

## Exhibit A

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Michael Chechile and Sonia Lopez, individually  
and on behalf of a Class of Participants and  
Beneficiaries of the Baystate Health, Inc.  
Retirement Plan,

Plaintiffs,

v.

Baystate Health, Inc. and Board of Directors of  
Baystate Health, Inc.,

Defendants.

Case No. 22-cv-30155-KAR

#### **CLASS ACTION SETTLEMENT AGREEMENT & RELEASE**

This CLASS ACTION SETTLEMENT AGREEMENT & RELEASE (“Settlement Agreement”) is entered into by and between Named Plaintiffs, as defined in Section 1.24 below, on the one hand, and Baystate Health, Inc. (“Baystate”), on the other hand. Capitalized terms and phrases have the meanings provided in Section 1 below or as specified elsewhere in this Settlement Agreement.

#### 1. **DEFINITIONS**

- 1.1. “Action” shall mean: *Chechile et al v. Baystate Health, Inc. et al.*, No. 22-cv-30155-KAR, pending in the United States District Court for the District of Massachusetts.
- 1.2. “CAFA” shall mean: the Class Action Fairness Act of 2005, as amended.
- 1.3. “Case Contribution Award” shall mean: any monetary amount awarded by the Court in recognition of the Named Plaintiffs’ assistance in the prosecution of this Action and payable pursuant to Section 11 below.
- 1.4. “Challenged RKA Fees” shall mean: the Plan’s total recordkeeping and administrative fees as defined in paragraphs 48 to 50 of the Complaint.
- 1.5. “Class Counsel” and/or “Plaintiffs’ Counsel” shall mean: Walcheske & Luzi, LLC and Jonathan Feigenbaum.
- 1.6. “Class Settlement Amount” is defined in Section 8.2 below.
- 1.7. “Class Period” shall mean: the period from November 17, 2016 through the Effective Date of Settlement.

1.8. “Complaint” shall mean: the Class Action Complaint filed in the Action on November 17, 2022 (Dkt. 1).

1.9. “Court” shall mean: the United States District Court for the District of Massachusetts.

1.10. “Current Participants” shall mean: Settlement Class members who have a positive balance in their Plan account at the time the Court enters the Final Approval Order.

1.11. “Defendants” shall mean: Baystate Health, Inc. (“Baystate”) and the Board of Trustees of Baystate Health, Inc. (incorrectly named as Board of Directors of Baystate Health, Inc.).

1.12. “Defendants’ Released Claims” shall mean: any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether known or unknown, based on facts which have been, or could have been, asserted in the Action or in any court or forum, by Defendants against either of the Named Plaintiffs, which arise out of the institution, prosecution or settlement of the Action, except for any rights or duties arising out of the Settlement Agreement, including the enforcement of the Settlement Agreement.

1.13. “Defendant Releasees” shall mean: Defendants and its or their, as applicable, current and former parents, subsidiaries, affiliates, and successors, including, without limitation, its or their, as applicable, directors, trustees, managers, fiduciaries, members of 403(b) plan fiduciary committees, officers, governors, management committee members, in-house counsel, employees, agents, representatives, insurers, reinsurers, consultants, administrators, investments advisors, investment underwriters, estates, beneficiaries and spouses.

1.14. “Defense Counsel” shall mean: Proskauer Rose LLP.

1.15. “Effective Date of Settlement” shall mean: the date on which all of the conditions to settlement set forth in Section 3 of this Settlement Agreement have been fully satisfied or waived and the Settlement shall have become Final.

1.16. “ERISA” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all rules and regulations promulgated thereunder.

1.17. “Escrow Agent” shall mean: the custodian of the Qualified Settlement Fund, which shall be selected by Class Counsel and approved by Baystate.

1.18. “Final” when referring to the Final Approval Order or any other judgment or court order in this Action shall mean: (a) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (b) if there is an appeal from the judgment or order, the latter of (i) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (ii) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant.

1.19. “Final Approval Order” shall mean: the order of dismissal with prejudice entered by the Court as contemplated by Sections 3.2.5 and 3.6 of this Settlement Agreement.

1.20. “Final Individual Dollar Recovery” shall mean: the portion of the Net Settlement Fund payable to an individual Settlement Class member, as determined by the Settlement Administrator according to the procedures described in the Plan of Allocation.

1.21. “Former Participants” shall mean: Settlement Class members who have no account balance in the Plan at the time the Court enters the Final Approval Order.

1.22. “Independent Fiduciary” shall mean: the fiduciary retained pursuant to approval by Baystate for purposes of Section 3.4.

1.23. “Mediator” shall mean: Robert A. Meyer, JAMS.

1.24. “Named Plaintiffs” shall mean: Michael Chechile and Sonia Lopez.

1.25. “Net Settlement Fund” shall mean: the Qualified Settlement Fund, plus any interest or income earned on the Qualified Settlement Fund, less any: (a) taxes and tax-related expenses; (b) Settlement Administration Expenses; (c) reimbursement of expenses incurred by Class Counsel that are awarded by the Court; (d) attorneys’ fees to Class Counsel that are awarded by the Court; and (e) Case Contribution Awards that are awarded by the Court.

1.26. “Participant” shall mean: any person who was a participant in the Plan at any time during the Class Period.

1.27. “Party” or “Parties” shall mean: the Named Plaintiffs and Baystate, either individually or collectively.

1.28. “Person” shall mean: an individual, partnership, limited liability company, corporation, or any other form of organization.

1.29. “Plan” shall mean: the Baystate Health, Inc. Retirement Plan.

1.30. “Plan of Allocation” is defined in Section 9.3 below.

1.31. “Qualified Settlement Fund” is defined in Section 8.1 below.

1.32. “Plaintiffs” shall mean: Named Plaintiffs, the Plan, and each and every Settlement Class member and their Successors-In-Interest.

