
NANETTE KATZ, CHRISTINA KRESKI, Britney Richardson, as parent guardian of S.H., a minor, and NGHI TA, individually and on behalf of all others similarly situated	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
	:	
Plaintiffs,	:	Commerce Program
	:	
v.	:	CIVIL ACTION No. 02045
	:	
EINSTEIN HEALTHCARE NETWORK	:	April Term 2021
	:	
Defendant.	:	

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and between Nanette Katz, Christina Kreski, Britney Richardson as parent guardian of S.H., and Nghi Ta (collectively, the “Class Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through Settlement Class Counsel (as defined below), and Defendant Einstein Healthcare Network (“Einstein”), subject to Court Approval. Class Plaintiffs and Einstein may be referred to individually as a “Party” or collectively as the “Parties.”

WHEREAS, there is pending in the Commonwealth of Pennsylvania Court of Common Pleas of Philadelphia County a Class Action captioned at *Nanette Katz, Christina Kreski, Britney Richardson as parent guardian of S.H., and Nghi Ta, individually and on behalf of all others similarly situated v. Einstein Healthcare Network*, No. 02045 (the “Litigation”), arising out of an incident whereby a third party allegedly gained access to certain email accounts (the “Accounts”) belonging to employees of Einstein between August 5, 2020 and August 17, 2020 (the “Incident”);

WHEREAS, Class Plaintiffs further allege that the Accounts contained protected identifying information (“PII”) and protected health information (“PHI”) and that Einstein failed to adequately safeguard this information;

WHEREAS, Class Plaintiffs have asserted claims against Einstein for (i) negligence, (ii) breach of contract, (iii) breach of implied contract, (iv) breach of fiduciary duty, (v) breach of confidence, and (vi) declaratory judgment, and Class Plaintiffs have sought monetary and equitable relief;

WHEREAS, the Parties so as to explore resolution, agreed to engage in a mediation to seek to settle the Class Plaintiffs’ claims;

WHEREAS, the Parties engaged in two full days of mediation with Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP;

WHEREAS, as a result of the mediation, the Parties agreed to settle the Litigation without any admission of liability on the terms set forth herein;

WHEREAS, Class Plaintiffs and Einstein mutually desire to settle the Litigation fully, finally, and forever on behalf of the Settlement Class, including Class Plaintiffs, for the Released Claims (as defined in ¶ 1.20 below) in accordance with the terms and conditions of the Settlement Agreement, which the Parties believe constitute a fair and reasonable compromise of the claims and defenses asserted in the Litigation and upon final approval of the Court;

WHEREAS, Class Plaintiffs and Einstein agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Einstein or of the truth of any of the claims or allegations alleged in the Litigation or as a waiver of any defenses thereto;

NOW, THEREFORE, it is agreed by and among the undersigned on behalf of Class Plaintiffs, Settlement Class and Einstein that all claims asserted against Einstein in the Litigation are settled, compromised and dismissed on the merits and with prejudice and, except as hereafter provided, without costs as to Class Plaintiffs or Einstein, subject to the approval of the Court, on the following terms and conditions:

I. DEFINITIONS

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

- 1.1. “Agreement” or “Settlement Agreement” means this agreement.
- 1.2. “Approved Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the Dispute Resolution process.
- 1.3. “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Claims Administrator.
- 1.4. “Claims Administrator” means a company that is experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation, to be jointly agreed upon by the Parties and approved by the Court.
- 1.5. “Claims Deadline” means the postmark and/or online submission deadline for valid claims pursuant to ¶ 2.1.
- 1.6. “Claims Referee” means a third party designated by agreement of the Parties and approved by the Court to make final decisions about disputed claims for settlement benefits.
- 1.7. “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.8. “Court” means the Court of Common Pleas, Philadelphia County.

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

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

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

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

1.13. “Notice” means notice of the proposed class action settlement to be provided to Settlement Class Members pursuant to the notice plan approved by the Court in connection with preliminary approval of the Settlement.

1.14. “Notice Deadline” means the deadline for the completion of providing notice to Settlement Class Members as set forth in ¶ 3.2.

1.15. “Notice Specialist” means a company or such other notice specialist with recognized expertise in class action notice generally and data security litigation specifically, to be jointly agreed upon by the Parties and approved by the Court.

