel within ten (10) calendar days after the Effective Date. Under no circumstances will Defendant be required to pay anything more than the Settlement Amount in connection with this settlement.

Defendant will not object to a request for attorneys' fees so long as the request does not exceed one-third of \$2,500,000.00 (which is \$833,333.33) and reimbursement of costs. These amounts shall be subtracted from the Cash Fund.

**E. Service Award.**

The Class Representative, or Class Counsel on their behalf, may make an application for a service award in an amount not to exceed \$7,500.00. Defendant will not oppose or otherwise comment on the service award if in the amount referenced above. The service award shall be subtracted from the Cash Fund.

**F. *Cy Pres.***

Any amounts not distributed to Settlement Class Members or awarded as administrative expenses, attorneys' fees and costs, or as a service award, shall be distributed equally to Legal Aid of North Carolina, UNC Law School's Economic Justice Clinic, and the Blanchard Community

Law Clinic at Campbell University School of Law, subject to Court approval.

**G. No Prejudice to Parties.**

In the event this settlement does not become final and the Effective Date does not occur for any reason, this settlement agreement shall terminate and the Parties expressly reserve all of their rights and preserve all applicable defenses. All communications between the Parties leading up to or related to the settlement are confidential settlement communications inadmissible under North Carolina Rule of Evidence 408 and any and all other federal and state laws in any proceedings between the Parties or between a Settlement Class member and a party.

**H. Non-Admission of Liability.**

It is expressly understood that this Agreement does not in any way embody, reflect, or imply any admission of liability or wrongdoing on the part of Defendant, and the Parties may not use it for such purpose in any subsequent legal proceeding. Defendant denies all claims asserted against them in the Action, denies all allegations of wrongdoing and liability, and denies all material allegations of the First Amended Complaint. Defendant also asserts numerous defenses as to liability and damages and avers that Plaintiff could not certify a class in this Action, were it not for this settlement. No proceedings undertaken in accordance with this Agreement shall be construed as or deemed to be evidence or an admission or concession by Defendant as to the validity of any of claims. The Parties believe it would be in their respective best interests to settle all past, present and future claims, differences, and controversies (whether filed or not filed) and avoid the risk, expense, inconvenience, and distraction of continued litigation. Because Defendant denies all liability, the Settlement cannot be offered into evidence in any civil, criminal, administrative, or other related action or proceeding other than as may be necessary to consummate or enforce this Agreement.

**I. Stay of Action.**

The Parties agree to immediately file a notice of settlement with the Court and request a stay of this Action pending filing the motion for preliminary approval.

**IV. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT.**

The Parties and their counsel shall take reasonable steps as may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective reasonable best efforts to obtain Court approval and effect the reasonable implementation of this Agreement. The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

**A. Submission to the Court for Preliminary Approval.**

Class Counsel shall submit this Agreement to the Court, along with a motion seeking preliminary approval of the proposed Settlement, as soon as practicable following the execution of this Agreement. The motion shall request entry of the Preliminary Approval Order.

In the event the Court does not approve this Agreement and the Effective Date does not occur, or this Agreement is otherwise terminated, all stayed proceedings shall resume in a reasonable manner.

**B. Appointment of Claims Administrator.**

Subject to the approval of the Court, Class Counsel has proposed the appointment of KCC, LLC to serve as Claims Administrator in this matter. The Claims Administrators shall perform the following duties: (a) prepare the Notice Plan; (b) disseminate the Notice of Class Settlement; (c) process opt-out forms; (d) receive and serve upon Class Counsel, Defendant's Counsel, and the Court any written objections and opt-out requests; (e) determine the amounts of the awards due to eligible Settlement Class Members in accord with the terms and procedures set forth herein; (f)

report, in summary or narrative form, to Class Counsel and Defendant's counsel regarding the completion of the tasks identified in this paragraph; (g) issue other reports and provide any and all files, documents, and data related to this Agreement, upon request, to Defendant's Counsel or Class Counsel; (h) carry out other related tasks in accordance with the terms of this Agreement; and (i) agree to employ their best efforts to faithfully and fully perform any and all obligations and duties imposed on the Claims Administrator pursuant to this Agreement and its exhibits and amendments.

