

**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN SUPERIOR COURT**

BONITA JOYNER,

Plaintiff,

v.

BEHAVIORAL HEALTH NETWORK,
INC.,

Defendant.

Case No. 2079CV00629

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, as of the date of execution below (the “Settlement Agreement,” “Settlement,” “Agreement,” or “Stipulation”), is made and entered into by and among the following settling parties (“Parties”): (i) Bonita Joyner (“Plaintiff” or “Settlement Class Representative”), individually and on behalf of the Settlement Class (defined below); and (ii) Behavioral Health Network, Inc. (“BHN” or “Defendant”), and subject to preliminary and final Court approval as required by Rule 23 of the Massachusetts Rules of Civil Procedure. In consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a final approval order and judgment, all claims of the Settlement Class against BHN in the Action shall be settled and compromised upon the terms and conditions contained herein. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all of Plaintiff’s and the Settlement Class Members’ Released Claims (defined below), upon and subject to the terms and conditions hereof.

RECITALS

WHEREAS, Plaintiff asserts that BHN was the victim of a Data Security Incident resulting in access by an unauthorized third party to certain computer systems of BHN containing patients’ names, addresses, dates of birth, Social Security numbers, medical/diagnosis/treatment information, and/or health insurance claim information from May 26, 2020 to May 28, 2020;

WHEREAS, BHN notified affected individuals of the Data Security Incident between August and September 2020;

WHEREAS, on November 19, 2020, Plaintiff filed a Class Action Complaint against BHN in the Hampden County Massachusetts Superior Court, Case No. 2079CV00629 (the “Action”). The Class Action Complaint asserted claims for negligence, invasion of privacy, and breach of implied contract;

WHEREAS, on February 10, 2021, Plaintiff filed her First Amended Class Action

Complaint. The First Amended Class Action Complaint asserted claims for negligence, invasion of privacy, breach of implied contract, and unfair business practices under Massachusetts General Laws Chapter 93A and 93H and 201 Massachusetts Code of Regulations § 17.00, *et seq.*;

WHEREAS, BHN denies (a) the allegations and all liability with respect to any and all facts and claims alleged in the Action, (b) that Plaintiff and the class she purports to represent have suffered any damage, (c) that the Action satisfies the requirements to be tried as a class action under the Massachusetts Rules of Civil Procedure, and (d) that the Action states a claim for any relief;

WHEREAS, the Parties agreed to attempt to mediate a resolution to the dispute and on May 12, 2021, the Court ordered a stay to allow the Parties to focus on mediation;

WHEREAS, on June 28, 2021, the Parties attended an arm's-length mediation negotiation supervised by the Honorable Morton Denlow (ret.) of JAMS Resolution Center;

WHEREAS, throughout their mediation session and for several months after that mediation session, the Parties engaged in an extensive evaluation and discussion of the relevant facts and law, and the Parties carefully considered the risk and uncertainties of continued litigation and all other factors bearing on the merits of settlement;

WHEREAS, Settlement Class Counsel have conducted sufficient informal discovery, have fully investigated the facts and law relevant to the subject matter of the Action, and have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens, and costs of further prosecution of the Action, and taking into account the substantial benefits to be received pursuant to this Agreement as set forth below, and for the purpose of putting to rest all controversies with the Defendant that were alleged in the operative First Amended Class Action Complaint, that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class;

WHEREAS, BHN, despite its belief that it has valid and complete defenses to the claims asserted against it, has nevertheless agreed to enter into this Agreement to reduce and avoid the additional expense, burden, inconvenience, and uncertainty of continuing to litigate the Action, and without any admission of liability or wrongdoing whatsoever, desires to enter into this Agreement; and

WHEREAS, on July 20, 2021, the Parties executed a term sheet to resolve this matter, subject to negotiation and agreement on a formal, detailed settlement agreement;

WHEREAS, the Parties now agree to settle the Action in its entirety, without any admission of liability by BHN, with respect to all Released Claims (defined below) of the Settlement Class. The Parties intend this Agreement to bind Plaintiff, BHN, and all members of the Settlement Class.

NOW THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows:

1. DEFINITIONS

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Agreement:

1.1. “Action” means *Joyner v. Behavioral Health Network, Inc.*, No. 2079CV00629 (Hampden Cnty. Mass. Super. Ct.).

1.2. “Administrative Costs” means all costs and expenses associated with providing notice of the Settlement to the Settlement Class and administering and carrying out the terms of the Settlement.

1.3. “Attorneys’ Fees and Expense Award” means such funds as may be awarded by the Court to Settlement Class Counsel to compensate Settlement Class Counsel for their fees and expenses in connection with the Action.

1.4. “Claim” or “Reimbursement Claim” means a written request, in electronic or paper form, by a Settlement Class Member, consistent with the provisions of this Agreement, seeking reimbursement for documented Economic Losses and/or Lost Time.

1.5. “Claimant” means a Settlement Class Member who submits a Claim.

1.6. “Claims Period” means the period for submitting Claims ending six months after the Settlement Offering is first instituted.

1.7. “Court” refers to the Hampden County Massachusetts Superior Court.

1.8. “Data Security Incident” means the access, as the result of a cyberattack, by an unauthorized third party to certain computer systems of BHN containing personal information and protected health information stored by BHN, including patients’ names, addresses, dates of birth, Social Security numbers, medical/diagnosis/treatment information, and/or health insurance claim information from May 26, 2020 to May 28, 2020.

1.9. “Economic Losses” means unreimbursed out-of-pocket costs fairly traceable to the Data Security Incident and not attributable to bodily injury or harm (including mental suffering) and not including time lost or expended as a result of the Data Security Incident.

1.10. “Effective Date” means the date on which the Judgment entered pursuant to this Settlement Agreement becomes Final.

1.11. “Election Deadline” means the last day for Settlement Class Members to submit the Election Form to enroll in the Settlement Offering of credit monitoring and identity restoration services, which shall be 90 days from the Notice Date.

1.12. “Execution Date” means the last date on which all parties have executed this Agreement.

1.13. “Fee Application” means any application by Settlement Class Counsel for an award of attorneys’ fees and reimbursements of expenses, as set forth in Paragraph 10.

1.14. “Final” means, with respect to any judicial ruling or order, that: (1) if no appeal, motion for reargument, motion for rehearing, petition for *writ of certiorari*, or other writ has been filed, the time has expired to file such an appeal, motion for reargument, motion for rehearing, petition for writ of certiorari, or other writ; or (2) if an appeal, motion for reargument, motion for rehearing, petition for a writ of certiorari, or other writ has been filed, the judicial ruling or order has been affirmed with no further right of review, or such appeal, motion, petition, or writ has been denied or dismissed with no further right of review. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any application for attorneys’ fees or expenses will not in any way delay or preclude the Judgment from becoming Final.

1.15. “Final Approval Order” and “Judgment” means the order and judgment finally approving the terms of this Agreement. If the Court enters separate orders addressing the matters constituting final approval, then “Final Approval Order” includes all such orders.

1.16. “Lost Time” means time a Settlement Class Member expended that is fairly traceable to the Data Security Incident, such as time related to placing a freeze on credit reports, monitoring for fraud, and attempting to repair any fraudulent activity.

1.17. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with preliminary approval of the Settlement.

1.18. “Notice Date” means the deadline to disseminate Notice to the Settlement Class, which is 30 days after the Court issues the preliminary approval order.

1.19. “Notice Program” means the methods for providing Notice of this Settlement to the Settlement Class Members, including (1) a Summary Notice sent by electronic mail (“Email Notice”) to each Settlement Class Member for whom the Settlement Administrator can ascertain an email address; (2) a Summary Notice sent by mail (“Postcard Notice”) to each Settlement Class Member whose email notice was undeliverable or the Settlement Administrator can ascertain a mailing address with reasonable effort or by implementing a standard skip trace; and (3) by posting a long-form notice on the Settlement Website (“Long-Form Notice”). The forms of Notice shall be substantially in the forms attached as Exhibits A-B to this Agreement and approved by the Court. The Notice Program shall be effectuated in substantially the manner provided in Paragraph 8.

1.20. “Objection Period” means the period during which a Settlement Class Member may file an objection to the Settlement, which period shall expire thirty (30) days following the Notice Date, subject to Court approval. The deadline for filing an objection to the Settlement or the Fee Application shall be set forth clearly in the Notice.

1.21. “Preliminary Approval” means an order, providing for, among other things, preliminary approval of the Settlement;

1.22. “Released Claims” means all claims to be released as specified in Paragraph 9.

1.23. “Released Parties” means those persons or entities released as specified in Paragraph 9.

1.24. “Releases” means all of the releases specified in Paragraph 9.

1.25. “Releasing Parties” means Plaintiff and all Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns.

1.26. “Service Award” means payment, subject to Court approval and not to exceed \$5,000 to compensate the Settlement Class Representative for efforts in the Action on behalf of the Settlement Class.

1.27. “Settlement” means the settlement of the Action, between and among the Plaintiff, individually and on behalf of the Settlement Class, and BHN, as set forth and reflected in this Agreement.

1.28. “Settlement Administrator” means, subject to approval by the Court, KCC Class Action Services, LLC, a nationally recognized and experienced class-action claims administrator.

1.29. “Settlement Class” means all persons who fall into the Settlement Class to be certified pursuant to section 4.1.

1.30. “Settlement Class Members” means members of the Settlement Class.

1.31. “Settlement Class Counsel” refers to Cohen & Malad, LLP, and Branstetter, Stranch, & Jennings, PLLC, and Turke & Straus LLP.

1.32. “Settlement Class Representative” or “Plaintiff” refers to Bonita Joyner.

1.33. “Settlement Consideration” means that consideration set forth in Paragraph 5.

1.34. “Settlement Fund” means the sum of \$1,200,000, to be paid by BHN as a common fund and to be used for payment of the Attorneys’ Fees and Expense Award, the Service Award, purchase of the Settlement Offer, payment of claimed Economic Losses, payment of claimed Lost Time, and payment of the costs and expenses of notice and administration of the Settlement by the Settlement Administrator.

1.35. “Settlement Offering” means credit monitoring and identity restoration services purchased by BHN using monies from the Settlement Fund, and in which Settlement Class Members can elect to enroll in by the Election Deadline.

1.36. “Settlement Website” means the website that the Settlement Administrator will establish, as provided for in Paragraph 7.2.4.