1.33. “Plaintiffs’ Released Claims” shall mean: subject to Section 10 below and the Carved Out Claims, any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, disgorgement, and causes of action, whether arising under federal, state or local law, whether by statute, regulation, contract or equity, whether brought in an individual, derivative, or representative capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, against the Defendant Releasees for actions, inactions, or omissions during the

Class Period that: (a) would have been barred by the doctrine of *res judicata* or claim preclusion had the Action been fully litigated to a final judgment; (b) arise out of the same operative facts as those alleged in the Complaint; (c) were asserted in the Complaint, or arise out of the conduct alleged in the Complaint whether or not pleaded in the Complaint; (d) arise out of, relate to, are based on, or have any connection with fees, costs, or expenses charged to, paid by, or reimbursed by the Plan, or the Plan's Participants, directly or indirectly; (e) relate to the direction to calculate, the calculation of, and/or the method or manner of allocation, implementation or administration of the Qualified Settlement Fund or Net Settlement Fund to the Plan or any member of the Settlement Class in accordance with the Plan of Allocation; or (f) relate to the approval by the Independent Fiduciary of the Settlement Agreement.

The Parties stipulate and agree that, upon the Effective Date of Settlement, Named Plaintiffs and Defendants shall expressly waive, the Plan and each of the other Settlement Class members and each of the Plaintiff Releasees shall be deemed to have waived, and by operation of the Final Approval Order, shall have waived expressly, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, 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.**

1.34. "Carved Out Claims" are the following rights and/or claims which are specifically excluded from the Plaintiffs' Released Claims:

- (a) Any rights or duties arising out of the Settlement Agreement, including the enforcement of the Settlement Agreement;
- (b) Claims of individual denial of benefits under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) that do not fall within Section 1.33 above; or
- (c) Claims arising exclusively from conduct after the Final Approval Order becomes Final.

In no event shall any member of the Settlement Class be permitted to recover more than 100% of his or her vested benefits.

1.35. "Plaintiff Releasees" shall mean: Plaintiffs and any and all of their related parties or entities, including, without limitation, any and all members of their immediate families, agents or other persons acting on their behalf at any time, heirs, beneficiaries, and estates.

1.36. "Representatives" shall mean: representatives, attorneys, agents, directors, officers, employees, insurers, and/or reinsurers.

1.37. “Settlement” shall mean: the settlement to be consummated under this Settlement Agreement pursuant to the Final Approval Order.

1.38. “Settlement Administration Expenses” shall mean: the expenses of the implementation of the Settlement and the Plan of Allocation, including the fees and expenses associated with the Independent Fiduciary, Defendants’ collection of Settlement Class member data from the Plan’s recordkeepers and delivery of such data to the Settlement Administrator, and Defendants’ compliance with CAFA described herein, and the fees and expenses of the Settlement Administrator and Escrow Agent, including: (a) providing notice to the Settlement Class; (b) calculating each Settlement Class member’s Final Individual Dollar Recovery and implementing the Plan of Allocation; (c) distributing to Former Participants their Final Individual Dollar Recoveries; (d) paying taxes on the Qualified Settlement Fund and tax-related expenses; and (e) generally administering the Settlement. All Settlement Administration Expenses shall be paid from the Qualified Settlement Fund. The Parties agree that the record-keeper, trustee, and Defendants will not be exercising any discretion when distributing Final Individual Dollar Recoveries to Current Participants based on the instructions of Class Counsel. Furthermore, the Parties, Class Counsel and Defense Counsel do not exercise discretion when assisting the Settlement Administrator with the implementation or administration of the Court-approved Plan of Allocation.

1.39. “Settlement Administrator” shall mean: a third party retained by Class Counsel, subject to approval by Baystate and the Court, who will: (a) issue the Class Notice; (b) calculate each Settlement Class member’s Final Individual Dollar Recovery and implement the Plan of Allocation; (c) distribute to Former Participants their Final Individual Dollar Recoveries; (d) effectuate the payment of all taxes and tax expenses, including tax reporting, remittance, and/or withholding obligations for distributions to Settlement Class members; (e) issue the CAFA notices; and (f) generally administer the Settlement.

1.40. “Settlement Amount” shall mean: the five hundred thousand U.S. dollars (\$500,000) deposited in the Qualified Settlement Fund pursuant to Section 8.1 below.

1.41. “Settlement Class” shall mean: all Participants and beneficiaries in the Baystate Health, Inc. Retirement Plan during the Class Period. Excluded from the Settlement Class are participants who joined the Plan for the first time on or after May 27, 2022.

1.42. “Successor-In-Interest” shall mean: a Person’s estate, legal representatives, heirs, beneficiaries, successors or assigns, and any other Person who can make a legal claim by or through such Person.

1.43. “Term Sheet” shall mean: the Settlement Term Sheet executed by the Parties on February 10, 2023.

2. **RECITALS**

2.1. In the Complaint, the Named Plaintiffs allege that Defendants were fiduciaries of the Plan and that they breached fiduciary duties owed to the Participants in the Plan.

2.2. Class Counsel has conducted an investigation into the facts, circumstances and legal issues associated with the allegations made in the Action. This investigation has included, *inter alia*: (a) reviewing and analyzing documents relating to the Plan; and (b) researching the applicable law with respect to the claims asserted in the Action and the defenses and potential defenses thereto.

2.3. Defendants deny any and all liability, and deny any and all allegations of wrongdoing made in the Complaint and Action. Defendants deny that some or all of them were fiduciaries under ERISA, or were acting as ERISA fiduciaries at the time of the events complained of, or to the extent that any of them were acting as fiduciaries, that any breach of fiduciary duty occurred in connection with the contracting, acquisition, oversight, monitoring, or payment of the Challenged RKA Fees of, or any other actions taken with respect to, the Plan. Defendants further contend that they acted prudently, loyally and in accordance with the Plan documents at all times and in all respects with regard to the Plan.

2.4. On January 18, 2023, the Court issued an Order (Dkt. 11) staying the proceedings and scheduling the filing of a joint status report by no later than February 17, 2023.