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

1.17. “Opt-Out Date” means the date by which Settlement Class Members must mail their requests to be excluded from the Settlement Class in order for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.18. “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

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

1.20. “Related Entities” means Einstein’s respective past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing,

aiding or abetting the criminal activity occurrence of the Incident or who pleads nolo contendere to any such charge.

1.21. “Released Claims” shall collectively mean any and all claims and causes of action including, without limitation, any causes of action under or relying on Pennsylvania or other state law; Federal law; the Health Insurance Portability and Accountability Act; the Federal Trade Commission Act; negligence; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy/intrusion upon seclusion; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Incident and alleged compromise of personally identifiable information, protected health information, or other personal information or the allegations, facts, or circumstances described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.22. “Released Persons” means Einstein and its Related Entities and each of their past or present direct and indirect parents, subsidiaries, divisions, partners, affiliates, and

insurers, and their respective present and former stockholders, officers, directors, employees, managers, agents, and each of their respective predecessors, successors, heirs, executors, trustees, administrators, assigns, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers. As used in this Paragraph, “affiliates” means entities controlling, controlled by or under common control with a Released Person.

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

1.24. “Settlement Class” means all individuals residing in the United States whose PHI and/or PII was involved in the Incident that impacted Einstein in August 2020 and who received notice of the settlement. Einstein represents that the Settlement Class consists of approximately 286,181 individuals. The Settlement Class specifically excludes: (i) Einstein and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Incident or who pleads nolo contendere to any such charge.

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

1.26. “Settlement Class Counsel” or “Class Counsel” means Nussbaum Law Group, P.C., Morgan & Morgan Complex Litigation Group, Golomb Spirt Grunfeld, P.C., Casey Gerry Schenk Francavilla Blatt & Penfield, LLP and Lynch Carpenter, LLP.

1.27. “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including Class Plaintiffs, does not know or suspect to exist in his/her favor at the

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

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

Settlement Class Members, including Class Plaintiffs, and any of them, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Class Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.28. “United States” as used in this Settlement Agreement includes the District of Columbia and all territories.

II. SETTLEMENT BENEFITS

Subject to the terms of this Settlement Agreement, the Settlement Class shall receive the following benefits:

2.1. Compensation for Losses: Einstein or its insurer shall make available the following benefits to Settlement Class Members who submit a valid Claim Form, a form substantially similar to that attached hereto as Exhibit A. Settlement Class Members may choose any or all applicable claim categories below. The overall amount for all payments made by Einstein or its insurer under Claims A, B, and C in this Section shall not exceed \$1,500,000.00. If the total of all Claims A, B, and C exceed \$1,500,000.00, the claims shall be reduced pro rata.

(a) Claim A: Compensation for Lost Time. Settlement Class Members will be eligible for compensation of up to 3 hours of lost time (at \$20.00 per hour) spent dealing with the Incident, provided that the claimant submits an attestation with the Claim Form that the time was spent dealing with issues relating to the Incident.

(b) Claim B: Compensation for Ordinary Losses. Settlement Class Members will be eligible for compensation for ordinary losses, as defined below, up to a total of \$1,500.00 per claimant, upon submission of a claim and supporting documentation, if applicable. Ordinary losses are: (i) out-of-pocket expenses incurred as result of the Incident, including but not limited to unreimbursed bank fees, unreimbursed card reissuance fees, unreimbursed overdraft fees, unreimbursed charges related to the unavailability of funds, unreimbursed late fees, unreimbursed over-limit fees, unreimbursed charges from banks or credit card companies, interest on payday loans due to a card cancelation or over-limit situation, long distance phone charges, cellphone charges if charged by the minute, data charges if charged

based on data usage, text messages if charged by the message, postage, or gasoline for local travel, costs associated with freezing or unfreezing credit with any credit reporting agency, fees for credit reports between the date of the Incident and the Claims Deadline; and (ii) the cost of purchasing credit monitoring or other identity theft insurance products purchased between October 9, 2020 and the date of preliminary approval of the settlement, provided that the claimant attests that the credit monitoring or other identity theft insurance products were purchased primarily as a result of the Incident. The Settlement Class Member must provide documentation to the Claims Administrator that establishes the out-of-pocket expenses and charges claimed were both actually incurred and are fairly and reasonably traceable to the Incident. Failure to provide supporting documentation as requested on the Claim Form shall result in denial of a claim. The maximum amount any one claimant may recover under Claim B is \$1,500.00.

