

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

T.D., et al.,	)	
	)	
Plaintiffs,	)	Case No. 20SL-CC05974
	)	
v.	)	Division No. 6
	)	
MERCY HOSPITALS EAST COMMUNITIES,	)	
d/b/a Mercy Hospital St. Louis, et al.,	)	
	)	
Defendants.	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement, dated March \_\_\_, 2024, is made and entered into by and between: (1) Plaintiffs T.D. and Monica Gama, on behalf of herself, as next friend to A.L. (collectively, “Plaintiffs” or “Class Representatives”), on behalf of themselves and the proposed Settlement Class (as hereinafter defined); and (2) Defendants Mercy Hospitals East Communities and Mercy Health (collectively, “Mercy”) (individually each a “Party” and collectively, the “Parties”).

**SECTION 1 – BACKGROUND**

1. In 2020, Mercy discovered that one of its employees improperly accessed the protected health information and/or personally identifiable information of certain Mercy patients (the “Incident”). In December 2020, Mercy sent a notice about the Incident to these Mercy patients (or to their parents if they were minors).

2. On November 21, 2022, Plaintiffs filed a consolidated class action petition against Mercy in the above-captioned case (the “Civil Action”), asserting various causes of action as a result of the Incident. The case consolidated case number 21SL-CC00852 into the above-captioned case.

3. Previously, Mercy filed motions to dismiss Plaintiffs' petitions in the Civil Action. The Court denied Mercy's motions to dismiss on December 2, 2021.

4. On January 24, 2023, the Parties and their counsel participated in an all-day mediation with retired federal judge Michael Reagan. The mediation did not result in a settlement.

5. Thereafter, the Parties engaged in substantial discovery, including, but not limited to, interrogatories, document production, and the depositions of Plaintiffs and four Mercy employees.

6. Near the close of discovery, the parties' counsel resumed settlement discussions and exchanged settlement offers.

7. On November 3, 2023, Mercy filed its motion for summary judgment.

8. On November 30, 2023, the Parties' counsel met in person (with their respective clients available by phone) and conducted arms-length settlement negotiations for a full day.

9. Following these arms-length settlement negotiations, the Parties have negotiated a settlement by which the Parties agree and hereby wish to resolve all claims that Plaintiffs and the members of the class that they seek to represent for purposes of the Settlement have or may have had against Mercy or the Mercy Released Parties (as defined herein) that arise from, pertain or are related to, or are associated with the Incident or the Civil Action.

10. After coming to an agreement in principle, the Parties have finalized the terms of this Settlement Agreement and the attached exhibits. The Parties have agreed to settle the Civil Action on the terms and conditions set forth herein in recognition that the outcome of the Civil Action is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time, and expense.

11. Mercy has maintained and continues to maintain that it has at all times complied with all applicable laws. Mercy denies and continues to deny: (a) each and every allegation and all charges of wrongdoing or liability of any kind whatsoever that Plaintiffs and/or members of the Settlement Class have asserted in this Civil Action or may in the future assert; (b) that it breached any duties owed to Plaintiffs, the Settlement Class, or any other persons; (c) that it violated any law; (d) that it is liable for or owes damages or other relief to anyone with respect to the alleged facts or causes of action asserted in the Civil Action; and (e) that any claims asserted by Plaintiffs may proceed on a class action basis. Despite Mercy's belief that it is not liable for, and has good defenses to, the claims alleged in the Civil Action, without admitting or conceding any arguments, facts, issues, liability, or damages whatsoever, or that any claims alleged in the Civil Action may proceed on a class action basis, Mercy has agreed to settle the Civil Action on the terms and conditions set forth in this Settlement Agreement, and thereby avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally put to rest in this Settlement Agreement. Neither this Settlement Agreement nor any negotiation or act performed or document created in relation to the Settlement Agreement or negotiation or discussion thereof is or may be deemed to be or may be used as an admission of, or evidence of, any wrongdoing or liability.

12. Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits on the Settlement Class and is in the best interest of the putative class. Plaintiffs and Class Counsel have conducted a thorough investigation into the facts and the law regarding the Incident and the Civil Action and have concluded that a settlement according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of Plaintiffs

and the Settlement Class, recognizing: (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in litigation; (c) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; and (d) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery for Plaintiffs and the Settlement Class whatsoever.

13. The Parties understand, acknowledge, and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of all claims and defenses as described herein. It is the Parties' desire and intention to affect a full, complete, and final settlement and resolution of all disputes and claims as set forth herein.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is hereby agreed by and among Plaintiffs (individually and on behalf of the Settlement Class) and Mercy that, subject to the Court's approval, the Civil Action be forever resolved, settled, and compromised on the following terms and conditions:

## **SECTION 2 – DEFINITIONS**

The terms used in this Settlement Agreement and listed in this section shall have the following meanings:

14. "Administration Expenses" means those expenses incurred and charged by the Claims Administrator in administering the Settlement, including, but not limited to, costs in providing notice to and communicating with Class Members and disbursing payments to the Class Members.