2.5. During the course of the Action, the Parties engaged in settlement discussions, including through private mediation with the Mediator. The Parties signed the Term Sheet on February 10, 2023. The terms of the Parties' Settlement are memorialized in this Settlement Agreement.

2.6. On February 21, 2023, the Court extended the stay in the Action through April 6, 2023 and ordered the Parties to file a joint status report if Plaintiffs' Counsel had not filed their Preliminary Approval Motion (as defined in Section 3.2.1) on or before April 6, 2023. (Dkt. 19.)

2.7. On March 30, 2023, the Court extended the stay in the Action through May 8, 2023, and ordered the Parties to file a joint status report if Plaintiffs' Counsel had not filed their Preliminary Approval Motion (as defined in Section 3.2.1) on or before May 10, 2023. (Dkt. 21.)

2.8. Plaintiffs' Counsel believes that the Settlement will provide a benefit to the Settlement Class and the Plan, and, when that benefit is weighed against the attendant risks of continuing the prosecution of the Action, the Settlement represents a reasonable and fair resolution of the claims of the Settlement Class. In reaching this conclusion, Plaintiffs' Counsel has considered, among other things: the risks of litigation; the relevant law; the time necessary to achieve a final resolution through litigation; the complexity of the claims set forth in the Complaint; and the benefit accruing to the Plan's Participants under the Settlement.

2.9. Defendants maintain that the Plan has been managed, operated, and administered at all relevant times in compliance with its terms, ERISA, and all applicable laws and regulations, and further maintain that they acted prudently, loyally and in accordance with plan documents at all times and in all respects with regard to the Plan. This Settlement Agreement, and the prior

negotiations between the Parties, shall in no event be construed as, or be deemed evidence of, an admission or concession of any wrongdoing, fault or liability of any kind by Defendants.

2.10. Defendants desire to resolve fully and settle with finality the Action and all of Plaintiffs' Released Claims for themselves and the Plan, thereby avoiding the expense, inconvenience, burden, distraction and diversion of their personnel and resources, and uncertainty of outcome that is inherent in any litigation.

2.11. The Named Plaintiffs and Defendants have thus reached this Settlement by and through their respective counsel on the terms and conditions set forth herein, which is subject to Court approval.

3. **CONDITIONS TO EFFECTIVENESS OF THE SETTLEMENT**

3.1. *Effectiveness of Settlement.* The Settlement provided for in this Settlement Agreement shall not become binding unless and until each and every one of the following conditions in Sections 3.2 through 3.8 shall have been satisfied or waived.

3.2. *Court Approval.* The Settlement contemplated under this Settlement Agreement shall have been approved by the Court, as provided for in this Section 3.2. The Parties agree jointly to recommend to the Court that it approve the terms of this Settlement Agreement and the Settlement contemplated hereunder. The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps or efforts which may become necessary by order of the Court (unless such order modifies the terms of this Settlement Agreement) or otherwise, to carry out this Settlement Agreement, including the following:

3.2.1. *Preliminary Approval of Settlement and of Notices.* The Court shall have approved the motion for preliminary approval of settlement filed by Named Plaintiffs (the "Preliminary Approval Motion") by issuing an order in substantially the same form as attached hereto as Exhibit 1 (the "Preliminary Approval Order"):

- (a) preliminarily approving the Settlement embodied in this Settlement Agreement;
- (b) directing the Settlement Administrator to mail by electronic means or by first class mail the class notice, substantially in the form attached to the Preliminary Approval Order as Exhibit A (the "Class Notice"), to all Settlement Class members;
- (c) finding that: (i) the proposed Class Notice fairly and adequately (A) describes the terms and effect of this Settlement Agreement and of the Settlement, (B) provides sufficient notice to all members of the Settlement Class of the time and place of the Fairness Hearing (defined below in Section 3.2.5), and (C) describes the rights of all Settlement Class members including that the recipients of the Class Notice may object to approval of the Settlement; and (ii) the proposed manner of distributing the Class Notice to the members of the Settlement Class is the best notice practicable under the circumstances and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process;

- (d) setting the Fairness Hearing; setting the deadline for all objections to any aspect of the Settlement Agreement that is at least twenty (20) days prior to the Fairness Hearing; and setting the deadline for a notice to be filed by any Person who wishes to speak at the Fairness Hearing at least twenty (20) days prior to the Fairness Hearing;
- (e) providing that any Party may file a response to an objection by a Settlement Class member at least ten (10) calendar days before the Fairness Hearing; and
- (f) approving the form of the CAFA notices attached to the Preliminary Approval Order as Exhibit B (the “CAFA Notices”), and ordering that upon mailing of the CAFA Notices by the Settlement Administrator, Defendants will have fulfilled their obligations under CAFA.

3.2.2. *Class Certification.*

- (a) The Court shall have certified the Action as a class action for settlement purposes only pursuant to Rule 23(b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure, with Named Plaintiffs as the named Settlement Class representatives, Walcheske & Luzzi, LLC and Jonathan M. Feigenbaum as Class Counsel, and a Settlement Class as defined above, except that this condition shall also be deemed satisfied if another member of the Settlement Class is named as Settlement Class representative.
- (b) The Parties agree to stipulate to a certification of the Action as a non-opt-out class action for settlement purposes only, pursuant to Rule 23(b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure, on the foregoing terms. If the Settlement does not become Final, then no Settlement Class will be deemed to have been certified by, or as a result of, this Settlement Agreement, and the Action will for all purposes revert to its status as of February 9, 2023, the day immediately prior to the date on which the Term Sheet was executed. In such event, Defendants will not have consented to class certification, the agreements and stipulations in this Settlement Agreement concerning the Settlement Class definition or class certification shall not be used as evidence or argument to support class certification, and Defendants will retain all rights and arguments with respect to any motions for class certification that Named Plaintiffs may make.