2. DENIAL OF WRONGDOING AND LIABILITY

2.1. BHN denies the material factual allegations and legal claims asserted by the Plaintiff in the Action, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Similarly, this Agreement provides for no admission of wrongdoing or liability by any of the Released Parties. This Agreement is entered into solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

3. THE BENEFITS OF THE SETTLEMENT

3.1. Settlement Class Counsel believes that the proposed settlement set forth in this Settlement Agreement confers substantial benefits upon the Settlement Class.

3.2. Settlement Class Counsel and Plaintiff recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against BHN through trial and appeal.

3.3. Settlement Class Counsel also has taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation. Settlement Class Counsel is mindful of possible defenses related to the claims asserted in the Action and under Massachusetts Rule of Civil Procedure 23. Based on their evaluation of all of these factors, Plaintiff and Settlement Class Counsel have determined that the Settlement is in the best interests of Plaintiff and the Settlement Class.

4. SETTLEMENT CLASS CERTIFICATION

4.1. For purposes of settlement only, the Plaintiff shall seek, and BHN shall not oppose, certification of the Settlement Class, pursuant to Massachusetts Rules of Civil Procedure 23(a) and 23(b), defined as follows:

Settlement Class. All individuals to whom a notification was sent by or on behalf of Behavioral Health Network, Inc. regarding the Data Security Incident.

4.2. For settlement purposes only, Plaintiff shall also seek, and BHN shall not oppose, appointment of Settlement Class Counsel, and appointment of Plaintiff as Settlement Class Representative to represent the Settlement Class.

4.3. BHN does not consent to certification of the Settlement Class (or to the propriety of class treatment) for any purpose other than to effectuate the settlement of this Action. BHN's agreement to provisional certification does not constitute an admission of wrongdoing, fault, liability, or damage of any kind to Plaintiff or any of the provisional Settlement Class Members. BHN reserves the right to contest any motion to certify a class for any purpose other than settlement of the Action.

4.4. If this Settlement Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order certifying the Settlement Class for purposes of effectuating the Settlement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and the Action shall return to the procedural posture on the day before this Settlement Agreement was executed, in accordance with this paragraph. Neither party nor counsel shall refer to or invoke the vacated findings and/or order relating to class settlement or Rule 23 of the Massachusetts Rules of Civil Procedure if this Settlement Agreement is not consummated and the Action is later litigated and contested by Defendant under Rule 23 of the Massachusetts Rules of Civil Procedure.

5. SETTLEMENT CONSIDERATION

In consideration for the releases provided in this Settlement Agreement, BHN will provide the following relief to the Settlement Class:

5.1. Identity Theft Protection Services.

5.1.1 **Settlement Offering.** Any Settlement Class Member shall have the option to sign-up for the Settlement Offering¹, which shall be paid via the Settlement Fund. If a Settlement Class Member elects to utilize the Settlement Offering, he or she must make that election by the Election Deadline. Settlement Class Members shall make their Settlement Offering election pursuant to the Election Form, which is attached hereto as Exhibit C. To the extent there is any ambiguity with respect to the election to receive the Settlement Offering, and the Settlement Administrator cannot resolve the ambiguity, the ambiguous Election Form shall default to an election of the Settlement Offering.

5.1.2 **Timing of Provision of the Settlement Offering.** The Settlement Administrator shall collect and process all Election Forms and shall submit the necessary information to the vendor chosen to provide the Settlement Offering. The Settlement Administrator shall distribute activation codes for the Settlement Offering as follows:

¹ The offered credit monitoring and identity restoration service vendor shall be chosen after bids have been received, but the product provided to Settlement Class Members must include no less than one (1) year of credit monitoring and \$1,000,000 in identity theft insurance coverage.

(a) For Settlement Class Members who have submitted valid and approved Election Forms by the Election Deadline, the Settlement Administrator will, within thirty (30) days after the Effective Date, issue activation codes for the Settlement Offering that the Settlement Class Member can use to enroll in the Settlement Offering.

(b) For deficiencies, the Settlement Administrator shall ask the Settlement Class Member within twenty-one (21) days after the Election Deadline to cure the deficiency, and in doing so, may use its discretion to determine the most efficient and most effective means of communicating with the Settlement Class Member, whether by email, telephone, or mail. Settlement Class Members shall have twenty-one (21) days from the date of the Settlement Administrator's notice to correct all deficiencies in their Election Forms. If a Settlement Class Member fails to correct all deficiencies within that time, the Settlement Administrator shall deny the Settlement Class Member's request for the Settlement Offering. For Settlement Class Members who cure deficiencies, the Settlement Administrator will, within ninety (90) days after the Effective Date, issue activation codes for the Settlement Offering.

5.2. Reimbursement of Documented Economic Losses and Lost Time.

5.2.1 Reimbursement of Documented Economic Losses. Any Settlement Class Member may submit one or more Claims for reimbursement for documented Economic Losses related to the Data Security Incident that have not been reimbursed by the vendor providing the Settlement Offering or other third parties, up to an aggregate total of \$10,000.00 per Settlement Class Member. Reimbursement Claims must be submitted pursuant to Reimbursement Form attached as Exhibit D and in accordance with the reimbursement terms under the provisions of this Agreement. All Reimbursement Claims must be submitted to the Settlement Administrator on or before the expiration of the Claims Period. Any Claim for documented Economic Losses that is approved by the Settlement Administrator shall be paid via the Settlement Fund.

5.2.2 Settlement Class Members who wish to make a timely and properly supported Claim for reimbursement of Economic Losses related to the Data Security Incident must provide to the Settlement Administrator the information required to evaluate the claim, including: (a) the Claimant's name and current address; (b) if applicable, a signed copy of IRS Form 14039 along with a statement under penalty of perjury that the form was submitted to the Internal Revenue Service; (c) the bills or invoices documenting the amount of the Claim and proof that the bills or invoices were paid; and (d) a statement signed under penalty of perjury indicating that: (i) the Economic Losses claimed are fairly traceable to the Data Security Incident; and (ii) the total amount claimed has not been reimbursed by any other person or entity. Third-party documentation of Economic Losses is required to establish a Claim. Economic Losses that are compensated under this Agreement are those that are reasonable and customarily incurred when responding to the type of fraud or identity theft suffered by the Settlement Class Member from the Data Security Incident.

5.3. Reimbursement of Lost Time. Any Settlement Class Member may submit one or more Claims for reimbursement for Lost Time related to the Data Security Incident up to an aggregate total of \$1000.00 per Settlement Class Member. A Settlement Class Member may

submit a Claim regardless of whether the Settlement Class Member takes advantage of the Settlement Offer and regardless of whether the Settlement Class Member submits a claim for documented Economic Losses. A Settlement Class Member is eligible for the payment provided in this section in addition to, and on top of, any payment for documented Economic Losses. A Claim for reimbursement of Lost Time must be submitted pursuant to the Reimbursement Form attached as Exhibit E and in accordance with the reimbursement terms under the provisions of this Agreement. All Claims must be submitted to the Settlement Administrator on or before the expiration of the Claims Period. Any Claim for reimbursement of Lost Time that is approved by the Settlement Administrator shall be paid via the Settlement Fund.

5.3.1 Settlement Class Members who wish to make a timely and properly supported Claim for reimbursement of Lost Time related to the Data Security Incident must provide to the Settlement Administrator the information required to evaluate the claim, including: (a) the Claimant's name and current address; (b) a statement signed under penalty of perjury indicating that: (i) the Lost Time claimed is fairly traceable to the Data Security Incident, such as time related to placing a freeze on credit reports, monitoring for fraud, and attempting to repair any fraudulent activity; and (ii) providing a generalized description of how the time was spent. Third-party documentation of Lost Time is not required to establish a Claim. Lost Time that is compensated under this Agreement is that time reasonably and customarily incurred when responding to the notification of the Data Security Incident or to the type of fraud or identity theft suffered by the Settlement Class Member from the Data Security Incident.

5.4. **Maximum Amount Payable for Reimbursement of Documented Economic Losses and Lost Time.** The Maximum Amount Payable to the Settlement Class for reimbursement of documented Economic Losses and Lost Time shall be the amount remaining in the Settlement Fund after deduction of the Attorneys' Fees and Expense Award, the Service Award, the cost to purchase the Settlement Offering, and the costs and expenses of notice and administration. In the event that the aggregate amount of payments for reimbursement of documented Economic Losses and Lost Time to the Settlement Class meets or exceeds the Maximum Amount Payable, then the Settlement Administrator shall determine payment amounts for valid claims utilizing the process set forth in Paragraph 5.5.8.

5.5. **Adjudication of Reimbursement Claims for Documented Economic Losses and Lost Time.**

5.5.1 The Settlement Administrator shall verify that each person who submits a Claim for reimbursement is a Settlement Class Member and shall determine whether and to what extent the Claim reflects valid Economic Losses and/or Lost Time that are fairly traceable to the Data Security Incident. The Settlement Administrator shall determine whether a Claimant's supporting materials are sufficient to support a Claim and the amount of such a Claim and shall use reasonable procedures to screen claims for abuse, fraud, duplication, or ineligibility.

5.5.2 Within thirty (30) days after receipt of the Claim, the Settlement Administrator shall send a written notice to Settlement Class Members whose Reimbursement Forms were rejected as incomplete. Settlement Class Members shall have twenty-one (21) days from the date of the Settlement Administrator's notice to correct all deficiencies in their

Reimbursement Claims. If a Settlement Class Member fails to correct all deficiencies within twenty-one (21) days from receiving the written notice, the Settlement Administrator shall deny the Settlement Class Member's Claim. The Settlement Administrator shall determine whether the Settlement Class Member has corrected the deficient claim such that it reflects a valid Economic Loss actually incurred that is fairly traceable to the Data Security Incident.

5.5.3 Economic Losses shall be deemed fairly traceable to the Data Security Incident if (i) the alleged wrongdoing occurred on May 22, 2020 or thereafter, (ii) the Settlement Class Member executes a statement signed under penalty of perjury indicating that the Economic Losses claimed are fairly traceable to the Data Security Incident, (iii) the alleged wrongdoing involved misuse of the type of personal information inadvertently disclosed in the Data Security Incident (i.e., name, address, Social Security number, date of birth, medical history information, health insurance information, etc.), and (iv) the Settlement Administrator determines by a preponderance of evidence that it is fairly traceable to the Data Security Incident.