The Claims Administrator estimates that it will cost approximately \$60,000 to \$75,000 to perform the notice procedures and administration functions. All costs and fees of the Claims Administrator shall be paid from the Cash Fund, and any amounts remaining after the Claims Administrator has completed its tasks will be distributed to the *cy pres* recipients, equally.

All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

### **C. Plan for Dissemination of Notice.**

It is the Parties' intent that Class Members receive constitutionally adequate notice of the Settlement. Class Representative shall submit to the Court for approval the Notice Plan and the Notice of Class Settlement. The Notice Plan will provide the best notice practicable under the circumstances of the Action, conform to all aspects of N.C. Gen. Stat. § 1A-1, Rule 23, and comply with the terms and conditions of this Agreement.

The dissemination of the Notice of Class Settlement shall be commenced by the Claims Administrator within thirty (30) days of the entry of the Preliminary Approval Order.

The Notice Plan shall include the following:

**1. Class Member Information.**

Within seven (7) days after the entry of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator all Settlement Class Member Information.

**2. Internet Website.**

At the commencement of the Notice Period, the Claims Administrator shall establish an internet website, [www.MRORecordSettlement.com](http://www.MRORecordSettlement.com) (the “Website”), or a substantially similar domain, that will inform Settlement Class Members of the terms of this Settlement, as well as their rights, dates and deadlines, and other necessary related information.

The Website shall include the following: (1) the Long Form Notice; (2) the Preliminary and Final Approval Orders entered by the Court; (3) this Agreement (including all Exhibits other than the Preliminary Class List); (4) the operative Complaint filed in the Action; and (5) any other materials agreed upon by the Parties and/or required by the Court. All website materials shall be in “PDF” format and available for download.

**3. Direct Notice – Email Notice**

No later than thirty (30) days after the commencement of the Notice Period, the Claims Administrator shall email the following message to each Class member with a facially valid e-mail address provided by Defendant (if maintained):

SUBJECT HEADER: Class Action Settlement *Davis v. MRO Corporation*

***A North Carolina State Court authorized Notice. This is not a solicitation from a lawyer.***

This Notice informs you of a proposed settlement in a class action lawsuit filed by Leland Davis against MRO Corporation (“MRO”).

The Plaintiff has alleged that, in connection with a request for medical records, you (or your attorney) were charged and paid amounts to MRO in excess of those

allowed under the North Carolina Medical Record Fee Act, N.C.G.S. § 90-411. The Settlement resolves the lawsuit. MRO denies that it did anything wrong or unlawful, including any liability to Plaintiff and to the members of the Settlement Class.

If you are included in the Settlement, you may qualify to receive compensation. This class has been defined as:

Settlement Class: All North Carolina residents who, during the Relevant Time Period, (a) requested medical records from a North Carolina medical provider, (b) were sent an Invoice, and (c) paid amounts, or had amounts paid on their behalf to MRO in excess of those allowed under the North Carolina Medical Record Fee Act, N.C.G.S. § 90-411 (“Excess Fees”).

Please see the attached Notice for more detail and information.

**If you are a member of the Class, your legal rights are affected whether you act or do not act. Read the attached Notice carefully.**

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Each Summary E-mail Notice will include as an attachment the Long Form Notice attached hereto as Exhibit A.

The Summary E-mail Notice will be sent in small groups to avoid being erroneously flagged as a bulk junk e-mail blast. For any Summary E-mail Notice for which a bounce code is received indicating that the message is undeliverable, at least one additional attempt will be made to deliver the notice by e-mail.

#### **4. Direct Notice – United States First-Class Mail.**

No later than thirty (30) days after the commencement of the Notice Period, the Claims Administrator will send the Postcard Notices by United States Postal Service (“USPS”) first-class mail to all Settlement Class Members (a) for whom Defendant does not have a facially valid e-mail address; or (b) for whom the Claims Administrator received a bounce back or error message on the e-mail notice. Additionally, the Notices will be mailed to all persons who request one via the toll-free phone number maintained by the Claims Administrator.