3.2.3. *Issuance of Class Notice.* On the date and in the manner set by the Court in its Preliminary Approval Order, the Settlement Administrator shall have caused the Class Notice to be sent to members of the Settlement Class in the form and manner approved by the Court. The Parties shall confer in good faith with regard to the form and content of the Class Notice in an effort to utilize cost effective forms of notice. Baystate shall provide reasonable cooperation with respect to the Class Notice, including by providing Participant addresses and contact information, to the extent Baystate has such information. The Parties agree, and the form of Preliminary Approval Order attached hereto as Exhibit 1 shall provide, that the last known email addresses and/or mailing addresses for the Settlement Class members in the possession of the Plan’s current record-keeper will suffice for all purposes in connection with this Settlement,



including, without limitation, the furnishing of the Class Notice. The Settlement Administrator shall enter into a confidentiality agreement and information security agreement, both of which shall be satisfactory to Baystate to adequately protect information provided to the Settlement Administrator relating to the Settlement and the identification of Settlement Class members.

3.2.4. *Internet Publication of Class Notice.* Class Counsel also shall have given notice by publication of the Settlement Agreement and Class Notice on the Settlement website.

3.2.5. *The Fairness Hearing.* On the date set by the Court in its Preliminary Approval Order, the Parties shall have participated in the hearing (the “Fairness Hearing”), during or after which the Court will issue the Final Approval Order. The Parties further agree that they will reasonably cooperate with one another in obtaining an acceptable Final Approval Order at the Fairness Hearing. The Parties will not do anything inconsistent with obtaining such a Final Approval Order in substantially the same form as attached hereto as Exhibit 2, which is an Order by the Court that:

- (a) the proposed Settlement between the Parties on the terms and conditions provided for in this Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court;
- (b) final judgment should be entered;
- (c) the Settlement Class should be certified as a non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23;
- (d) the Class Notice distributed to members of the Settlement Class constituted the best notice practicable under the circumstances and sufficient notice of the Fairness Hearing and all rights of members of the Settlement Class was provided consistent with Federal Rule of Civil Procedure 23 and the requirements of due process;
- (e) the requirements of CAFA have been satisfied;
- (f) the proposed Plan of Allocation, to be filed with the Court and described below in Section 9.3, has been approved;
- (g) Settlement Administration Expenses shall be paid from the Qualified Settlement Fund;
- (h) Named Plaintiffs shall be awarded Case Contribution Award(s) in the amount(s) approved by the Court, but not to exceed \$5,000 for each Named Plaintiff;
- (i) Class Counsel shall receive attorneys’ fees and reimbursement of expenses as approved by the Court, but not to exceed 33% of the Settlement Amount;
- (j) the Settlement Administrator shall have final authority to determine the amount of the Final Individual Dollar Recovery to be allocated to each Current Participant and Former Participant pursuant to the Plan of Allocation approved by the Court;

- (k) the Settlement Administrator shall distribute the Net Settlement Fund in accordance with the Plan of Allocation that is approved by the Court;
- (l) the payments made from the Net Settlement Fund to effectuate the Plan of Allocation constitute restorative payments in accordance with Revenue Ruling 2002-45;
- (m) all Settlement Class members and the Plan are barred and enjoined from asserting any of Plaintiffs' Released Claims against any of the Defendant Releasees, and Defendants are barred and enjoined from asserting any of Defendants' Released Claims against the Named Plaintiffs;
- (n) the Parties shall take the necessary steps to effectuate the terms of the Settlement Agreement;
- (o) the Action is dismissed with prejudice and without costs, except as contemplated by this Settlement Agreement; and
- (p) the Court shall retain jurisdiction to enforce and interpret the Settlement Agreement in accordance with its terms for the mutual benefit of the Parties, but without affecting the finality of the Final Approval Order.

3.2.6. *Motion for Final Approval of Class Action Settlement.* On the date set by the Court in its Preliminary Approval Order, Named Plaintiffs shall have filed a motion for final approval of the Settlement (the "Final Approval Motion"). However, such date shall be at least twenty-one (21) days before the deadline for objections. The Final Approval Motion shall seek the Court's finding that the Final Approval Order is a final judgment disposing of all claims and all Parties.

3.3. *Finality of Final Approval Order.* The Final Approval Order shall have become Final.

3.4. *Determination by Independent Fiduciary.* At least twenty-one (21) days prior to the deadline for filing the Final Approval Motion, the Independent Fiduciary shall have approved and authorized in writing the Settlement in accordance with Prohibited Transaction Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended by 72 Fed. Reg. 65,597 (the "Class Exemption"). If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement, then the Parties, through their counsel, shall attempt to agree in writing prior to filing the Final Approval Motion to modify the Settlement to satisfy objections by the Independent Fiduciary to the Settlement. If the Parties are unable to reach agreement on any modification required by the Independent Fiduciary, Defendants may, at their sole discretion, terminate the Settlement Agreement at which point the Settlement Agreement will be null and void and the provisions of Section 10.3 shall apply.

3.4.1. The Independent Fiduciary's fees and expenses shall be paid from the Qualified Settlement Fund. The Independent Fiduciary shall acknowledge in writing that it is a fiduciary with respect to the Settlement of this Action on behalf of the Plan. The Defendants and Class Counsel will comply with reasonable requests for non-privileged information made by the Independent Fiduciary that are for the purpose of reviewing and evaluating the Settlement Agreement and subject to the Confidentiality Order.

3.5. *Compliance with CAFA.* Defendants shall have fulfilled their obligations under CAFA and the Court shall have determined that Defendants complied with CAFA and its notice obligations therein by providing, through the Settlement Administrator, appropriate federal and state officials with information about the Settlement.

3.6. *Dismissal of Action with Prejudice.* The Action shall have been dismissed with prejudice on the Effective Date of Settlement.

3.7. *Funding of Settlement Amount.* Baystate shall have caused to be deposited five hundred thousand U.S. dollars (\$500,000.00) into the Qualified Settlement Fund (defined below in Section 8.1) within thirty (30) days after the date on which both of the following have occurred: (i) the Court has issued the Preliminary Approval Order; and (ii) Baystate has been provided wiring instructions and a completed W-9 from the Settlement Administrator.