5.5.4 Lost Time shall be deemed fairly traceable to the Data Security Incident if (i) the time spent occurred on May 22, 2020 or thereafter, (ii) the Settlement Class Member executes a statement signed under penalty of perjury indicating that the Lost Time claimed is fairly traceable to the Data Security Incident, (iii) the Lost Time claimed is of the type to expected to be incurred from the Data Security Incident, such as time related to placing a freeze on credit reports, monitoring for fraud, and attempting to repair any fraudulent activity, and (iv) the Settlement Administrator determines by a preponderance of evidence that it is fairly traceable to the Data Security Incident.

5.5.5 No decisions by the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by BHN as to any matter of fact, law, or evidence having any collateral effect on any Claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

5.5.6 If a Settlement Class Member disputes a claim determination related to an Economic Loss or Lost Time in writing and requests an appeal, the Parties will meet and confer on the appeal. If the Parties are unable to reach an agreement, the dispute will be submitted to Hon. Morton Denlow (Ret.) of JAMS Resolution Center or a neutral at JAMS with prior experience as a claims referee, who will serve as the claims referee. BHN will be responsible for the claim referee's fee.

5.5.7 **Payment on Claims.** The Settlement Administrator shall make a determination of and pay all valid Reimbursement Claims from the Settlement Fund no later than nine months after the Settlement Offering is first provided.

5.5.8 **Pro-Rata Contingencies.** In the event that the aggregate amount of payments for reimbursement of Economic Losses and Lost Time meets or exceeds the Maximum Amount Payable to the Settlement Class for the payment, then the value of either such payments shall be reduced on a pro rata basis, such that the aggregate value of all payments for Economic Losses and Lost Time does not exceed the Maximum Amount Payable to the Settlement Class. All

pro rata determinations required by this Paragraph shall be performed by the Settlement Administrator.

5.5.9 **Payment of Costs Associated with Settlement.** The costs of notice and settlement administration shall be paid from the Settlement Fund.

5.5.10 **Non-Monetary Relief.** BHN has taken, or within 60 days of the Effective Date will take, the following measures: (a) Establish a Cybersecurity Committee comprised of company employees (“Committee”). The Committee will act on behalf of BHN’s Board of Directors and will be responsible for evaluating BHN’s information technology use and protection, data privacy, compliance with applicable laws and regulations, and cybersecurity; and (b) require employees to complete annual cybersecurity training. The training materials will be prepared by BHN or provided through a reputable third-party vendor. The training will be required for all new hires, and all employees will be required to complete an update or “refresher” training course each year. The training will cover best practice for HIPAA security awareness and awareness of recognizing and avoiding phishing campaigns.

5.5.11 **Cy Pres Award.** If any monies remain in the Settlement Fund following all payments made for Attorneys’ Fees and Expense Award, Service Award, costs and expenses of notice and settlement administration, purchase of the Settlement Offering, and payment on Reimbursement Claims, such funds shall not revert to Defendant. Such funds shall instead be distributed, subject to Court approval, to a charity approved by the Court. The Settlement Administrator shall report to the Parties the amount of uncollected and remaining monies in the Settlement Fund no later than 30 days after the stale date of the last check that is paid on a Reimbursement Claim.

6. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW AND PRELIMINARY AND FINAL APPROVAL

6.1. **Preliminary Approval.** As soon as practicable, but no later than seven (7) days following the full execution of this Agreement by all Parties, Settlement Class Counsel shall promptly move the Court for entry of a Preliminary Approval Order. A proposed Preliminary Approval Order shall be attached to the motion and shall be substantially in the form set forth in Exhibit E. The motion for Preliminary Approval shall request that the Court, among other things:

6.1.1 Approve the terms of the Settlement as within the range of fair, adequate, and reasonable;

6.1.2 Provisionally certify the Settlement Class pursuant to Massachusetts Rule of Civil Procedure 23(a) and (b), appoint Plaintiff as the Settlement Class Representative of the Settlement Class, and appoint Settlement Class Counsel as counsel for the Settlement Class;

6.1.3 Approve the Notice Program set forth in Paragraph 8 and provide that following the Preliminary Approval Order Notice shall be provided in accordance with the procedures set forth in Paragraph 8.1 within thirty (30) days of preliminary approval;

6.1.4 Approve the procedures set forth in Paragraph 8.8 for Settlement Class Members to object to the Settlement or Fee Application;

6.1.5 Find that the Court will retain jurisdiction over all claims relating to this Agreement;

6.1.6 Maintain the stay of the Action pending Final Approval of the Settlement;

6.1.7 Stay, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning Released Claims;

6.1.8 Schedule the Final Approval Hearing at a time and date mutually convenient for the Court, Settlement Class Counsel, and counsel for BHN, at which time the Court will conduct an inquiry into the fairness of the Settlement, whether it was made in good faith and should be finally approved, and whether to approve Settlement Class Counsel's application for attorneys' fees, costs, and expenses, and for a Service Award ("Final Approval Hearing" or "Fairness Hearing");

6.1.9 Provide that all Settlement Class Members will be bound by the Final Approval Order and Judgment dismissing the Action with prejudice;

6.1.10 Establish dates by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement and Settlement Class Counsel's Fee Application; and

6.2. **Final Approval.** The Final Approval Hearing shall be scheduled no earlier than forty (40) days after notices are mailed to Settlement Class Members. By no later than seven (7) days prior to the Final Approval Hearing, the Parties shall file any responses to any objections and any briefs in support of final approval of the Settlement. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fees, costs, expenses, or Service Award application, provided the objectors filed timely objections that met all of the requirements listed in Paragraph 8.8.

6.2.1 At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and whether to approve Settlement Class Counsel's request for attorneys' fees, costs, expenses, and the Service Awards. The proposed Final Approval Order that will be filed with the motion for Final Approval shall be in a form agreed upon by Class Counsel and BHN. Such proposed Final Approval Order shall, among other things:

(a) Determine that the Settlement is fair, adequate, and reasonable and approve the Settlement pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;

(b) Finally certify the Settlement Class for settlement purposes only;

- (c) Determine that the Notice provided satisfied due process requirements;
- (d) Enter Final Judgment on the Settlement Agreement;
- (e) Bar and enjoin the Releasing Parties from asserting any of the Released Claims, as set forth in Paragraph 9, including during the pendency of any appeal from the Final Approval Order;
- (f) Release BHN and the Released Parties from the Released Claims, as set forth in Paragraph 9; and
- (g) Reserve the Court's continuing and exclusive jurisdiction over BHN and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

7. SETTLEMENT ADMINISTRATOR

7.1. The Settlement Administrator shall administer various aspects of the Settlement as described in this Agreement and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing the Notice to Settlement Class Members as described in Paragraph 8; establishing and operating the Settlement Website and toll-free number; administering the provision of credit monitoring and identity restoration services, and the Claims process as described in Paragraph 5.

7.2. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include the following:

7.2.1 Obtaining from BHN the name, last known email address, and last known mailing or other address information for Settlement Class Members (to the extent it is reasonably available) and verifying and updating the email and mailing addresses received, through the National Change of Address database or other similar data source, for the purpose of sending the Summary Notice to Settlement Class Members;

7.2.2 Establishing and maintaining a post office box for mailed written correspondence from the Settlement Class;

7.2.3 Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;

7.2.4 Establishing and maintaining a Settlement Website as an additional means for Settlement Class Members to obtain notice of and information about the Settlement through and including hyperlinked access to this Agreement; the Notice; the order preliminarily approving the Settlement; the Final Approval Order; Election Forms; Reimbursement Forms; and such other

documents as Class Counsel and BHN agree to post or that the Court orders posted. These documents shall remain on the Settlement Website at least until expiration of the Election Deadline and the Reimbursement Deadline. The URL of the Settlement Website will be agreed upon in writing by BHN and Class Counsel. The Settlement Website shall not include any advertising and shall not bear or include the BHN logo or BHN trademarks.

7.2.5 Responding to any mailed or emailed Settlement Class Member inquiries;

7.2.6 Providing reports to Settlement Class Counsel and BHN that set forth the number of Election Forms received since the prior reporting period, and the total number of Election Forms received to date;

7.2.7 Providing reports to Class Counsel and BHN that set forth the number and amount of Reimbursement Forms received since the prior reporting period, the total number and amount of Reimbursement Forms received to date, and Reimbursement Forms permitted, and the number rejected;

7.2.8 In advance of the Final Approval Hearing, preparing a declaration to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) provides information on the number of Settlement Class Members who requested the Settlement Offering, and the total number of Settlement Class Members who submitted Reimbursement Claims;

7.2.9 Receiving and processing all Election Forms submitted by Settlement Class Members pursuant to the criteria set forth in Paragraph 5, as well as distributing activation codes to Settlement Class Members for identity theft protection based on Election Forms pursuant to the criteria set forth in Paragraph 5;

7.2.10 Reviewing, determining the validity of, and responding to Reimbursement Forms submitted by Settlement Class Members pursuant to the criteria set forth in Paragraph 5;

7.2.11 Processing and transmitting distributions to Settlement Class Members in accordance with Paragraph 5;

7.2.12 Performing any other function related to Settlement administration at the agreed-upon instruction of both Settlement Class Counsel and BHN.

7.3. The Parties, the Released Parties, and their respective counsel shall have no responsibility or liability whatsoever for the Settlement Administrator's conduct, omissions, or actions.

7.4. The Settlement Fund shall be solely responsible for paying the Settlement Administrator for its settlement administration services related to the Settlement.

8. NOTICE AND OBJECTIONS

8.1. Within thirty (30) days of the Preliminary Approval Order, the Settlement Administrator shall distribute the Summary Notice, activate the Settlement Website and otherwise implement the Notice Program provided herein, using the forms of Notice substantially in the form attached as Exhibits A-B, as approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: (i) a description of the material terms of the Settlement; (ii) a date by which Settlement Class Members may object to the Settlement; (iii) the date upon which the Final Approval Hearing is scheduled to occur; (iv) a description of the Settlement Consideration; (v) a description of the process for submitting Election Forms; (vi) a description of the process for submitting Claims; (vii) the Election Deadline; (viii) the Reimbursement Deadline; and (ix) the Internet address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information. Class Counsel and BHN shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include the BHN logo or trademarks or the return address of BHN, or otherwise be styled to appear to originate from BHN.