15. “Civil Action” means the civil action captioned *T.D. and Monica Gama, on behalf of herself, as next friend to A.L. v. Mercy Hospitals East Communities and Mercy Health*, Circuit Court of St. Louis County, Missouri, Case No. 20SL-CC05974.

16. “Claim Form” means the documentation, in substantially similar form to **Exhibit D**, that a Class Member must complete and submit by the Claims Deadline to receive compensation from the Settlement Consideration.

17. “Claims Administrator” is Atticus Administration which has been chosen by the Parties to provide Notice of the Settlement to the Settlement Class and to administer the Settlement, subject to the approval of the Court.

18. “Claims Deadline” means the final date by which any Class Member shall have to complete and submit a Claim Form as designated by the Court, and which the Parties will request to be 45 calendar days from the Notice Date by 11:59:59 pm (Central Standard Time) (or said claim is postmarked by the date of the Claims Deadline), provided that if the Claims Deadline falls on a Saturday, Sunday, or holiday, the Claims Deadline will be the next day that is not a Saturday, Sunday, or holiday.

19. “Class Counsel” means: (a) Maureen M. Brady of McShane & Brady LLC; (b) Christopher E. Roberts of Butsch Roberts & Associates, LLC; and (c) Todd C. Werts of Lear Werts LLP.

20. “Class List” means the list of Class Members to whom the Notice regarding this Settlement will be sent.

21. “Class Member” means a member of the Settlement Class, as defined in Paragraph 54.

22. “Class Representatives” means Plaintiffs, as defined in Paragraph 47.

23. “Counsel” or “Counsel for the Parties” means Class Counsel and Mercy’s Counsel, collectively.

24. “Court” means the Circuit Court of St. Louis County, Missouri.

25. The “Effective Date” is 41 days after the entry of the Judgment provided that: (a) no motion to amend or vacate the Judgment is filed within 30 days after entry of the Judgment; and (b) no appeals are taken from the Judgment. If a motion to amend or vacate the Judgment is filed within 30 days after entry of the Judgment and the motion is denied, then the “Effective Date” is 11 days after the motion is denied provided that no appeals are taken from the Judgment. If a motion to amend or vacate the Judgment is filed within 30 days after entry of the Judgment and the Judgment is amended to any extent, then the “Effective Date” is as provided in the first sentence of this paragraph. If any appeals are taken from the Judgment, then the “Effective Date” is 16 days after all such appeals are finally resolved by the Missouri Court of Appeals and/or the Missouri Supreme Court with the Judgment still in effect.

26. “Excluded Persons” means those Class Members who exclude themselves from this settlement by submitting a Valid Exclusion Statement.

27. “Exclusion Statement” means a statement substantially in the form detailed in Paragraph 101 of this Settlement Agreement.

28. “Fee and Expense Application” means the motion to be filed by Class Counsel in which they seek the approval of an award of attorney’s fees, costs, and expenses, not to exceed \$600,000.

29. “Fee Award” means the amount of attorney’s fees and reimbursement of costs and expenses awarded by the Court to Class Counsel.

30. “Final Approval Hearing” means the hearing before the Court on the Motion for Final Approval and on the question of whether the Settlement, including approval of the Fee Award, Incentive Awards, and Administrative Expenses, should be finally approved as fair, reasonable, and adequate to the Class Members.

31. The “Gross Settlement Fund” is \$1,800,000.

32. “Incentive Awards” means the payments to the Class Representatives pursuant to Class Counsel’s motion and subject to the Court’s approval and the limitations/procedures set forth in Paragraphs 126-128 of this Settlement Agreement.

33. “Incident” means the improper access of the protected health information and/or personally identifiable information of certain Mercy patients by a certain Mercy employee, as determined by Mercy in 2020.

34. “Judgment” means a judgment entered by the Court, as discussed in Paragraphs 76-79 of this Settlement Agreement.

35. “Mercy” means Mercy Health, Mercy Hospitals East Communities, and their respective past, present, and future owners, officers, directors, employees, predecessors, successors, parents, subsidiaries, affiliates, agents and assigns, whether pursuant to contract, by operation of law, or otherwise.

36. “Mercy’s Counsel” means attorney Jeffrey R. Fink of Thompson Coburn LLP.

37. “Mercy Released Parties” shall refer, jointly and severally, and individually and collectively, to Mercy and all of its respective past, present, and future parents, subsidiaries, predecessors, successors, assigns, holding companies, divisions, principals, owners, members, trustees, administrators, executors, directors, officers, managers, employees, independent contractors, agents, board members, partners, attorneys, insurers, reinsurers, accountants, financial

and other advisors, investment bankers, employee benefit plans (and the trustees, administrators, fiduciaries, agents, representatives, insurers, and reinsurers of such plans), underwriters and lenders, and each of their respective past, present and future parents, subsidiaries, affiliates, predecessors, successors, employees, and agents, and all other persons and/or entities acting by, through, under, and/or in concert with any of the foregoing, and any other individual or entity that could be jointly liable with any of them.