3.8. *No Termination.* The Settlement shall not have terminated pursuant to Section 10 below.

3.9. *Materiality of Settlement Conditions.* The Parties expressly acknowledge that this Settlement is specifically conditioned upon the occurrence of each and every one of the foregoing conditions precedent prior to the Effective Date of Settlement, and that a failure of any condition set forth in Sections 3.1 through 3.8 above at any time prior to the Effective Date of Settlement shall make this Settlement Agreement, and any obligation to pay the Settlement Amount, or any portion thereof, null, void, and of no force and effect, unless the Parties agree in writing that despite the non-occurrence of one of the above conditions the remainder of the Settlement Agreement shall go forth.

#### 4. **RELEASES AND COVENANT NOT TO SUE**

4.1. *Release By Named Plaintiffs, the Settlement Class, Defendants, and the Plan.*

4.1.1. *Releases of the Defendant Releasees and Named Plaintiffs.* Subject to Section 10 below and the Carved Out Claims, upon the Effective Date of Settlement, Named Plaintiffs, on behalf of themselves, the Plan, and each member of the Settlement Class and their Successors-In-Interest, absolutely and unconditionally release and forever discharge the Defendant Releasees from any and all of Plaintiffs' Released Claims that Named Plaintiffs or the Settlement Class directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have. Defendants release and forever discharge the Named Plaintiffs for any and all of Defendants' Released Claims that Defendants directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have.

4.1.2. *Plan Release.* Subject to Section 10 below, upon the Effective Date of Settlement, the Independent Fiduciary's approval of the Settlement shall constitute a release of any and all of Plaintiffs' Released Claims the Plan ever had, now has or hereafter may have against any and all of Defendant Releasees.

4.1.3. *Covenant Not to Sue.* Subject to Section 10 below, Named Plaintiffs, on behalf of themselves and each member of the Settlement Class, their Successors-In-Interest, their Representatives, and the Plan (subject to Independent Fiduciary approval as required by Section 3.4), expressly covenant and agree that they, acting individually, derivatively, or

together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert against Defendant Releasees, in any action or proceeding, any cause of action, demand, or claim on the basis of, connected with, or arising out of any of Plaintiffs' Released Claims, and that the foregoing covenant and agreement shall be a complete defense to any such Plaintiffs' Released Claims against any of the Defendant Releasees. Defendants expressly covenant and agree that they shall not sue or seek to institute, maintain, prosecute, argue, or assert against Named Plaintiffs, in any action or proceeding, any cause of action, demand, or claim on the basis of, connected with, or arising out of any of Defendants' Released Claims, and that the foregoing covenant and agreement shall be a complete defense to all of Defendants' Released Claims against either of the Named Plaintiffs. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement.

5. **COVENANTS**

5.1. *No Amendment or Modification of Any Plan.* Notwithstanding anything to the contrary herein, Named Plaintiffs, on behalf of themselves, the Plan, and each member of the Settlement Class, their Successors-In-Interest, and their Representatives, hereby covenant that nothing in this Settlement Agreement, including the Plan of Allocation, shall constitute an amendment or modification of any rights or obligations under any of Defendant Releasees' employee benefit plans, including the Plan.

5.2. *Taxation of Qualified Settlement Fund.* Named Plaintiffs, on behalf of themselves, the Plan, and each member of the Settlement Class, their Successors-In-Interest, and their Representatives, hereby covenant that neither the Parties, Defendant Releasees, Defense Counsel, Class Counsel nor any of their Representatives or Successors-In-Interest shall have any responsibility for any taxes due on the Qualified Settlement Fund, or on any funds that the Plan, members of the Settlement Class, or Named Plaintiffs receive from the Qualified Settlement Fund. Nothing herein shall constitute an admission or representation that any taxes will or will not be due on the Qualified Settlement Fund or any allocation or distribution therefrom.

5.3. *Cooperation.*

5.3.1. Baystate shall use its best efforts to provide Class Counsel with the names, last known email addresses, and last known addresses of members of the Settlement Class in electronic spreadsheet format (to the extent Baystate has such information) as soon as reasonably possible upon entry of the Preliminary Approval Order. However, Baystate will not transfer any Settlement Class member information until Baystate has fully approved the Settlement Administrator and the Settlement Administrator has entered into a confidentiality agreement and information security agreement, both of which shall be satisfactory to Baystate to adequately protect information provided to the Settlement Administrator relating to the Settlement and the identification of Settlement Class members. Such information shall be used by the Settlement Administrator to deliver the Class Notice, and implement the Settlement, including the Plan of Allocation, and for no other purpose.

5.3.2. Class Counsel anticipates that the Settlement Administrator and Class Counsel will receive inquiries from Persons concerning whether they are members of the Settlement Class. To the extent that such Persons are not included in the information provided in the paragraph

immediately above, Baystate and/or its Representatives will reasonably assist the Settlement Administrator and Class Counsel in determining whether or not such Persons are members of the Settlement Class.

6. **REPRESENTATIONS AND WARRANTIES**

6.1. *Parties' Representations and Warranties.*

6.1.1. Named Plaintiffs, on behalf of themselves and each member of the Settlement Class, their Successors-In-Interest, and their Representatives, represent and warrant that they have not assigned or otherwise transferred any interest in any of Plaintiffs' Released Claims against any of the Defendant Releasees, and further covenant that they will not assign or otherwise transfer any interest in any of Plaintiffs' Released Claims.

6.1.2. Named Plaintiffs, on behalf of themselves, the Plan, and each member of the Settlement Class, their Successors-In-Interest, and their Representatives, represent and warrant that they shall have no surviving claim or cause of action against any of the Defendant Releasees with respect to Plaintiffs' Released Claims.