8.2. The Notice shall include information about the benefits of the Settlement and the following information:

8.2.1 Election Forms are available at the Settlement Website, providing the URL for the applicable webpage and, in the Email Notice, a hyperlink to said page; and

8.2.2 Elections to receive the Settlement Offering must be received no later than the Election Deadline.

8.2.3 Reimbursement Forms are available on the Settlement Website, providing the URL for the applicable webpage and, in the Email Notice, a hyperlink to the page.

8.2.4 The deadline for submitting Claims.

8.3. The Notice shall include the procedure for Settlement Class Members to object to the Settlement and/or the Fee Application. Objections to the Settlement and/or Fee Application must comply with the procedures set forth in Paragraph 8.8.

8.3.1 For an objection to be considered by the Court, the objection must conform to the specifications set forth in Paragraph 8.8.

8.4. Notice shall be provided to the Settlement Class by Email Notice to each Settlement Class Member for whom the Settlement Administrator can ascertain an email address, by Postcard Notice to each Settlement Class Member whose Email Notice could not be ascertained or was undeliverable and for whom BHN or the Settlement Administrator can ascertain a mailing address with reasonable effort or by implementing a standard skip trace, and by posting the Long-Form Notice on the Settlement Website, pursuant to the terms of Paragraph 8. Notice shall be provided substantially in the forms attached as Exhibits A-B to this Agreement.

8.5. BHN shall, within seven (7) days of the Execution Date, provide the Settlement Administrator with data files containing the identity, last known mailing, last known email address, or other addresses of the Settlement Class Members (to the extent reasonably available). The Settlement Administrator shall also run the mailing addresses through the National Change of Address Database or other similar data source and shall send the Summary Notice to Settlement Class Members at the identified US mail and email addresses under the provisions of this Agreement.

8.6. The Settlement Administrator shall perform reasonable address traces, such as a standard skip trace, for all Summary Notices sent by US mail that are returned as undeliverable. The Settlement Administrator shall promptly complete the re-mailing of Summary Notices by US mail to those Settlement Class Members for whom an updated address can be located through address traces.

8.7. By no later than twenty-one (21) days after the date of the Preliminary Approval Order, the Settlement Administrator shall establish a dedicated post office box address and the toll-free telephone number contemplated in Paragraphs 7.2.2-7.2.3.

8.8. Notice to the Massachusetts IOLTA Fund Committee

8.8.1 At or before the date on which the Settlement Administrator emails and mails the Notice, the Settlement Administrator shall, pursuant to Mass. R. Civ. P. 23(c), give notice of the proposed settlement to the Massachusetts IOLTA Committee for the purpose set forth in Mass. R. Civ. P. 23(e)(3).

8.9. Objection Procedures

8.9.1 Any Settlement Class Member who desires to object to the Settlement or the Fee Application shall file and serve such objections on or before the expiration of the Objection Period, in the form provided in the Notice. Such objections must set forth:

- the name of the Action;
- the objector's full name, address, telephone number, and e-mail address;
- a statement of the basis on which the objector claims to be a Settlement Class Member;
- a written statement of all grounds for the objection, accompanied by any legal support for the objection, and any evidence the objecting Settlement Class Member wishes to introduce in support of the objection;

- the identity of all counsel, if any, representing the objector, including any former or current counsel who may claim entitlement to compensation for any reason related to the objection to the Settlement or the Fee Application;
- a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing and the identification of any counsel representing the objector who intends to appear at the Final Approval Hearing;
- a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- the objector's signature signed under oath and penalty of perjury or, if legally incapacitated, the signature of their duly authorized representative (along with documentation setting forth such legal incapacitation and representation) (an attorney's signature is not sufficient).

8.9.2 Except as otherwise ordered by the Court, any Settlement Class Member who fails to comply with the provisions of Paragraph 8.8.1 shall waive and forfeit any and all rights the Settlement Class Member may have to appear separately and/or to object to the Settlement or Fee Application, and shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments in the Action.

9. RELEASES AND DISMISSAL OF ACTION

9.1. As of the Effective Date, the Releasing Parties, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged BHN and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, and the predecessors, successors, and assigns of each of them as well as covered entities associated with the Data Security Incident (collectively, the "Released Parties"), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Data Security Incident, and conduct that was alleged or could have been alleged in the Action, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (1) the unauthorized access to or disclosure of Settlement Class Members' personal information; (2) BHN's maintenance of Settlement Class Members' personal information; (3) BHN's information security policies or practices; (4) BHN's provision of notice to Settlement Class Members following the Data Security Incident; and (5) any event, matter, dispute, or thing that in whole or in part, directly or indirectly, relates to or arises out of the Data Security Incident and (1) through (4) above (the "Released Claims"), provided that nothing in this Release is intended to, does or shall be deemed

to release any claims not arising out of, based upon, resulting from, or related to the Data Security Incident.

9.1.1 For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under any Data Security Incident statutes in effect in the United States or in any states in the United States, including but not limited to causes of action under the common or civil laws of any state in the United States, including but not limited to unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of express contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; and also including, but not limited to, any and all claims in any state or federal court of the United States, for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, identity theft insurance, statutory penalties, restitution, the appointment of a receiver, and any other form of relief). The Released Claims do not include any claims by the Parties hereto to enforce the terms of the Settlement or any claims not arising out of the Data Security Incident.

9.2. Upon the Effective Date, and to the fullest extent permitted by law, each Releasing Party, including Plaintiff, 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 the participation in the Settlement as provided herein) in which any of the Released Claims is asserted.

9.3. As of the Effective Date, BHN and all Released Parties agree to fully, completely, finally, and forever release, relinquish, and discharge Plaintiff and Class Counsel from all claims, known or unknown, arising out of or relating to the institution, prosecution, settlement, or resolution of the Action (provided, however, that this release, relinquishment, and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement).

9.4. As of the Effective Date, this Settlement Agreement may be pled as a full and complete defense to any Released Claims that may be instituted, prosecuted, or attempted in breach of this Settlement Agreement. The Releasing Parties covenant that they will not institute or prosecute, against the Released Parties, any action, suit, or other proceeding based in whole or in part upon any of the Released Claims. In the event such a claim is filed, the Released Parties shall be entitled to reimbursement from the Party that instituted the action of all legal fees and costs incurred in the enforcement of this provision.

9.5. Plaintiff and/or any Releasing Party may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of Paragraphs 9.1-9.3, or the law applicable to such claims

may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Paragraph and Paragraphs 9.1-9.3.

10. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARDS

10.1. Class Counsel may file a Fee Application seeking an award of attorneys' fees and reimbursement of reasonable expenses of no more than one-third of the Settlement Fund as fees, plus reasonable expenses, and a Service Award of \$5,000 to Plaintiff, all of which shall, if approved by the Court, be paid from the Settlement Fund. Neither Class Counsel's application for, nor any individual's entitlement to, a Service Award shall be conditioned in any way upon such individual's support for this Agreement.

10.2. BHN will not oppose any motion by Class Counsel for an award of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of reasonable expenses, and Service Award to Plaintiff of up to \$5,000. BHN agrees that it has no right to appeal the amount of any award of attorneys' fees, costs or Service Awards so long as the amounts awarded do not exceed those set forth in this paragraph. BHN reserves the right to object to a fee request that exceeds the terms outlined in this paragraph.

10.3. Class Counsel must file the Fee Application, if at all, at least fourteen (14) days prior to the Objection Deadline.

10.4. Within fourteen (14) days after entry of the Final Approval Order, Defendant will pay the attorneys' fees and expenses, and Service Award approved by the Court separate and apart from any other amounts or relief provided herein.

10.5. **No Additional Amounts Due.** BHN shall not be liable for any additional attorneys' fees and expenses of Settlement Class Counsel or the Settlement Class Representative in the Action.

11. TERMINATION OF SETTLEMENT

11.1. This Settlement may be terminated by either Plaintiff or BHN by serving on counsel for the opposing Party and filing with the Court a written notice of termination within fourteen (14) days (or such longer time as may be agreed between Class Counsel and BHN) after any of the following occurrences:

11.1.1 Settlement Class Counsel and BHN agree to termination before the Effective Date;

11.1.2 The Court refuses to grant Preliminary Approval of this Agreement in any material respect;

11.1.3 The Court refuses to grant final approval of this Agreement in any material respect;

11.1.4 The Court of Appeals or Supreme Court modifies the Final Judgment or reverses it in any material respect; or

11.1.5 The Effective Date does not occur.

12. CONDITIONS OF SETTLEMENT

12.1. This Settlement Agreement is expressly conditioned on and subject to each of the following conditions and, except as provided in Paragraph 11, shall be null and void and of no force and effect, cancelled and terminated unless:

12.1.1 The Court enters a Final Approval Order and Judgment; and

12.1.2 The Final Approval Order and Judgment becomes Final.

13. EFFECT OF A TERMINATION

13.1. The grounds upon which this Agreement may be terminated are set forth in Paragraph 11. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of BHN's obligations under the Agreement shall cease to be of any force and effect, the amounts in the Settlement Administration Account, if any, shall be returned to BHN; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. Either party may, at any time after the termination of this Agreement, move the Court to lift the stay of proceedings. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Plaintiff's right to seek class certification and BHN's right to oppose class certification.

13.1.1 In the event of a termination as provided in Paragraph 11, the Settlement Administrator shall return the balance, if any, of the Settlement Fund to BHN within seven (7) days of receiving notice of the termination.

13.1.2 In the event the Settlement is terminated in accordance with the provisions of Paragraph 11, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

13.1.3 The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of Paragraph 11.

14. CONTACT WITH SETTLEMENT CLASS MEMBERS

14.1. Settlement Class Counsel recognizes that the Settlement Class includes current and former BHN patients/customers as well as associated physicians and Settlement Class Counsel consents to BHN communicating with any Settlement Class Member, including in connection with the subject matter of this Settlement Agreement, provided the communication is not to discourage participation in the Settlement or the making of a Reimbursement Claim.

15. DISMISSAL OF THE ACTION

15.1. Plaintiff, on behalf of herself and the Settlement Class Members, consents to the entry of Final Judgment on this Settlement Agreement, fully resolving and adjudicating all claims brought in this Action.