Prior to the initial mailing of the Postcard Notices, all postal mailing addresses will be checked against the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”). Any addresses returned by NCOA as invalid will be updated through a third-party address search service prior to mailing. All addresses will be certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip codes and verified through the Delivery Point Validation (“DPV”) to confirm the accuracy of the addresses. Postcard Notices returned as undeliverable will be re-mailed to any new address available through USPS information (*i.e.*, to the address provided by USPS on returned pieces for which the automatic forwarding order has expired; or to more current or correct address found using a third-party lookup service, such as *ALLFIND* maintained by LexisNexis). The Postcard Notices will be promptly re-mailed upon locating any new address available through USPS information.

**5. Post-Notice Declaration of Claims Administrator.**

Following the completion of the Notice Plan, the Claims Administrator shall prepare a declaration attesting to its compliance. Such declaration shall be provided to Class Counsel and Defendant’s Counsel following the end of the Notice Period and be filed with the Court along with the filing of any memorandum in support of final approval of the Settlement.

**D. Opt-Outs and Objections by Settlement Class Members.**

**1. Requests for Exclusion from Class or Opt-Outs.**

Any potential Settlement Class Member may request to be excluded from the Settlement Class by submitting a Request for Exclusion pursuant to the terms set forth in the Notice of Class Settlement. Any such request must be made in accordance with the terms set forth in the Notice of Class Settlement, must be mailed or delivered to the designated Claims Administrator as provided in the Notice of Class Settlement, and will be timely only if postmarked no later than fifteen (15)



days following the last day of the Notice Period.

Each Settlement Class Member not timely opting out of the proposed Settlement shall be bound by all the terms and conditions of the Final Approved Settlement. The Parties agree that, should a potential Settlement Class Member submit objections to the proposed Settlement and timely submit a Request for Exclusion, that potential Settlement Class Member shall be deemed to have excluded themselves from the Settlement Class and their objections shall not be considered.

Any potential Settlement Class Member that effectively excludes themselves from the Settlement shall not participate in or be bound by the Final Approved Settlement.

Class Counsel shall provide to the Court a report of the total number of valid Opt-Outs. The report will include the names and address of each valid Opt-Out, and copies of each Request for Exclusion it receives from putative members of the Settlement Class (regardless of validity).

## **2. Objections to Settlement.**

Any Settlement Class Member who has not submitted a timely Request for Exclusion and who wishes to object to the fairness, reasonableness, or adequacy of any aspect of the Settlement, must deliver an objection, in writing, to Class Counsel and Defendant's Counsel, and file the objection with the Court no later than fifteen (15) days after the last day of the Notice Period or as the Court may otherwise direct.

### ***a. Contents of Objection.***

Objections must include: (1) the objector's name, address, and telephone number; (2) the name of this Action and the case number; (3) a statement of each objection; (4) proof of Class Membership; and (5) a brief description of the specific basis for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the

objector wishes to introduce in support of the objection.

Any Class Member filing a written objection or appearing at the Fairness Hearing may do so either on his or her own or through an attorney hired at the objecting Class Member's own expense. If a Class Member hires an attorney to represent him or her, the attorney must file a notice of appearance with the Court no later than twenty-one (21) days before the Fairness Hearing or as the Court may otherwise direct, and serve a copy of such notice of appearance on Class Counsel and Defendant's counsel.

If an objection is made through an attorney, it must also include: (1) the name of each Settlement Class Member whom the attorney represents; (2) how many of those Settlement Class Members have opted out of the Settlement Class; and (3) how many of those Settlement Class Members have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objectors they represent, then the attorney shall file with the Court and serve upon Class Counsel and Defendant's Counsel not later than fifteen (15) days before the Final Fairness Hearing or as the Court may otherwise direct a document containing the following: (1) the amount of fees sought by the attorney for representing the objector(s) and the factual and legal justification for the fees being sought; (2) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (3) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (4) the attorney's hourly rate.