6.1.3. The Parties, and each of them, represent and warrant that: (a) they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among their counsel; (b) in executing this Settlement Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; (c) except as expressly stated herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements or omissions pertaining to any of the foregoing matters by any other Party or its Representatives; and (d) each Party assumes the risk of mistake as to facts or law.

6.1.4. The Parties, and each of them, represent and warrant that: (a) they have carefully read the contents of this Settlement Agreement; (b) they have made such investigation of the facts pertaining to the Settlement, this Settlement Agreement, and all of the matters pertaining thereto as they deem necessary; and (c) this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Parties.

6.2. *Signatories' Representations and Warranties.* Each individual executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each Person which such individual represents or purports to represent.

7. **NO ADMISSION OF LIABILITY**

The Parties understand and agree that this Settlement Agreement embodies a compromise and settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any finding of fiduciary status under ERISA or wrongdoing by any of the Defendant Releasees, or give rise to any inference of fiduciary status under ERISA or wrongdoing or admission of

wrongdoing or liability in this or any other proceeding. This Settlement Agreement and the payment made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. Moreover, the Defendant Releasees specifically deny any such liability or wrongdoing. Neither the fact nor the terms of this Settlement Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Settlement Agreement or arising out of or relating to the Final Approval Order.

8. **THE QUALIFIED SETTLEMENT FUND; DELIVERIES INTO THE QUALIFIED SETTLEMENT FUND ACCOUNT**

8.1. *The Qualified Settlement Fund.*

8.1.1. As noted above in Section 3.7, Baystate shall cause the Settlement Amount to be deposited into the Qualified Settlement Fund within thirty (30) days after the date on which both of the following have occurred: (i) the Court has issued the Preliminary Approval Order; and (ii) Baystate has been provided wiring instructions and a completed W-9 from the Settlement Administrator. The Qualified Settlement Fund is an interest-bearing escrow account, trusted by the Escrow Agent.

8.1.2. The Qualified Settlement Fund shall: (a) bear interest for the benefit of the Settlement Class; (b) be structured and managed to qualify as a Qualified Settlement Fund under Section 468B-1 of the Internal Revenue Code and Treasury regulations promulgated thereunder; and (c) contain customary provisions for such funds, including obligations of the Qualified Settlement Fund to make tax filings and to provide reports to the Parties concerning taxes. The Escrow Agent timely shall make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. The Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment.

8.1.3. Class Counsel agrees to use best efforts to attempt to have the Escrow Agent structure the Qualified Settlement Fund to the extent possible to preserve for the Settlement Class the tax benefits associated with retirement plans.

8.1.4. The Parties acknowledge and agree that neither the Parties, Defense Counsel, Class Counsel, nor the Defendant Releasees shall have authority or liability in connection with the management, investment, maintenance or control of the Qualified Settlement Fund.

8.2. *The Class Settlement Amount.* The Settlement Amount deposited in the Qualified Settlement Fund pursuant to Section 8.1 above, plus all interest income earned thereon and less

expenditures authorized under this Settlement Agreement, shall constitute the “Class Settlement Amount.”

8.3. *Sole Monetary Contribution.* The Settlement Amount shall be the full and sole monetary contribution and consideration made by or on behalf of the Defendant Releasees in connection with the Action and Settlement. The Settlement Amount specifically satisfies any and all claims for costs and attorneys’ fees by Class Counsel, claims for Case Contribution Awards to Named Plaintiffs, any costs or expenses of the Class Notice, the costs of the Independent Fiduciary and compliance with CAFA, and all taxes on the Qualified Settlement Fund, in addition to any amounts to be distributed to Current Participants and Former Participants pursuant to this Settlement. Except as set forth in Section 11 below, as otherwise specified in this Settlement Agreement, or as provided for in any applicable contract of insurance or other written agreement between the Parties, the Parties shall bear their own costs and expenses (including attorneys’ fees) in connection with effectuating the Settlement and securing all necessary court orders and approvals with respect to the same.

9. **EFFECTIVE DATE OF SETTLEMENT; DISBURSEMENT FROM QUALIFIED SETTLEMENT FUND; PLAN OF ALLOCATION**

9.1. *Establishment of Effective Date of Settlement.* If Named Plaintiffs and Defendants disagree as to whether each and every condition set forth in Section 3 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes as provided for in Section 14.

9.2. *Disbursement from Qualified Settlement Fund.*

9.2.1. No distribution of part, or all, of the Class Settlement Amount shall be made from the Qualified Settlement Fund until the Final Approval Order is Final, and the Escrow Agent has received: (a) a notice by Class Counsel and Defense Counsel, directing that the Class Settlement Amount be disbursed and designating the appropriate recipient(s); or (b) a Court Order, directing that the Class Settlement Amount be disbursed and designating the appropriate recipient(s).

9.2.2. After the Final Approval Order is Final, the Settlement Administrator or Class Counsel may direct the Escrow Agent to pay from the Qualified Settlement Fund the following: (a) taxes; (b) Settlement Administration Expenses; (c) Case Contribution Awards; and (d) attorneys’ fees and costs.

9.2.3. The Settlement Administrator and/or the Escrow Agent shall discharge their duties under Class Counsel’s supervision and subject to the jurisdiction of the Court. Except as otherwise expressly provided herein, the Defendant Releasees, Named Plaintiffs, Defense Counsel, and Class Counsel shall have no responsibility whatsoever for the administration of the Settlement, and shall have no liability whatsoever to any Person, including, but not limited to, any Settlement Class member, in connection with any such administration.

9.2.4. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Settlement Class members in accordance with the Plan of Allocation set forth in Section 9.3 and as ordered by the Court.

9.3. *Plan of Allocation.*

9.3.1. At least thirty (21) days prior to the submission of the Plan of Allocation to the Court along with the Final Approval Motion, Class Counsel shall provide a copy of the Plan of Allocation to Baystate for review and comment.