16. MISCELLANEOUS PROVISIONS

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

16.2. **Singular and Plurals.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

16.3. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

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

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

16.6. **Amendment.** This Stipulation may be amended, modified, or waived only by a written instrument signed by counsel for all Parties hereto or their successors in interest or their duly authorized representatives.

16.7. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

16.8. **Deadlines.** If any deadline set forth in this Stipulation or the Exhibits thereto falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

16.9. **No Conflict Intended.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

16.10. **Confidentiality.** To the extent permitted by law and any applicable Court rules, all agreements made, and orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Stipulation and the Effective Date.

16.11. **Destruction of Confidential Information.**

16.11.1 Within three (3) days of the end of the Claims Period, Settlement Class Counsel shall return or destroy all confidential, non-public information obtained in connection with the Action and Agreement, and certify the same, if requested.

16.11.2 Within a year of the end of the Claims Period, the Settlement Administrator shall destroy the Class List and all information obtained or compiled from the Action or the settlement and provide written verification to BHN's Counsel, if requested.

16.12. **Waiver.** The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of that or any other prior or subsequent breach of any provision of this Stipulation by any other Party.

16.13. **Notices.** Notices in relation to this Agreement shall be provided as follows:

16.13.1 All notices to Settlement Class Counsel provided for herein, shall be sent by email and overnight mail to:

Lynn A. Toops
COHEN & MALAD, LLP
One Massachusetts Square, Suite 1400
Indianapolis, IN 46204
ltoops@cohenandmalad.com

J. Gerard Stranch, IV
BRANSTETTER STRANCH &
JENNINGS PLLC
223 Rosa L Parks Avenue, Suite 200
Nashville, TN 37203
gerards@bsjfirm.com

16.13.2 All notices to BHN, provided for herein, shall be sent by overnight mail and email to:

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

16.13.3 The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections or other filings received as a result of the Notice Program.

17. REPRESENTATIONS AND WARRANTIES

17.1. **No Additional Persons with Financial Interest.** BHN shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Agreement. Settlement Class Counsel agree to hold BHN harmless from any claim that the term "Settlement Class Counsel" (as defined in section 1.33 of this Agreement) fails to include any counsel, person, or firm who claims that they are entitled to a share of any attorneys' fees awarded to Settlement Class Counsel in this lawsuit.

17.2. **Parties Authorized to Enter into Agreement.** Settlement Class Representative and BHN represent and warrant that they are fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of a Settlement Class Representative or BHN covenants, warrants, and represents that he or she is and has been fully authorized to do so by the Settlement Class Representative or BHN. Settlement Class Representative and BHN hereto further represent and warrant that they intend to be bound fully by the terms of this Agreement.

Plaintiff and Settlement Class Counsel represent and warrant that Plaintiff is a Settlement Class Member and that none of the Plaintiff's claims or causes of action that are or could have been asserted in the Action have been assigned, encumbered, or otherwise transferred in any manner in whole or in part.

17.3. **Arm's-Length Negotiations.** The Parties represent and agree that the terms of the Settlement were negotiated at arm's-length and in good faith by the Parties and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

17.4. **Best Efforts.** The Parties and their respective counsel of record agree that they will use their reasonable best efforts to obtain (and, if necessary, defend on appeal) all necessary approvals of the Court required by this Stipulation (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement); provided, however, that Defendant shall have no obligation to file briefs or otherwise advocate in favor of the Fee Application referenced in Paragraph 10, and, pursuant to the terms in Paragraph 10.2, Defendant shall take no position as to the Fee Application.

17.5. **Independent Investigation and Decision to Settle.** The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in any substantive or procedural law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law or changes in any substantive or procedural law, subsequently occurring or otherwise.

17.6. **Receipt of Advice of Counsel.** Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Paragraph 9, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

17.7. **Time Periods.** The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Settlement Class Counsel and BHN's Counsel.

17.8. **Governing Law.** This Agreement is intended to and shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law principles.

17.9. **No Construction Against Drafter.** This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

17.10. **Press.** Except as required by law, this document, the court orders in this case or any other disclosure obligations, the Parties, and the Parties' counsel, shall not issue any press releases or make any media statements about this case or the Settlement until after the Effective Date. Nothing in this agreement prohibits counsel from including this settlement and information on the settlement on their website, social media accounts or in the Firm resume or other similar materials used by the firm.

17.11. **Agreement Binding on Successors in Interest.** This Stipulation shall be binding upon and shall inure to the benefit of the Parties and the Class (and, in the case of the releases, all Released Parties) and the respective legal representatives, heirs, executors, administrators, transferees, successors, and assigns of all such foregoing Persons and upon any corporation, partnership, or other entity into or with which any party may merge, consolidate, or reorganize.

17.12. **Enforcement.** Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Court in which this Action is pending.

17.13. **Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the Parties' attorneys. The signatories may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all signatories had signed the same instrument.

17.14. **Signatures.** Each person executing this Agreement warrants that such person has the full authority to do so. Signatures sent in PDF format by email will constitute sufficient execution of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below:


Dated: September __, 2021

Dated: September 16, 2021

DocuSigned by:

9/14/2021
2D7A17FEEDF941D...
J. Gerard Stranch, IV
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JENNINGS PLLC
223 Rosa L Parks Avenue, Suite 200
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Attorneys for Defendant

Attorneys for Plaintiff

Exhibit A

Summary Notice

Joyner v. Behavioral Health Network, Inc., 2079CV00629 (Hampden Cnty. Mass. Super. Ct.)

You may be entitled to receive benefits under this class action settlement.

*A state court authorized this Notice. It is **not** a solicitation from a lawyer.*

A proposed settlement has been reached in a lawsuit entitled *Joyner v. Behavioral Health Network, Inc.*, No. 71D05-2002-PL-000060, pending in the Hampden County Massachusetts Superior Court. The lawsuit alleges that on or about May 26, 2020 to May 28, 2020, BHN was the victim of a cyberattack resulting in access by an unauthorized third party to certain computer systems of BHN containing personal information and protected health information stored by BHN, including names, Social Security numbers, dates of birth, medical history information, health insurance information, and other information (the “Data Security Incident”). BHN maintains that it had meritorious defenses, and it was prepared to vigorously defend the lawsuit. The settlement is not an admission of wrongdoing or an indication that BHN has violated any laws, but rather the resolution of disputed claims. BHN encourages all persons who qualify as members of the Settlement Class to participate in the Settlement.

Who Is Included? BHN’s records indicate you are included in the settlement as a Settlement Class Member because your information may have been involved in the Data Security Incident.

What Benefits are Included in the Settlement?

- BHN has agreed to pay \$1,200,000 into a Settlement Fund to provide for Settlement Class Members to sign up, at no cost to the Settlement Class Member, for credit monitoring, and to provide for payments of valid claims for documented Economic Losses and Lost Time.
- All Settlement Class Members have the option to sign-up for the Settlement Offering of credit monitoring, which will include identity theft insurance coverage with a limit of no less than \$1,000,000.
- Any Settlement Class Member may submit one or more Claims for reimbursement for documented Economic Losses related to the Data Security Incident that have not been reimbursed by IDX or other third parties, up to an aggregate total of \$10,000.00 per Settlement Class Member, provided, however, that no Settlement Class Member may submit a Reimbursement Form unless said Settlement Class Member has first elected to receive and enrolled in the Settlement Offering, submitted a Reimbursement Claim to the vendor supplying the Settlement Offering, the vendor has denied the claim, and said Settlement Class Member has exhausted the vendor’s claims process.
- In addition, any Settlement Class Member may submit one or more Claims for reimbursement of Lost Time, up to an aggregate total of \$1,000.00. A Settlement Class Member may submit Claims for Lost Time regardless of whether the Settlement Class Member enrolls in the Settlement Offering or has any Claim for documented Economic Losses.
- If funds are insufficient to cover all Claims, the Claims will be reduced pro rata.

How Do I Receive Settlement Benefits? To receive the Settlement Offering, Settlement Class Members must submit an Election Form to the Settlement Administrator by **DATE**. To file a claim for reimbursement of Economic Losses, Settlement Class Members must first elect to receive and enroll in the Settlement Offering, submit a Reimbursement Claim to the vendor, receive a denial of your Reimbursement Claim from the vendor, exhaust the vendor's claim process, and submit a Reimbursement Form to the Settlement Administrator by **DATE**.

To receive reimbursement for Lost Time, Settlement Class Members must submit a Reimbursement Form to the Settlement Administrator by **DATE**.

All forms are available at www.INSERTWEBSITE.com, by calling **1-PHONE NUMBER**, or by writing to the Settlement Administrator at **ADDRESS**. All forms may be submitted through the Settlement Website or by mail to the Settlement Administrator.

What Are My Options? You can do nothing, or you can submit an Election Form or a Reimbursement Form. Whether you do nothing or submit an Election or Reimbursement Form, your rights will be affected. You will not be able to sue BHN in a future lawsuit about the claims addressed in the settlement. You can also object to the settlement, Class Counsel's request for fees and expenses, or the Settlement Class Representative's requests for service awards. *All Objections must be postmarked by [objection deadline].*

The Final Approval Hearing. The Court will hold a Final Approval Hearing at [**TIME**, on **DATE**], at the Hampden County Massachusetts Superior Court, 50 State St., Springfield, MA 01102. At the Final Approval Hearing, the Court will consider whether the proposed settlement is fair, reasonable, and adequate. The Court may also consider Settlement Class Counsel's request for attorneys' fees of up to one-third of the Settlement Fund, plus reasonable expenses, and a service award of \$5,000 to the Settlement Class Representative that filed this lawsuit. If there are objections, the Court will consider them.

Getting More Information. More information, including the Settlement Agreement and other related documents, is available at www.INSERTWEBSITE.com.

Exhibit B

HAMPDEN COUNTY MASSACHUSETTS SUPERIOR COURT

Notice of Class Action and Proposed Settlement

You may be entitled to receive benefits under this class action settlement.

This notice summarizes the proposed settlement reached in a lawsuit entitled *Joyner v. Behavioral Health Network, Inc.*, No. 2079CV00629, pending in the Hampden County Massachusetts Superior Court (“Lawsuit”). For the precise terms and conditions of the settlement, please see the settlement agreement available at www.WEBSITE.com, or by contacting the Settlement Administrator at [REDACTED].

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

This notice may affect your rights – please read it carefully.