**b. *Class Counsel's Right to Take Discovery Required.***

Class Counsel shall have the right to take discovery, including via subpoenas *duces tecum* and depositions, from any objector. Objectors must make themselves available for deposition by counsel for the Parties between the time the objection is filed and a date no later than five (5) days

before the Final Fairness Hearing, and the objection must include the dates when the objector is available for deposition.

***c. Notice of Intent to Appear Required.***

Any Settlement Class Member who files and serves a written objection satisfying the requirements of this section may appear at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement Class Members or Class Counsel.

No later than fifteen (15) days after the end of the Notice Period, any such Settlement Class Member intending to make an appearance at the Final Fairness Hearing must deliver to Class Counsel and Defendant's Counsel, and have file-marked by the Court, a Notice of Intent to Appear. The Notice of Intent to Appear must: (1) state how much time the Settlement Class Member anticipates he/she will need to present the objection(s); (2) identify, by name, address, and telephone number all witnesses whom the Settlement Class Member proposes to have testify; (3) summarize in detail the anticipated testimony of all such witnesses; (4) identify all exhibits the Settlement Class Member intends to offer in support of the objection; and (5) attach complete copies of all such exhibits.

***d. Maximum Number of Returned Opt-Outs***

The Parties agree that if more than ten percent (10%) of the Settlement Class Members return a class action opt-out, indicating their desire to not be included in the Settlement Agreement, then MRO shall have the option of (i) terminating the entire Settlement Agreement and MOU and receiving in return the Settlement Amount, or (ii) accepting the opt-outs received and proceeding with the settlement process.

### **3. Failure to Object.**

Any Settlement Class Member who fails to timely file such a written statement of their intention to object: (1) shall be foreclosed from making any objection to the Settlement; (2) shall waive and forfeit any and all rights they may have to appear separately and/or object; and (3) shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments.

### **E. Claim Process.**

#### **1. Monetary Benefits.**

Settlement Class Members who have not opted out are eligible to receive monetary benefits without submission of any claim form or any requirement to take any affirmative action in order to qualify for compensation. Monetary benefits will be paid out by the Claims Administrator within forty (40) days after Final Approval Order. The Claims Administrator shall mail settlement checks or money via a court-approved method to the Settlement Class Members. Any settlement checks must be cashed within six (6) months of the date of the mailing (the “Payment Period”).

#### **2. Miscellaneous.**

The Claims Administrator, in consultation with Class Counsel, shall determine whether the claimant is a Settlement Class Member.

### **F. Effective Date.**

The Agreement shall be effective the first day after the Effective Date.

### **G. Disbursements and Distributions from the Cash Fund.**

Payment, disbursements, and distributions of the Cash Fund shall proceed as follows:

#### **1. First Payment.**

Defendant shall pay \$60,000 to \$75,000 to the Claims Administrator for the costs of notice and administration within seven (7) calendar days after the Order on Preliminary Approval is

entered.

**2. Second Payment.**

Within ten (10) calendar days after the Effective Date, Defendant shall cause the remainder of the Cash Fund (less the \$60,000 to \$75,000 already paid to the Claims Administrator for the costs of notice and claims administration; and less any awarded attorneys' fees, costs, and service awards) to be remitted to the Claims Administrator for distribution to the Settlement Class.

**3. Third Payment.**

Within ten (10) calendar days after the Final Approval Order is entered, all amounts awarded for attorneys' fees, costs, and any Service Award approved by the Court for services rendered by the Class Representative shall be paid by Defendant into the Maginnis Howard Trust Account for distribution in accordance with this Agreement.