9.3.2. The distribution of the Net Settlement Fund to the Settlement Class members shall be made in accordance with the Plan of Allocation to be proposed by Class Counsel, reviewed by Baystate, and approved by the Court. Defendant Releasees, Named Plaintiffs, Defense Counsel, and Class Counsel shall have no responsibility or liability for calculating the amounts payable to the Settlement Class members, and Defendant Releasees, Named Plaintiffs, Defense Counsel, and Class Counsel shall have no responsibility or liability for distributing the Net Settlement Fund to the Settlement Class members in accordance with the Court-approved Plan of Allocation.

9.3.3. After the Final Approval Order is Final, the Settlement Administrator or Class Counsel may direct the Escrow Agent to pay from the Qualified Settlement Fund the Net Settlement Fund.

9.3.4. To effectuate the distribution of the Net Settlement Fund to Settlement Class members, the Settlement Administrator shall calculate each Settlement Class member's Final Individual Dollar Recovery based on the Plan of Allocation approved by the Court and shall provide to the Plan's record-keeper and trustee the total amount of the aggregate recoveries for Current Participants.

9.3.5. All inquiries by the Settlement Class members concerning the amount distributed to a particular Settlement Class member shall be handled in the first instance by the Settlement Administrator. Thereafter, Class Counsel and Defense Counsel shall work cooperatively to resolve any such inquiries.

9.3.6. Neither the Parties, Defense Counsel, Class Counsel, nor the Defendant Releasees shall have any responsibility for or liability whatsoever with respect to any tax advice given to the Former Participants or the Current Participants. Deductions will be made, and reporting will be performed, by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Parties.

9.3.7. Any and all Settlement Administration Expenses incurred for the implementation of the Settlement and of the Plan of Allocation shall be paid from the Qualified Settlement Fund.

9.3.8. In the event that Defense Counsel or Class Counsel determines that it is necessary to modify the Plan of Allocation, Class Counsel and Defense Counsel shall jointly discuss such modification and determine whether the modification is reasonable and appropriate under the circumstances. The Parties will jointly petition the Court for approval of any such material modification.

9.3.9. Notwithstanding anything in this Settlement Agreement to the contrary, the Plan of Allocation is a matter separate and apart from the Settlement between the Parties, and no



decision by the Court concerning the Plan of Allocation shall affect the validity of the Settlement Agreement or finality of the proposed Settlement in any manner.

9.3.10. The determination of “Current Participants” and “Former Participants” will be based on Settlement Class members’ Plan account balances as of the date the Court enters the Final Approval Order, as long as the “Current Participants” and “Former Participants” data is available at that time. Baystate shall use its best efforts to provide Class Counsel with updated information on the names, last known addresses, and email addresses of “Current Participants” and “Former Participants” (to the extent Baystate has such information) within thirty (30) days of the Final Approval Order.

## 10. **TERMINATION OF THE SETTLEMENT AGREEMENT**

10.1. *Termination by Defendants.* Defendants may terminate this Settlement Agreement if, before the issuance of the Final Approval Order, the U.S. Department of Labor files any objection to the Settlement Agreement or Settlement in any court, brings a claim against any of the Defendant Releasees, or notifies any of the Defendant Releasees that it intends to bring such a claim.

10.2. *Automatic Termination.* This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

10.2.1. If the Court declines to approve the Settlement, and if such order declining approval has become Final, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the date that any such order becomes Final, provided, however, that if the Court declines to approve the Settlement for any reason, the Parties shall negotiate in good faith to cure any deficiency identified by the Court, and further provided that if necessary to cure any such deficiency, Class Counsel shall re-submit within a reasonable time the Preliminary Approval Motion and/or Final Approval Motion with an additional or substitute member of the Settlement Class as a named Settlement Class representative.

10.2.2. If the Court issues an order in the Action modifying the Settlement Agreement, and if within thirty-one (31) days after the date of any such order the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or by the Parties, then, provided that no appeal, petition for writ of certiorari, or any other request for review of such order is then pending, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first (31st) day after issuance of the order referenced in this Section.

10.2.3. If the U.S. Court of Appeals for the First Circuit reverses the Court’s Final Approval Order, and if within ninety-one (91) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the First Circuit or by the Parties, then, provided that no appeal, petition for writ of certiorari, or any other request for review of such order is then pending, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the ninety-first (91st) day after issuance of the First Circuit order referenced in this Section.

10.2.4. If the Supreme Court of the United States reverses or remands a First Circuit order approving the Settlement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Supreme Court or by the Parties, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first (31st) day after issuance of the Supreme Court order referenced in this Section.

10.2.5. If an appeal or petition for writ of certiorari to the Supreme Court regarding an order declining to approve the Settlement Agreement or modifying this Settlement Agreement is pending, this Settlement Agreement shall not be terminated until final resolution or dismissal of any such appeal or petition, except by written agreement of the Parties.

10.3. *Consequences of Termination of the Settlement Agreement.* If the Settlement Agreement is terminated and rendered null and void for any reason, the following shall occur:

10.3.1. Within three (3) days after the date of termination of the Settlement Agreement, Class Counsel shall notify the Escrow Agent in writing to return to Baystate the Qualified Settlement Fund and all net income earned thereon, and direct the Escrow Agent to effect such return as soon as possible.

10.3.2. The Action shall for all purposes with respect to the Parties revert to its status as of February 9, 2023, the day immediately prior to the execution of the Term Sheet. The Parties will cooperate in trying to return the Action to the Court for decision on the matters pending before the Court at the time of execution of the Term Sheet.

10.3.3. All releases given or executed pursuant to the Settlement Agreement shall be null and void; none of the terms of the Settlement Agreement shall be effective or enforceable, except those provisions providing for reimbursement of costs as set forth in Section 10.3.1; and neither the fact nor the terms of the Settlement Agreement shall be offered or received in evidence in this Action or in any other action or proceeding for any purpose, except in an action or proceeding arising under this Settlement Agreement.