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

- The lawsuit alleges that on or about May 26, 2020 to May 28, 2020, BHN was the victim of a cyberattack resulting in access by an unauthorized third party to certain computer systems of BHN containing personal information and protected health information stored by BHN, including names, Social Security numbers, dates of birth, medical history information, health insurance information, and other information (the “Data Security Incident”). BHN maintains that it had meritorious defenses, and it was prepared to vigorously defend the lawsuit. The settlement is not an admission of wrongdoing or an indication that BHN has violated any laws.

- If your information was potentially compromised in the Data Security Incident, you are a Settlement Class Member.

- **The Settlement provides a \$1,200,000 Settlement Fund.**

- **Settlement Class Members are eligible for the Settlement Offering, which is credit monitoring and identity theft insurance, by submitting the Election Form by the Election Deadline and following the additional enrollment instructions to activate the plan as instructed.**

- **The Settlement also provides that Settlement Class Members who elected to receive and enrolled in the Settlement Offering may also seek reimbursement of up to \$10,000 for documented Economic Losses Settlement Class Members suffered as a result of the Data Security Incident that have not be reimbursed. To be eligible for reimbursement, you must submit sufficient evidence of your economic loss and satisfy additional requirements. The deadline to submit a claim is Claims Deadline.**

- **The Settlement also provides that Settlement Class Members may seek reimbursement for Lost Time related to the Data Security Incident. To be eligible for reimbursement, you must submit a claim showing the Lost Time is fairly traceable to the**

Data Security Incident. The deadline to submit a claim is [Claims Deadline](#)

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<p>SUBMIT AN ELECTION FORM</p> <p>DEADLINE: [DATE]</p>	<p>This is the only way for Settlement Class Members to enroll in the Settlement Offering of credit monitoring and identity theft insurance paid for by BHN.</p>
<p>REIMBURSEMENT FORMS</p> <p>DEADLINE: [DATE] SUBMIT ONE OR MORE</p>	<p>This is the only way for Settlement Class Members to request reimbursement of economic losses and lost time related to the Data Security Incident. For economic losses, you must elect to receive and enroll in the Settlement Offering offered through this settlement to be eligible for reimbursement. For lost time you do not need to enroll in the Settlement Offering. You can seek reimbursement for economic losses, for lost time, or for both.</p>
<p>DO NOTHING</p>	<p>If you are a Settlement Class Member and do not submit an Election Form or a Reimbursement Form, you will not receive anything from the settlement, and you will not be able to sue, continue to sue, or be part of another lawsuit against BHN about the legal claims resolved by this Settlement.</p>
<p>OBJECT:</p> <p>DEADLINE: [30 DAYS FOLLOWING NOTICE]</p>	<p>You may object to the Settlement or to Class Counsel’s or the Class Representatives’ requests for Class Counsel fees or Service Awards, respectively.</p>
<p>GO TO A HEARING ON [DATE]</p>	<p>You may object to the Settlement and ask the Court permission to speak at the Final Approval Hearing about your objection.</p>

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court still must decide whether to approve the Settlement. No benefits will be provided, or payments made until after the Court grants final approval of the Settlement and all appeals, if any, are resolved.

QUESTIONS? READ ON AND VISIT WWW.INSERTWEBSITE.COM

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BASIC INFORMATION

Why is this notice being provided?

This Class Notice is provided pursuant to an order issued by the Court to inform you of the proposed Settlement and the Final Approval Hearing to be held by the Court to consider, among other things, (a) whether the Settlement is fair, reasonable and adequate and should be approved; and (b) Class Counsel's request for Class Counsel Fees and Expenses and the Class Representatives' request for a Service Award. This Class Notice explains the nature of the lawsuit, the general terms of the proposed Settlement (including the benefits available), and your legal rights and obligations. This Class Notice is not an expression of any opinion by the Court as to the merits of the claims or defenses asserted in the Action.

The Hampden County Massachusetts Superior Court is overseeing this action, which is known as *Joyner v. Behavioral Health Network, Inc.*, 2079CV00629 (the "Action"). The person that filed the lawsuit is called the "Plaintiff." Behavioral Health Network, Inc. is the "Defendant."

What is this lawsuit about?

The lawsuit alleges that on or about May 26, 2020 to May 28, 2020, BHN was the victim of a cyberattack resulting in access by an unauthorized third party to certain computer systems of BHN containing personal information and protected health information stored by BHN, including names, Social Security numbers, dates of birth, medical history information, health insurance information, and other information (the "Data Security Incident").

Plaintiff claims that BHN did not adequately protect personal information, and that as a result of the Data Security Incident people were harmed. BHN denies any wrongdoing, and no court or other entity has made any judgment or other determination of any wrongdoing or that any law has been violated.

Why is this a class action?

In a class action, one or more people called "class representatives" sue on behalf of themselves and other people with similar claims. The Plaintiff (the class representative here), together with the people she represents, are called Settlement Class Members. One court resolves the issues for all Settlement Class Members. In this case, the Class Representative is Bonita Joyner.

Why is there a Settlement?

The Court has not decided in favor of Plaintiff or BHN. Instead, both sides agreed to a settlement. Settlement avoids the costs and uncertainty of trial and related appeals, while providing benefits to members of the Settlement Class. The Class Representative and attorneys for the Settlement Class ("Settlement Class Counsel") believe the Settlement is in the best interests of the Settlement Class Members.

WHO IS IN THE SETTLEMENT

How do I know if I am part of the Settlement?

You are included in the Settlement Class if you are a member of the following:

All individuals to whom a notification was sent by or on behalf of Behavioral Health Network, Inc. regarding the Data Security Incident.

What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are in the Class, or have any other questions about the Settlement, call the toll-free number, 1-800-PHONENUMBER. You also may write with questions to: INSERT SETTLEMENT ADMININSTRATOR INFO AND ADDRESS or go to www.INSERTWEBSITE.com.

THE SETTLEMENT BENEFITS

What benefits does the Settlement provide?

BHN will pay \$1,200,000 into a Settlement Fund, which, after deduction of Court-approved fees, awards, and expenses, will be used to pay the benefits of the Settlement.

The Settlement Fund will be used to provide Settlement Class Members the following benefits under the Settlement: (1) coverage under a credit monitoring and identity theft insurance plan, with coverage of at least \$1,000,000; and (2) reimbursement of documented Economic Losses up to \$10,000.00 per Settlement Class Member, which are: (a) related to the Data Security Incident; (b) have not otherwise been reimbursed; (c) supported by required documentation; and (d) meets all requirements set forth in the Reimbursement Form and the Settlement Agreement. In addition, the Settlement Fund will be used to pay claims for lost time related to the Data Security Incident.

Complete details regarding the settlement benefits are available in the Settlement Agreement, which is available at www.INSERTWEBSITE.com.

Tell me more about enrollment in the credit monitoring and identity theft insurance.

Settlement Class Members can enroll in the following credit monitoring and identity theft insurance of at least \$1,000,000:

Identity Theft Protection.

Settlement Class Members shall have the option, at no cost to them, to sign-up for credit monitoring identity theft insurance of at least \$1,000,000 offered by the Settlement (“Settlement Offering”). If a Settlement Class Member elects to utilize the Settlement Offering, he or she must make that election by [the Election Deadline](#). If a Settlement Class Member elects to receive the Settlement

Offering, he or she must activate the plan in accordance with the instructions provided with the activation code that will be issued.

Tell me more about reimbursement of economic costs.

17.14.1 **Reimbursement of Documented Economic Losses.** Any Settlement Class Member may submit one or more Claims for reimbursement for documented Economic Losses related to the Data Security Incident that have not been reimbursed by the vendor providing the Settlement Offering or other third parties, up to an aggregate total of \$10,000.00 per Settlement Class Member. Reimbursement Claims must be submitted pursuant to Reimbursement Form attached as Exhibit D and in accordance with the reimbursement terms under the provisions of this Agreement. All Reimbursement Claims must be submitted to the Settlement Administrator on or before the expiration of the Claims Period.

Settlement Class Members who wish to make a timely and properly supported Claim for reimbursement of Economic Losses related to the Data Security Incident must provide to the Settlement Administrator the information required to evaluate the claim, including: (a) the Claimant's name and current address; (b) if applicable, a signed copy of IRS Form 14039 along with a statement under penalty of perjury that the form was submitted to the Internal Revenue Service; (c) the bills or invoices documenting the amount of the Claim and proof that the bills or invoices were paid; and (d) a statement signed under penalty of perjury indicating that: (i) the Economic Losses claimed are fairly traceable to the Data Security Incident; and (ii) the total amount claimed has not been reimbursed by any other person or entity. Third-party documentation of Economic Losses is required to establish a Claim. Economic Losses that are compensated under this Agreement are those that are reasonable and customarily incurred when responding to the type of fraud or identity theft suffered by the Settlement Class Member from the Data Security Incident.

Tell me more about reimbursement of lost time.

Reimbursement of Lost Time. Any Settlement Class Member may submit one or more Claims for reimbursement for Lost Time related to the Data Security Incident, up to an aggregate total of \$1000.00 per Settlement Class Member. A Settlement Class Member may submit a Claim regardless of whether the Settlement Class Member takes advantage of the Settlement Offer and regardless of whether the Settlement Class Member submits a claim for documented Economic Losses. A Settlement Class Member is eligible for the payment provided in this section in addition to, and on top of, any payment for documented Economic Losses. A Claim for reimbursement of Lost Time must be submitted pursuant to the Reimbursement Form. Third-party documentation of Lost Time is not required to establish a Claim, but you must provide a general description of how the time was spent and how many hours were spent.

HOW TO GET SETTLEMENT BENEFITS

How can I enroll in the credit monitoring and identity theft insurance plan?

To receive the Settlement Offering, Settlement Class Members must submit an Election Form by mail or through the Settlement Website by **DATE**. The Settlement Administrator will notify you of any deficiencies with respect to your Election Form, and you will have 21 days after such notice is sent to correct these deficiencies. The Settlement Administrator will then issue a final decision on your entitlement to the credit monitoring and identity theft insurance plan.

An Election Form is available at www.INSERTWEBSITE.com or by calling **1-800-PHONENUMBER**. Election Forms are also available by writing to the Settlement Administrator at **[SETTLEMENT ADMINISTRATOR INFORMATION AND ADDRESS]**.

How do I obtain reimbursement of economic costs related to the Data Security Incident?