(c) **Claim C: Compensation for Extraordinary Losses.**

Settlement Class Members will be eligible for compensation for extraordinary losses, as defined below, up to a total of \$7,500.00 per claimant, upon submission of a claim and supporting documentation. Extraordinary losses are losses associated with identity theft, medical fraud, tax fraud, other forms of fraud, and other actual misuse of personal information, provided that (i) the loss is an actual documented and unreimbursed monetary loss; (ii) the loss was fairly and reasonably traceable to the Incident; (iii) the loss is not already covered by one or more of the ordinary loss compensation categories under Claim B; (iv) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring or identity monitoring insurance; and (v) the loss occurred

between the date of the Incident and the Claims Deadline. The maximum amount any one claimant may recover under Claim C is \$7,500.00.

Settlement Class Members seeking reimbursement under this section must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the 90th day after the Notice Deadline as set forth in ¶ 3.2 (previously defined as the “Claims Deadline” in ¶ 1.5). The notice to the class will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 2.4.

2.2. Identity Monitoring Services: Settlement Class Members will receive an offer of one year of Identity Monitoring Services from Experian on a claims made basis, that includes, at least, the following, or similar, services: (i) internet surveillance; (ii) identity theft insurance of up to \$1,000,000; and (iii) identity restoration services.

2.3. Remedial Measures/Security Enhancements: Einstein has implemented information security enhancements since the Incident, and as part of this agreement Einstein will commit to continue to make additional security enhancements in the future. Nothing in this section shall create any contractual rights to any present or future equitable remedy requiring Einstein to make or maintain any particular security processes or procedures in the future.

The enhancements implemented by Einstein since the Incident or that it expects to implement in the future include but are not limited to the following:

- Implement advanced security awareness training to educate employees to recognize and avoid engagement with phishing emails and other similar social engineering attempts;

- Implement controls and technology enforcement of controls to check, warn, or block PII and PHI that is transmitted externally via unencrypted email;
- Implement multi-factor authentication for web email interface or VPN access to any Einstein systems;
- Implement enhanced password security measures for Einstein email accounts, including requirements of password reset on a regular intervals;
- Engage a reputable third-party cybersecurity company to deploy endpoint monitoring and response tools on an around-the-clock basis;
- Identify and remove inactive email accounts to reduce the number of accounts present on the network;
- Encrypt Social Security numbers and other sensitive PII or PHI, both when at rest and during movement (but not for internal emails sent by and between Einstein employees);
- Within two (2) years of the date of this Agreement, Einstein will segment all internet-facing and/or ecommerce applications from internal networks;
- Within one (1) year of the date of this Agreement, Einstein will complete a risk assessment that includes both internal and external penetration testing;
- Engage third-party security auditors/penetration testers to conduct testing, including simulated attacks, penetration tests, and audits on Einstein's systems on a periodic basis;
- Audit, test, and train its security personnel regarding any new or modified procedures;
- Purge, delete, and destroy in a reasonably secure manner data not necessary for Einstein's provision of services;
- Conduct regular computer system scanning and security checks; and
- Conduct internal training and education to inform internal security personnel how to identify and contain a breach when it occurs and what to do in response to a breach.

2.4. Dispute Resolution for Claims: The Claims Administrator, in his or her sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the

expenses described in ¶ 2.1; and (3) the information submitted could lead a reasonable person to conclude that the claimant has suffered the claimed losses as a result of the Incident (collectively, “Facially Valid”). The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the claim, e.g., documentation requested on the Claim Form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof.

Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is Facially Valid, the Claims Administrator shall request additional information (“Claim Supplementation”) and give the claimant thirty (30) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the 30-day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the 30-day deadline in which to comply; however, in no event shall the deadline be extended to later than one year from the Effective Date. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

Following receipt of additional information requested as Claim Supplementation, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is Facially Valid, then the claim shall be

paid. If the claim is not Facially Valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Settlement Administrator may reject the deficient portion of the claim without any further action. If the claim is rejected for other reasons, then the claim shall be referred to the Claims Referee.

Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination. If the claimant approves the final determination, then the approved amount shall be the amount to be paid. If the claimant does not approve the final determination within thirty (30) days, then the dispute will be submitted to the Claims Referee within an additional ten (10) days.

If any dispute is submitted to the Claims Referee, the Claims Referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days. The Claims Referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days. The Claims Referee's determination shall be based on whether the Claims Referee is persuaded that the claimed amounts are reasonably supported in fact and were fairly and reasonably traceable to the Incident. The Claims Referee shall have the power to approve a claim in full or in part. The Claims Referee's decision will be final and non-appealable. Any claimant referred to the Claims Referee shall reasonably cooperate with the Claims Referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the Claims Referee to verify the claim through third party sources, and failure to cooperate shall be grounds for denial of the

claim in full. The Claims Referee shall make a final decision within thirty (30) days of receipt of all supplemental information requested.

2.5. Settlement Expenses: All costs for notice to the Settlement Class as required under ¶ 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute Resolution described in ¶ 2.4, shall be paid by Einstein.

2.6. Settlement Class Certification: The Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Party's position on the issue of class certification or any other issue. The Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

2.7. Confidentiality of Information Submitted by Settlement Class Members: Information submitted by Settlement Class Members pursuant to ¶¶ 2.1 through 2.4 of this Settlement Agreement shall be deemed confidential and protected as such by Einstein, the Claims Administrator, and the Claims Referee.

III. ORDER OF PRELIMINARY APPROVAL AND PUBLISHING OF NOTICE OF FAIRNESS HEARING

3.1. As soon as practicable after the execution of the Settlement Agreement, Settlement Class Counsel and counsel for Einstein shall jointly submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement with the

Court requesting entry of a Preliminary Approval Order in the form attached hereto as Exhibit D, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

(a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.6;

(b) preliminary approval of the Settlement Agreement as set forth herein;

(c) appointment of Nussbaum Law Group, P.C., Morgan & Morgan Complex Litigation Group, Golomb Spirt Grunfeld, P.C., Casey Gerry Schenk Francavilla Blatt & Penfield, LLP and Lynch Carpenter, LLP as Settlement Class Counsel;

(d) appointment of Class Plaintiffs as Class Representatives;

(e) approval of a customary form of short notice to be provided to Settlement Class Members (the “Short Notice”) in a form substantially similar to the one attached hereto as Exhibit B;

(f) approval of a customary long form of notice (“Long Notice”) to be posted on the Settlement Website in a form substantially similar to the one attached hereto as Exhibit C, which, together with the Short Notice, shall include a fair summary of the parties’ respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;

(g) appointment of RG2 Claims Administration LLC as the Notice Specialist and Claims Administrator;

(h) approval of a claim form substantially similar to that attached hereto as Exhibit A; and

(i) appointment of Bennett G. Picker, or his associate, to serve as Claims Referee.

The Short Notice, Long Notice, and Claim Form have been reviewed and approved by the Notice Specialist and Claims Administrator but may be revised as agreed upon by the Parties prior to submission to the Court for approval.

3.2. Einstein or its insurer shall pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Attorneys' fees, costs, and expenses of Settlement Class Counsel and Class Plaintiffs' Counsel, and service awards to Class Representatives, shall be paid by Einstein as set forth in ¶ 7 below. Notice shall be provided to Settlement Class Members via mail to the postal address provided when the Settlement Class Members conducted transactions with Einstein. For those class members whose mailing addresses were not found or mail was returned previously, reasonable efforts will be made to identify email addresses which will be used to provide Notice. The notice plan shall be subject to approval by the Court as meeting constitutional due process requirements. The Claims Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the claim period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement and other important case documents. A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Claims Administrator also will provide copies of the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement,

upon request. At least five (5) days prior to the Final Fairness Hearing, Settlement Class Counsel and Einstein' counsel shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice. The Short Notice, Long Notice, and Claim Form approved by the Court may be adjusted by the Notice Specialist and/or Claims Administrator, respectively, in consultation and agreement with the Parties, as may be reasonable and not inconsistent with such approval. The Notice Program shall be completed within thirty (30) days after entry of the Preliminary Approval Order.

3.3. Settlement Class Counsel and Einstein's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

3.4. Einstein shall cause the Claims Administrator to provide (at Einstein's expense) notice to the relevant state and federal governmental officials as required by the Class Action Fairness Act.