## **11. ATTORNEYS' FEES AND EXPENSES; NAMED PLAINTIFFS' CASE CONTRIBUTION AWARDS**

11.1. *Application for Fees, Expenses, and Case Contribution Awards.* As provided in Section 3 above, and pursuant to the common fund doctrine, Class Counsel shall petition the Court no later than twenty-one (21) days prior to the deadline for objections for an award of attorneys' fees and Case Contribution Awards, and for reimbursement of expenses incurred by Class Counsel, to be paid from the Qualified Settlement Fund. The Case Contribution Awards and attorneys' fees and reimbursed expenses, if any are awarded by the Court, shall be paid from the Qualified Settlement Fund. The Case Contribution Awards are not to exceed \$5,000 to each Named Plaintiff. Class Counsel shall not seek more than 33% of the Qualified Settlement Fund for attorneys' fees. Defendants, their Representatives, and their Successors-In-Interest expressly agree not to take any position with respect to any application for attorneys' fees and expenses incurred by Class Counsel with respect to this Settlement, and acknowledge that these matters are left to the sound discretion of the Court. Defendants, their Representatives, and their

Successors-in-Interest also expressly agree not to contest or take any position with respect to the Case Contribution Awards and will leave this matter to the sound discretion of the Court.

11.2. *Disbursement of Fees, Costs, Expenses, and Case Contribution Awards.*

11.2.1. Attorneys' fees, costs, and expenses shall be payable to Class Counsel out of the Qualified Settlement Fund after the Final Approval Order is Final.

11.2.2. The Case Contribution Awards shall be payable from the Qualified Settlement Fund and shall be in addition to any portion of the Net Settlement Fund that Named Plaintiffs would otherwise be entitled to receive as members of the Settlement Class. The Case Contribution Awards will only be distributed after the Final Approval Order is Final.

12. **NON-DISPARAGEMENT**

The Parties agree to take no action in connection with the Settlement that is intended to, or that would reasonably be expected to, harm the reputation of any other Party (including a Party's officers, directors, employees, agents, or attorneys), or that would reasonably be expected to lead to unfavorable publicity for any other Party.

13. **STATEMENTS TO THE PUBLIC**

No press release or other publicity relating to the Settlement or the Action shall be issued by Class Counsel or Named Plaintiffs. If any Party (including his, her, or its counsel) is asked by a member of the press about the status of the Settlement or Action, the answer shall be "no comment."

14. **MISCELLANEOUS PROVISIONS**

14.1. *Disputes.* If any disputes arise out of this Settlement Agreement, including but not limited to disputes concerning the meaning of any express or implied terms of the Settlement Agreement, the Mediator will resolve them in the first instance. The Parties will split any Mediator-related costs necessary to resolve any disputes arising out of the Settlement Agreement.

14.2. *Jurisdiction.* The Court shall retain jurisdiction over Named Plaintiffs, the Settlement Class, the Plan, and Defendants to resolve any dispute that may arise regarding this Settlement Agreement or the orders and notices referenced in Section 3 above insofar as such dispute(s) cannot in the first instance be resolved by the Mediator.

14.3. *Governing Law.* This Settlement Agreement shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case Massachusetts law will apply without regard to conflict of law principles.

14.4. *Severability.* The provisions of this Settlement Agreement are not severable.

14.5. *Amendment.* Before entry of a Final Approval Order, the Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of a Final Approval Order, the Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Parties, and approved by the Court.

14.6. *Waiver.* The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

14.7. *Construction.* None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

14.8. *Principles of Interpretation.* The following principles of interpretation apply to this Settlement Agreement:

14.8.1. *Headings.* The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

14.8.2. *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.

14.8.3. *Gender.* Definitions apply to the masculine, feminine, and neuter genders of each term defined.

14.8.4. *References to a Person.* References to a Person are also to the Person's permitted successors and assigns.

14.8.5. *Terms of Inclusion.* Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

14.9. *Further Assurances.* Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

14.10. *Survival.* All representations, warranties and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.

14.11. *Notices.* Any notice, demand or other communication under this Settlement Agreement (other than notices to members of the Settlement Class) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed email, or delivered by reputable express overnight courier:

A. IF TO NAMED PLAINTIFFS:

Paul M. Secunda  
WALCHESKE & LUZI, LLC  
235 Executive Dr., Suite 240  
Brookfield, Wisconsin 53005  
Telephone: (262) 780-1953  
psecunda@walcheskeluzi.com

B. IF TO DEFENDANTS:

Russell L. Hirschhorn  
PROSKAUER ROSE LLP  
Eleven Times Square  
New York, New York 10036  
Telephone: (212) 969-3286  
rhirschhorn@proskauer.com

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

14.12. *Entire Agreement.* This Settlement Agreement contains the entire agreement among the Parties relating to this Settlement. It specifically supersedes any settlement terms or settlement agreements relating to Defendants that were previously agreed upon orally or in writing by any of the Parties, including the terms of the Term Sheet.

14.13. *Counterparts.* This Settlement Agreement may be executed by exchange of faxed or scanned executed signature pages, and any signature transmitted by facsimile or by email attachment for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

14.14. *Binding Effect.* This Settlement Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, beneficiaries, administrators, executors and Successors-in-Interest.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

**FOR NAMED PLAINTIFFS, THE PLAN AND THE SETTLEMENT CLASS**

Dated this 26<sup>th</sup> day of April, 2023.

By: Paul M. Secunda  
Paul M. Secunda  
WALCHESKE & LUZI, LLC  
235 Executive Dr., Suite 240  
Brookfield, Wisconsin 53005  
Telephone: (262) 780-1953  
psecunda@walcheskeluzi.com

**FOR ALL DEFENDANTS**

Dated this 26 day of April, 2023.

By: Raymond McCarthy  
Raymond McCarthy  
Senior Vice President, Chief Financial Officer, and  
Treasurer, Daystate Health, Inc.

By: Russell L. Hirschhorn  
Russell L. Hirschhorn  
PROSKAUER ROSE LLP  
Eleven Times Square  
New York, New York 10036  
Telephone: (212) 969-3286  
rhirschhorn@proskauer.com