**4. Disbursement.**

Within thirty (30) calendar days after payment of the amount in subsection G.2., the Claims Administrator shall disburse all approved amounts to Settlement Class Members in accordance with the terms of this Agreement. All disbursement checks shall be cashed within six (6) months of the date of the mailing. Disbursement should occur after Effective Date

**5. Cy Pres.**

Any amounts not distributed to Settlement Class Members or awarded as administrative expenses, attorneys' fees and costs, or as a service award, shall be distributed equally to Legal Aid of North Carolina, UNC Law School's Economic Justice Clinic, and the Blanchard Law Clinic, subject to Court approval. In addition, if Class Members do not cash their checks within six (6) months of the checks being issued, then the money will be distributed to the cy pres recipients equally.

#### **H. Retention of Records**

The Claims Administrator shall retain all records relating to payment of claims under this Agreement for a period of five (5) years from the Effective Date of this Agreement.

#### **V. EXCLUSIVE REMEDY, DISMISSAL OF CLAIMS, & JURISDICTION.**

##### **A. Exclusive Remedy.**

This Agreement shall be the exclusive remedy for all Released Claims, any claim arising out of the subject matter of this Agreement, and any complaint by any Settlement Class Member against the Released Persons related to the Released Claims. No Released Person shall be subject to liability or expense of any kind to any Settlement Class Member related to the Released Claims except as provided in this Agreement. Upon the Court's Final Approval, each Settlement Class Member shall be barred from initiating, asserting, or prosecuting any Released Claims against any Released Person. This Agreement shall be binding upon, and inure to the benefit of, the Parties' successors and assigns.

##### **B. Dismissal of Claims.**

The Parties agree that upon the Effective Date of this Agreement, all Released Claims are dismissed with prejudice.

##### **C. Jurisdiction.**

Durham County Superior Court in North Carolina shall retain exclusive and continuing jurisdiction over the Parties and this Agreement with respect to the performance of its terms and conditions (and any disputes derived or related to this Agreement); the proper provision of all compensation; the implementation and enforcement of its terms, conditions, and obligations; and the non-performance by the Claims Administrator of its duties.

## **VI. RELEASES & RESERVATIONS.**

### **A. Released Claims.**

Upon the Effective Date of this Agreement, the Released Persons shall be released and forever discharged by the Class Releasers from all Released Claims. All Class Releasers covenant and agree that they shall not hereafter seek to establish liability against any Released Person based, in whole or in part, on any of the Released Claims. Each Class Releaser expressly waives and fully, finally, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims without regard to the subsequent discovery or existence of different or additional facts.

Upon the Effective Date of the Settlement, all Settlement Class Members that have not filed a timely Request for Exclusion shall be forever enjoined and barred from asserting any of the Released Claims, and any such Settlement Class Member shall be deemed to have forever released the Released Persons from all such Released Claims.

### **B. Reservation of Claims and Rights, No Admission.**

Released Claims shall not include any claim against any person or entity that is not a Released Person, nor any claim for breach of this Agreement. The Parties agree that, whether or not the Effective Date occurs, this Agreement and all associated negotiations, documents, and discussions: (1) shall be without prejudice to the rights of any Party (other than those compromised herein); (2) shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Released Persons, or of the truth of any of the claims or allegations contained in any complaint or pleading, whether in this Action or any proceeding of any kind—civil, criminal or otherwise—before any court, administrative agency, regulatory body, or any other authority present or future.

Neither this Agreement, any of its provisions, any statement or document filed in connection herewith, nor the fact of this Agreement shall be filed, offered, received in evidence, or otherwise used in any action or proceeding. This Agreement and all its terms constitute compromises and offers to compromise. In the event this Agreement is terminated, nothing discussed herein or during negotiation may be used as evidence in any action between the Parties. The Parties expressly reserve all their rights if this Agreement fails to become final and effective substantially in accordance with its terms.

Notwithstanding the preceding paragraph, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted with respect to any of the Released Claims; and may be filed, offered, received into evidence, and otherwise used for such defense. This Agreement may also be used in connection with the Parties' application for approval or enforcement of this Agreement and all proceedings incident thereto, including requests for attorneys' fees, costs, disbursements and compensation to the Settlement Class, and any disputes arising from this Agreement.