For reimbursement of documented Economic Losses related to the Data Security Incident that have not been reimbursed, up to an aggregate total of \$10,000.00 in reimbursement per Settlement Class Member, you must read the instructions carefully, fill out the form completely, attach the required documentation, and either submit the form and documentation through the Settlement Website, or mail the form postmarked no later than **DATE**, to:

Settlement Administrator
ADDRESS
ADDRESS

If you have questions about how to file a claim, call **1-800-PHONENUMBER** or go to www.INSERTWEBSITE.com.

How do I obtain reimbursement of lost time related to the Data Security Incident?

For reimbursement of Lost Time related to the Data Security Incident, up to an aggregate total of \$1000.00 in reimbursement per Settlement Class Member, you must complete and submit a Reimbursement Form(s) and provide a narrative of what the time was spent on. You can get the Reimbursement Form at www.INSERTWEBSITE.com or by calling **1-800-PHONENUMBER**. For each Reimbursement Form, you must read the instructions carefully, fill out the form completely, attach any required documentation, and either submit the form and documentation through the Settlement Website, or mail the form postmarked no later than **DATE**, to:

Settlement Administrator
ADDRESS
ADDRESS

If you have questions about how to file a claim, call **1-800-PHONENUMBER** or go to www.INSERTWEBSITE.com.

When will I receive my reimbursement payment under the Settlement?

If you file a timely and valid Reimbursement Form and submit required documentation, the Settlement Administrator will evaluate your claim to confirm your eligibility and calculate your payment amount. The Settlement Administrator will notify you of any deficiencies with respect to your claim, and you will have 21 days after such notice is sent to correct these deficiencies. The Settlement Administrator will then issue a final decision on your claim.

Payments for valid claims will not be made until after the Settlement is finally approved and all appeals and other reviews have been exhausted.

What am I giving up as part of the Settlement?

If the Settlement is approved, you cannot sue BHN or be part of any lawsuit against BHN about any of the issues in this Action. All of the decisions by the Court will bind you. The specific claims you are giving up are described in Paragraph 9 of the Settlement Agreement. You will be releasing your claims against BHN and all related people as described in Paragraph 9.

The Settlement Agreement is available at [www. INSERTWEBSITE.com](http://www.INSERTWEBSITE.com) or by calling 1-800-PHONENUMBER. The Settlement Agreement describes the released claims with specific descriptions, so please read it carefully. If you have any questions about what this means, you can talk to Settlement Class Counsel, or you can talk to your own lawyer at your own expense.

THE LAWYERS REPRESENTING YOU

Do I have a lawyer in the case?

Yes, you do have a lawyer in the case. The Court appointed the law firms of Cohen & Malad, LLP, Branstetter, Stranch, & Jennings, PLLC, and Turke & Strauss LLP, to represent you and the Settlement Class. These firms are called “Settlement Class Counsel.” You will not be charged by these lawyers for their work on this case. If you want to be represented by your own lawyer, you may hire one at your own expense.

How will the lawyers be paid?

Class Counsel will ask the Court for BHN to pay for reasonable attorneys’ fees of up to one-third (\$400,000) of the Settlement Fund, plus reasonable litigation expenses, and a Class Representative service award not to exceed \$5,000. The Court will decide the amount of attorneys’ fees, expenses, and service awards. Any attorneys’ fees, expenses, and service awards approved will be paid from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

How do I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member, you can object to or comment on the Settlement, Settlement Class Counsel's request for attorneys' fees and expenses, and/or the Settlement Class Representative' request for service awards. To object, you must state in writing that you object to the Settlement, and include the following information in your written objection:

1. The name of the Action;
2. Your full name, mailing address, telephone number, and e-mail address;
3. A statement of the basis on which you claim to be a Settlement Class Member;
4. A written statement of all grounds for your objection, accompanied by any legal support for the objection, and any evidence you wish to introduce in support of the objection;
5. The identity of all counsel, if any, representing you, including any former or current counsel who may claim entitlement to compensation for any reason related to the objection to the Settlement or the Fee Application;
6. A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing and the identification of any counsel representing you who intends to appear at the Final Approval Hearing;
7. A list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; and
8. Your signature signed under oath and penalty of perjury or, if legally incapacitated, the signature of your duly authorized representative (along with documentation setting forth such legal incapacitation and representation) (an attorney's signature is not sufficient).

Failure to include this information may be grounds for the Court to disregard your objection.

To submit an objection, send a letter the Court either by: (a) mailing it to the Clerk of the Court, Hampden County Superior Court, 50 State St., Springfield, MA 01102, or; (b) filing the objection in person at the same location. Mailed objections must be filed or postmarked on or before the Objection Deadline, which is [Objection Deadline].

FINAL APPROVAL HEARING

When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ a.m., on _____, at the Hampden County Superior Court, 50 State St., Springfield, MA 01102. At the Final Approval Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court may also consider Class Counsel's request for attorneys' fees and expenses, and the service awards.

If there are objections, the Court will consider them. After the Final Approval Hearing, the Court will decide whether to approve the proposed Settlement and how much to award to Class Counsel as fees and expenses, and the service awards. You do not need to attend.

The Final Approval Hearing may be moved to a different date or time without additional notice, so if you wish to attend, it is recommended that you periodically check www.INSERTWEBSITE.com to confirm the date of the Final Approval Hearing.

Do I have to come to the hearing?

You do not have to attend the hearing. Class Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. If you submit a written objection, you do not have to come to the Fairness Hearing to raise your objection. As long as you timely mailed your written objection, the Court will consider it. You also may pay your own lawyer to attend the Final Approval Hearing, but their attendance is not necessary.

May I speak at the hearing?

Yes, you may speak at the hearing. If you would like to do so, you must indicate your intent to personally appear and/or testify at the Final Approval Hearing, and identify any counsel representing you who intends to appear at the Final Approval Hearing, when providing written notice of your objection as noted above regarding how to object to the Settlement.

IF YOU DO NOTHING

What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will be legally bound by the Settlement, but you will not receive the Settlement Offering, or reimbursement for Economic Losses and Lost Time related to the Data Security Incident. You will not be able to bring a lawsuit, continue a lawsuit, or be a part of any other lawsuit against BHN about the claims in this case.

If you would like to request benefits under the Settlement, you must follow the instructions described in the sections above.

GETTING MORE INFORMATION

How do I get more information about the proposed Settlement?

This notice summarizes the proposed Settlement. More details are included in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.INSERTWEBSITE.com. You also may write with questions to the Settlement Administrator, at [EMAIL ADDRESS OR REAL \[ADDRESS\]](mailto:EMAIL ADDRESS OR REAL [ADDRESS]). You can access Reimbursement and Election Forms and review additional documents on the Settlement Website. You can also request to receive Reimbursement and Election Forms, a copy of the Settlement Agreement, and a detailed notice by mail by calling the toll-free number, [1-800-PHONENUMBER](tel:1-800-PHONENUMBER).

Exhibit C

Joyner v. Behavioral Health Network, Inc., No. 2079CV00629
(Hampden Cnty. Mass. Super. Ct.)

**Settlement Credit Monitoring and Identity Restoration Enrollment
Election Form**

Submission Deadline: DATE

**You may quickly and easily file your Election Form online at
www.INSERTWEBSITE.com**

The Settlement Class is defined as all persons to whom a notification was sent by or on behalf of Behavioral Health Network, Inc. regarding the Data Security Incident. You may submit this Election Form only if you are a Settlement Class Member in the above action.

As a member of the Settlement Class, you are entitled to obtain coverage under a credit monitoring and identity theft insurance plan at BHN's cost.

Settlement Class Members who elect to receive coverage under the plan will receive enrollment information for coverage under the plan.

To elect the credit monitoring and identity theft insurance plan, please provide the following information:

I want to **ENROLL** in the credit monitoring and identity theft insurance at BHN's cost.

I declare under penalty of perjury that I am a Settlement Class Member and that the information provided below is true and accurate.

First Name: _____ MI: _____ Last Name: _____

Address: _____

E-Mail: _____ Phone Number: _____

Signature: _____ Date: _____

The deadline to submit this form is **DATE** online at **www.INSERTWEBSITE.com** or by mail to **ADDRESS**.

Exhibit D

Joyner v. Behavioral Health Network, Inc., No. 2079CV00629
SETTLEMENT ADMINISTRATOR
P.O. Box XXXXX
City, State XXXXX-XXXX

HAMPDEN COUNTY MASSACHUSETTS SUPERIOR COURT

Joyner v. Behavioral Health Network, Inc., No. 71D05-2002-PL-000060

ECONOMIC LOSS REIMBURSEMENT FORM

Reimbursements for Economic Losses

Eligible Settlement Class Members may submit one or more Claims for reimbursement for documented Economic Losses related to the Data Security Incident that have not been reimbursed, up to an aggregate total of \$10,000.00 per Settlement Class Member.

Additional information is contained in the Notice and the Settlement Agreement, both of which are available at www.INSERTWEBSITE.com or by calling 1-[PHONENUMBER](tel:PHONENUMBER).

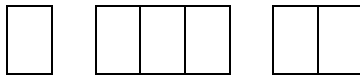
Settlement Class Members who wish to make a timely and properly supported Claim for reimbursement of Economic Losses related to the Data Security Incident must provide to the Settlement Administrator the information required to evaluate the claim, including: (a) the Claimant's name and current address; (b) if applicable, a signed copy of IRS Form 14039 along with a statement under penalty of perjury that the form was submitted to the Internal Revenue Service; (c) the bills or invoices documenting the amount of the Claim and proof that the bills or invoices were paid; (d) a statement signed under penalty of perjury indicating that: (i) the Economic Losses claimed are fairly traceable to the Data Security Incident; and (ii) the total amount claimed has not been reimbursed by any other person or entity. Third-party documentation of Economic Losses is required to establish a Claim. Economic Losses that are compensated under this Settlement are those that are reasonable and customarily incurred when responding to the type of fraud or identity theft suffered by the Settlement Class Member from the Data Security Incident.

Settlement Class Members must submit this documentation along with the form required below through the Settlement Website, or by mailing it to the following address:

ADDRESS
ADDRESS
ADDRESS

If you have any questions, call [1-PHONE NUMBER](tel:1-PHONE NUMBER) or go to www.INSERTWEBSITE.com for more information.

Deadline: All Claims must be submitted to the Settlement Administrator on or before **DATE**.