3.5. No later than twenty-one (21) days after entry of the Preliminary Approval Order, Einstein shall provide the Notice Specialist and/or Claims Administrator with the name and last known physical address and email address (to the extent available) of each Settlement Class Member (collectively, "Class Member Information") that Einstein possesses.

3.6. The Class Member Information and its contents shall be used by the Notice Specialist and/or Claims Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Claims Administrator

and Notice Specialist shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

IV. OPT-OUT PROCEDURES

4.1. Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. Opt-outs must be exercised individually by a Class Member, not as or on behalf of a group, class, or subclass, except that the individual exclusion requests may be submitted by a Class Member's legal representative. To be effective, written notice must be postmarked no later than sixty (60) days after Notice Deadline.

4.2. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. A list of Class Members submitting a timely request for exclusion shall be prepared by the Claims Administrator to be submitted to the Court with the Motion for Final Approval.

4.3. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon, and their claims shall be released as provided for herein. A Class Member is not entitled to submit both an opt-out request and a Claim Form. If a Class Member submits both an opt-out request and a Claim Form, the Claims Administrator will send a letter explaining that the Class Member may not make both of these requests, and asking the Class Member to make a final decision as to whether to opt out or submit a Claim Form and inform the Claims Administrator of that decision within 10 days. If the Class Member does not respond to that communication within 14 days

after it is mailed (or by the Opt-Out deadline, whichever is later), the Class Member will be treated as having opted out of the Class.

4.4. In the event that within ten (10) days after the Opt-Out Date as approved by the Court, more than 5,000 Persons have filed Opt-Outs, then Einstein may, by notifying Settlement Class Counsel in writing, void this Settlement Agreement. If Einstein voids the Settlement Agreement pursuant to this paragraph, Einstein or its insurer shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Settlement Class Counsel and Class Plaintiffs' Counsel and service awards and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

V. OBJECTION PROCEDURES

5.1. Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing the objector; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. To

be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court no later than sixty (60) days after Notice Deadline, and served concurrently therewith upon Settlement Class Counsel, Richard M. Golomb, Golomb Spirt Grunfeld PC, 1835 Market Street, Suite 2900, Philadelphia, Pennsylvania 19103; and counsel for Einstein, Jan P. Levine, Troutman Pepper Hamilton Sanders LLP, 3000 Two Logan Square, Philadelphia, Pennsylvania 19103 and Angelo A. Stio III, Troutman Pepper Hamilton Sanders LLP, 301 Carnegie Center, Suite 400, Princeton, New Jersey 08540.

5.2. Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 waives and forfeits any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Pennsylvania Rules of Appellate Procedure and not through a collateral attack.

VI. RELEASES

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

forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.2. Upon the Effective Date, Einstein shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Class Plaintiffs, each and all of the Settlement Class Members, Settlement Class Counsel and Class Plaintiffs' Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses Einstein may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3. Notwithstanding any term herein, neither Einstein nor the Related Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Class Plaintiffs, each and all of the Settlement Class Members, Settlement Class Counsel and Class Plaintiffs' Counsel.

VII. CLASS PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES, COSTS, AND EXPENSES; SERVICE AWARD TO CLASS PLAINTIFFS

7.1. The Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Class Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that Einstein would pay reasonable attorneys' fees, costs, expenses, and service awards to Class Plaintiffs as may be agreed to by Einstein and Settlement Class Counsel and/or as ordered by the Court, or in the

event of no agreement, then as ordered by the Court. Einstein and Settlement Class Counsel then negotiated and agreed as follows:

7.2. Einstein has agreed not to object to an award of up to \$375,000 in total for attorneys' fees and the reasonable costs and expenses to Settlement Class Counsel. Settlement Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among themselves.

7.3. Subject to Court approval, Einstein has agreed to pay service awards in the amount of \$1,500 each to Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta and a service award in the amount of \$1,000 to Britney Richardson, as parent guardian of S.H.

7.4. Once paid, Settlement Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Class Plaintiffs' Counsel and service award to Class Plaintiffs consistent with ¶¶ 7.2 and 7.3.