## **VII. MISCELLANEOUS PROVISIONS.**

### **A. Reasonable Best Efforts.**

The Parties agree to: (1) use their reasonable best efforts, including all steps required by this Agreement and other efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Agreement; (2) use their reasonable best efforts to defeat any lawsuit seeking to challenge this Agreement unless there is a conflict of interest; and (3) support the Settlement in all statements in any forum unless there is a conflict of interest.

Class Counsel has carefully reviewed this Agreement and has concluded that it is in the best interests of the Settlement Class Members and represents a fair and efficient method of



compensating them for their claims against the Released Persons. Accordingly, Class Counsel represents that they shall recommend that each Settlement Class Member accept their settlement offer under the terms of this Agreement. The Parties recognize, however, that the decision whether to participate in this Agreement rests with each individual Settlement Class Member.

**B. Authorization to Enter Agreement**

The undersigned representative of Defendant represents that they are fully authorized to enter and execute this Agreement on behalf of Defendant, subject to approval by the Court.

Class Counsel represents that they are fully authorized to conduct settlement negotiations with Defendant's Counsel on behalf of Plaintiff and to enter and execute this Agreement on behalf of Plaintiff and the putative Settlement Class, subject to approval by the Court.

**C. Confidentiality.**

Other than the extent required to effectuate this settlement, Class Counsel agrees not to publish the identity of Defendant or Defendant's counsel in any marketing publication, including but not limited to social media. In any such marketing publication, Class Counsel shall only refer to Defendant as a "medical industry corporation."

**D. Binding Effect.**

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

**E. No Party is the Drafter.**

None of the Parties to this Agreement shall be considered the drafter of this Agreement or any included provision for the purpose of any statute, case law, or rule of construction that would or might cause any provision to be construed against the drafter.

**F. Choice of Law.**

This Agreement shall be governed by and interpreted according to the substantive laws of the State of North Carolina without regard to its choice of law or conflict of laws principles.

**G. Amendment or Waiver.**

This Agreement shall not be modified in any respect except by a writing executed by all Parties to this Agreement. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneous with this Agreement.

**H. Integrated Agreement.**

This Agreement, including its exhibits, contain an entire, complete, and integrated statement of the terms agreed to by and between the Parties.

**I. No Collateral Attack.**

This Agreement shall not be subject to collateral attack by any Settlement Class Member, or any recipient of the Notice of Class Settlement after the Final Order and Judgment is entered. Such prohibited collateral attacks shall include but not be limited to claims that the Settlement Class Member failed for any reason to receive timely notice of the procedure for submitting a claim.

**J. Amendments.**

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by Class Counsel and Defendant's Counsel who executed this agreement and (b) approved by the Court.

**K. Meet & Confer Regarding Disputes.**

Should any dispute arise among the Parties or their respective Counsel regarding the implementation or interpretation of this Agreement, Class Counsel and Defendant's Counsel shall meet and confer with one another and/or the mediator, Thomas Duncan, in an attempt to resolve such disputes prior to submitting such disputes to the Court.

**L. Waiver of Compliance.**

Any failure of any Party, Defendant's Counsel, and/or Class Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

**M. Severability.**

In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement if the Defendant and Class Counsel mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Agreement.

**N. Execution of Counterparts.**

This Agreement may be executed in counterparts. Facsimile or PDF signatures shall be valid signatures as of the date thereof, although the original signature pages shall be appended to this Agreement and filed with the Court thereafter.

**O. Deadlines.**

MRO and Class Counsel may, by written agreement, extend any of the deadlines contained herein and agree that any requested reasonable extension of any deadline will not be unreasonably withheld.

IN WITNESS WHEREOF, the Parties hereto, by and through their fully authorized representatives, have executed this Agreement.

*[Signatures page to follow]*

FOR PLAINTIFF LELAND STANFORD DAVIS:

  
\_\_\_\_\_

Dated: 5/6/2024

FOR MRO CORPORATION:

\_\_\_\_\_

Dated: \_\_\_\_\_