Please provide a brief description of economic loss requested in this Claim, as well as an explanation of how such losses are related to the Data Incident. (You may attach additional pages if necessary).

Large empty rectangular box for providing a description of economic loss.

Signature: _____	Date: _____
Print Name: _____	Your claim will be submitted to the Settlement Administrator for review. If your Reimbursement Form is incomplete, untimely, or contains false information, it may be rejected by the Settlement Administrator. If your claim is approved, you will be mailed a check at the street address you provide. This process takes time; please be patient.

REIMBURSEMENT FORMS MUST BE POSTMARKED NO LATER THAN [PARTIES TO INSERT DATE] TO BE ELIGIBLE FOR PAYMENT. FILE ONLINE AT [www.INSERTWEBSITE.com] OR MAIL THIS CLAIM FORM TO [ANGEION GROUP, ADDRESS.]

Exhibit E

Joyner v. Behavioral Health Network, Inc., No. 2079CV00629
SETTLEMENT ADMINISTRATOR
P.O. Box XXXXX
City, State XXXXX-XXXX

HAMPDEN COUNTY MASSACHUSETTS SUPERIOR COURT

Joyner v. Behavioral Health Network, Inc., No. 71D05-2002-PL-000060

LOST TIME REIMBURSEMENT FORM

Reimbursements for Lost Time

Eligible Settlement Class Members may submit one or more Claims for reimbursement for documented Lost Time related to the Data Security Incident, up to an aggregate total of \$1000.00 per Settlement Class Member. Lost Time shall be deemed fairly traceable to the Data Security Incident if (i) the time spent occurred on May 22, 2020 or thereafter, (ii) the Settlement Class Member executes a statement signed under penalty of perjury indicating that the Lost Time claimed is fairly traceable to the Data Security Incident, (iii) the Lost Time claimed is of the type to expected to be incurred from the Data Security Incident, such as time related to placing a freeze on credit reports, monitoring for fraud, and attempting to repair any fraudulent activity, and (iv) the Settlement Administrator determines by a preponderance of evidence that it is fairly traceable to the Data Security Incident.

Additional information is contained in the Notice and the Settlement Agreement, both of which are available at www.INSERTWEBSITE.com or by calling 1-[PHONENUMBER](tel:PHONENUMBER).

Settlement Class Members must submit the form required below through the Settlement Website, or by mailing it to the following address:

ADDRESS
ADDRESS
ADDRESS

If you have any questions, call [1-PHONE NUMBER](tel:1-PHONE NUMBER) or go to www.INSERTWEBSITE.com for more information.

Deadline: All Claims must be submitted to the Settlement Administrator on or before **DATE**.

Exhibit F

**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN SUPERIOR COURT**

BONITA JOYNER,

Plaintiff,

v.

BEHAVIORAL HEALTH NETWORK,
INC.,

Defendant.

Case No. 2079CV00629

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND APPROVING NOTICE PROGRAM**

WHEREAS, this proposed class action is pending before the Court;

WHEREAS, Bonita Joyner (also referred to as “Plaintiff” or “Settlement Class Representative” for purposes of the Settlement Agreement), individually and on behalf of the Settlement Class, and Behavioral Health Network, Inc. (“BHN” or “Defendant”), have agreed to settle Plaintiff’s claims related to a Data Security Incident suffered by BHN (the “Data Security Incident”);

WHEREAS, the Parties’ Stipulation and Agreement of Settlement (“Settlement Agreement”), together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and final judgment resolving the Settlement Class’s claims against BHN upon the terms and conditions set forth in the Settlement Agreement;

This matter coming before the Court upon the agreement of the Parties and the motion of Plaintiff seeking preliminary approval of the Settlement Agreement, good cause being shown, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this order shall have the same meaning as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the Action, the Plaintiff, the Settlement Class Members, and BHN.

Settlement Class Certification.

3. Pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, a Settlement Class consisting of the following:

- a. **Settlement Class:** All individuals to whom a notification was sent by or on behalf of Behavioral Health Network, Inc. regarding the Data Security Incident.

4. Excluded from the Settlement Class are Defendant, their officers and directors during the Settlement Class Period, the members of their immediate families, and their respective representatives, heirs, successors, and assigns.

5. The Court hereby appoints Plaintiff as Settlement Class Representative.

6. The Court hereby appoints Cohen & Malad, LLP, Branstetter, Stranch, & Jennings, PLLC, and Turke & Strauss LLP as Settlement Class Counsel.

Preliminary Approval

7. Plaintiff has moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and final judgment resolving this Action. The Court, having read and considered the Settlement Agreement and having heard the Parties' arguments in support of the Settlement Agreement, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing referred to in Paragraph 20 of this order.

8. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement falls within the range of possible approval as fair, reasonable, adequate, and in the

best interests of the Settlement Class as to their claims against BHN. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides beneficial relief to the Settlement Class. The Court also finds that the Settlement Agreement: (a) is the result of serious, informed, non-collusive, arms' length negotiations involving experienced counsel familiar with the legal and factual issues of this case and made with the assistance of the Honorable Morton Denlow (ret.) of JAMS Resolution Center; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to the Settlement Class; (c) meets all applicable requirements of law, including Massachusetts Rule of Civil Procedure 23; and (d) is not a finding or admission of liability by BHN.

Notice and Administration

9. _____ is hereby appointed as Settlement Administrator and shall perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this order.

10. The Court finds that the notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits A and B thereto (the "Notice Program") is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

11. The Court thus hereby approves the Notice Program, including the proposed Notice documents attached as Exhibits A and B to the Settlement Agreement. The Court also approves the plan for Claims administration, including the Election Form and Reimbursement Form attached as Exhibits C, D, and E to the Settlement Agreement. The Parties may, by agreement, revise the Notice, Election Form, or Reimbursement Form documents in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

12. Pursuant to the Settlement Agreement, within thirty (30) calendar days after the entry of the Preliminary Approval Order (the “Notice Date”), and subject to the requirements of the Settlement Agreement and this Preliminary Approval Order, Settlement Class Counsel and BHN shall coordinate with the Settlement Administrator to provide Notice pursuant to the Notice Program as follows:

- a. Within thirty (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall send Email Notice to each Settlement Class Member for whom the Settlement Administrator can ascertain an email address;
- b. With respect to Settlement Class Members for whom the Settlement Administrator cannot ascertain an email address or for whom Email Notice was undeliverable, the Settlement Administrator shall send Postcard Notice to Settlement Class Members’ mailing addresses, as ascertained by BHN’s records or through the National Change of Address Database or other similar data source;
- c. The Settlement Administrator shall perform reasonable address traces for all initial Postcard Notices that are returned as undeliverable. The Settlement Administrator shall complete the re-mailing of the Summary Notice by US mail to Settlement Class Members whose new addresses were identified as of that time through address traces; and
- d. The Settlement Administrator shall publish, on or before the Notice Date, the Long-Form Notice on the Settlement Website in accordance with the requirements set forth in the Settlement Agreement.

13. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Election Form for credit monitoring and identity restoration coverage and a valid Reimbursement Form for reimbursement of documented economic losses and/or lost time fairly traceable to the Data Security Incident. All Election Forms must be postmarked or received by the Settlement Administrator not later than 90 days from the Notice Date. All Reimbursement Claim Requests must be received by the Settlement

Administrator by six months after the Settlement Offering is first instituted.

Objections

14. Any member of the Settlement Class may object to the granting of final approval to the settlement. Settlement Class Members may object on their own or may do so through separate counsel at their own expense.

15. Any written objection to the Settlement must include: (i) the name of the Action; (ii) the objector's full name, address, telephone number, and e-mail address; (iii) a statement of the basis on which the objector claims to be a Settlement Class Member; (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection, and any evidence the objecting Settlement Class Member wishes to introduce in support of the objection; (v) the identity of all counsel, if any, representing the objector, including any former or current counsel who may claim entitlement to compensation for any reason related to the objection to the Settlement or the Fee Application; (vi) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing and the identification of any counsel representing the objector who intends to appear at the Final Approval Hearing; (vii) a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; (viii) the objector's signature signed under oath and penalty of perjury or, if legally incapacitated, the signature of their duly authorized representative (along with documentation setting forth such legal incapacitation and representation) (an attorney's signature is not sufficient); and (ix) must be submitted to the Court either by: (a) mailing it to the Clerk of the Court, or; (b) filing the objection in person with the Clerk of the Court. Mailed objections must be filed or postmarked thirty (30) days following the Notice Date.

16. Any member of the Settlement Class who fails to file and serve a timely written objection in compliance with the requirements of this order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

Final Approval Hearing

17. A final approval hearing (the “Final Approval Hearing”) shall be held before this Court on _____ to consider: (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b) whether a final judgment should be entered; (c) whether to award payment of attorneys’ fees, costs, and expenses to Class Counsel and in what amount; and (d) whether to award payment of a service award to the Settlement Class Representative and in what amount. The Court may adjourn the Final Approval Hearing without further notice to Settlement Class Members.

18. By no later than fourteen (14) days prior to the Objection Deadline, papers supporting the Fee and Expense Application and requested Service Awards shall be filed with the Court.

19. Papers in support of final approval of the Settlement Agreement shall be filed with the Court no later than fourteen (14) days prior to the Final Approval Hearing.

Miscellaneous Provisions

20. To protect its jurisdiction to consider the fairness of the Settlement Agreement and to enter a final order and judgment having binding effect on all Settlement Class Members, the Court hereby enjoins all members of the Settlement Class, and anyone who acts or purports to act on their behalf, from pursuing all other proceedings in any state or federal court that seeks to address rights or claims of any Released Party or Settlement Class Member relating to, or arising out of, any of the Released Claims.

21. Settlement Class Members shall be bound by all determinations and judgments concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

22. All case deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

23. In the event that this Settlement Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order certifying the Settlement Class for purposes of effectuating the Settlement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and the Action shall return to the procedural posture on the day before the Settlement Agreement was executed, in accordance with this paragraph. Neither party, nor counsel shall refer to or invoke the vacated findings and/or order relating to class settlement or Rule 23 of the Massachusetts Rules of Civil Procedure if this Settlement Agreement is not consummated and the Action is later litigated and contested by Defendant under Rule 23 of the Massachusetts Rules of Civil Procedure.

IT IS ORDERED.

Dated: _____, _____