7.5. The amount(s) of any award of attorneys' fees, costs, and expenses, and the service award to Class Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service awards ordered by the Court to Settlement Class Counsel or Class Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

VIII. CLAIMS ADMINISTRATION

8.1. The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2.1. Settlement Class Counsel and Einstein shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or

inadequate. The Claims Administrator's and Claims Referee's, as applicable, determination of the validity or invalidity of any such claims shall be binding, subject to the dispute resolution process set forth in ¶ 2.4. All claims agreed to be paid in full by Einstein or its insurer shall be deemed valid.

8.2. Checks for approved claims shall be mailed and postmarked within forty-five (45) days of the Effective Date, or within forty-five (45) days of the date that the claim is approved, whichever is later.

8.3. All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4. No Person shall have any claim against the Claims Administrator, Claims Referee, Einstein, Settlement Class Counsel, Class Plaintiffs, Class Plaintiffs' Counsel, and/or Einstein's counsel based on distributions of benefits to Settlement Class Members.

IX. PAYMENT SCHEDULE

9.1. Einstein or its insurer shall pay costs sufficient to fund the settlement as follows:

(a) Within thirty (30) days of the Court granting preliminary approval of this Settlement Agreement, Einstein or its insurer shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement in an amount estimated by the Settlement Administrator;

(b) Within thirty (30) days of the Effective Date, Einstein or its insurer shall pay to Class Counsel any attorneys' fees, costs, expenses, and service award pursuant to ¶¶ 7.2 and 7.3;

(c) Within thirty (30) days of the Effective Date, Einstein or its insurer shall pay to the Settlement Administrator an amount sufficient to satisfy the full amount of approved claims. To the extent claims are finally approved after the deadline for the initial payment, the Settlement Administrator shall send monthly statements to counsel for Einstein with additional amounts due to pay for approved claims, and Einstein or its insurer shall pay those additional amounts within thirty (30) days of each monthly statement. Within forty-five (45) days of the Effective Date or within forty-five (45) days of the date that the claim is approved, whichever is later, the Settlement Administrator shall send out payment for all valid claims.

X. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

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

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

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

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

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

10.2. If all of the conditions specified in ¶ 10.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 10.4 unless Settlement Class Counsel and Einstein's counsel mutually agree in writing to proceed with the Settlement Agreement.

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

10.4. In the event that the Settlement Agreement is not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or its counsel, and (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Einstein or its insurer shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution pursuant to ¶ 2.4 above and shall not, at any time, seek

recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

XI. MISCELLANEOUS PROVISIONS

11.1. The Parties (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

11.2. The Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim or defense. The Parties each agree that the settlement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

11.3. Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may

be brought against them or any of them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11.4. All documents and materials, if any, provided by Einstein shall be treated as confidential and returned to Einstein and/or destroyed within sixty (60) days of the Effective Date. Such documents and materials, if any, may not be used for any purpose other than what they were provided for.

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

11.6. The Settlement Agreement, together with the Exhibits attached hereto, constitutes the entire agreement among the parties hereto, and no representations, warranties or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties and covenants contained and memorialized in such document. Except as otherwise provided herein, each party shall bear its own costs. This agreement supersedes all previous agreements made by the parties. Settlement Class Counsel, on behalf of the Settlement Class, is expressly authorized by Class Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

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

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

11.9. The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

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

11.11. The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Pennsylvania, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Pennsylvania.

11.12. As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and “him” means “him, her, or it.”

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

11.14. Cashing a settlement check is a condition precedent to any Settlement Class Member’s right to receive settlement benefits. All settlement checks shall be void sixty (60) days after issuance. If a check becomes void, the Settlement Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to

recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and Einstein shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶ 2.1 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for reissuance need not be honored after such checks become void.

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

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

Settlement Class Counsel

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LITIGATION GROUP**

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Dated: _____

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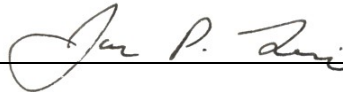
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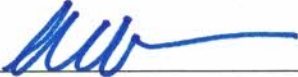
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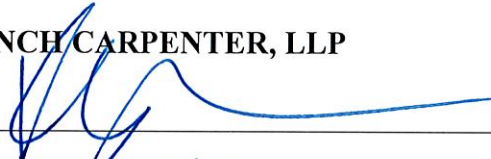
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