38. “Net Settlement Fund” means the remainder of the Gross Settlement Fund after payment of: (i) the Fee Award; (ii) the Incentive Awards; and (iii) the Administrative Expenses.

39. “Notice Date” is the first date upon which the Notice Package is disseminated by the Claims Administrator to the Class Members.

40. “Notice Form” is the “Notice of Class Action Settlement,” in substantially similar form to **Exhibit B**, which is to be provided to Class Members pursuant to Section 6 of this Settlement Agreement, subject to the Court’s approval and consistent with the requirements of due process.

41. “Notice Package” consists of the Notice Form and Claim Form to be sent by the Claims Administrator in accordance with Section 6 of this Settlement Agreement.

42. “Objection/Exclusion Deadline” is the date by which any Class Member is allowed to file any written objection to this Settlement Agreement or any request for exclusion, and which the Parties will request to be 45 calendar days from the Notice Date (or said objection or exclusion request is postmarked by the date of the deadline), provided that if the Objection/Exclusion Deadline falls on a Saturday, Sunday, or holiday, the Objection/Exclusion Deadline will be the next day that is not a Saturday, Sunday, or holiday.



43. “Participating Class Member” means any Class Member from whom the Settlement Administrator receives a Valid Claim Form that indicates that the Class Member desires to claim benefits under this Settlement and who has not submitted a Valid Exclusion Statement.

44. “Participating Class Member Payment” means, for each Participating Class Member, a cash payment in the amount of the Participating Class Member’s monetary share of the Settlement Consideration as set forth in Section 3.

45. “Parties” are collectively (a) the Class Representatives, on behalf of themselves and the Settlement Class, and (b) Mercy.

46. “Petition” is the consolidated class action petition that Plaintiffs filed in the Civil Action on November 21, 2022.

47. “Plaintiffs” are: (a) T.D.; and (b) Monica Gama, on behalf of herself, as next friend to A.L.

48. “Plaintiff Releasors” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Class Members, and each of their respective, current, former, and future predecessors, successors, heirs, spouses, children, beneficiaries, conservators, executors, administrators, assigns, agents, and all other persons or entities acting or claiming by, through, under, on behalf of, or in concert with any of them.

49. “Preliminary Approval Date” is the date that the Court enters the Preliminary Approval Order.

50. “Preliminary Approval Order” is the proposed order preliminarily approving, *inter alia*, the terms and conditions of this Settlement, the manner and timing of providing notice to the

Class Members, and the time period for objections and exclusions, which the Parties shall request be substantially in the form attached hereto as **Exhibit A**.

51. “Released Claims” means any and all claims, causes of action, demands, obligations, liabilities, complaints, charges, grievances, and/or suits of any type or nature or description whatsoever, known or unknown, against the Mercy Released Parties, whether premised upon or arising under federal, state, statutory, regulatory, common, foreign, or other law, statute, or contract, that arise in any way from or relate in any way to the Incident or the Civil Action, including, but not limited to, causes of action or claims for negligence, unjust enrichment, conversion, fraudulent inducement, intrusion on seclusion, publication of private facts, personal injury, liquidated damages, compensatory damages, punitive damages, penalties of any nature, invasion of privacy, breach of contract, violation of the Missouri Merchandising Practices Act, and/or any other causes of action or claims asserted in the Petition. “Released Claims” include, without limitation, all causes of action or claims that were asserted or were or are related in any way to the Incident or the factual allegations of the Civil Action, regardless of whether such claims are known or unknown, suspected or unsuspected, filed or unfiled, asserted or unasserted, existing or contingent, whether based on contract, tort, or otherwise, whether legal or equitable, or that were or are related in any way to the Incident or the factual allegations of the Civil Action. “Released Claim” does not include any claim related to any in-person encounter with the Mercy employee who caused the Incident.

52. “Reminder Notice” means the notice, substantially in the form of **Exhibit C**, that the Claims Administrator shall send to the Class Members in accordance with Paragraph 93 of this Settlement Agreement.

53. “Settlement Agreement” and “Settlement” mean this Settlement Agreement, the exhibits to this Settlement Agreement, and the settlement embodied in this Settlement Agreement.

54. “Settlement Class” consists of all individuals who, as determined by Mercy in 2020, were patients of Mercy (or were the patient’s parents if the patient was a minor at the time of the Incident) and had their protected health information and/or personally identifiable information improperly accessed by a certain Mercy employee. Excluded from the Settlement Class are: (a) all individuals who submit a Valid Exclusion Statement; and (b) all individuals who, as of the date of this Settlement Agreement, have reached settlements with Mercy or have commenced other litigation against Mercy concerning the actions of the Mercy employee who caused the Incident.

55. “Settlement Consideration” consists of: (a) cash payments to Participating Class Members as described herein; (b) the Fee Award; (c) the Administrative Expenses; and (d) the Incentive Awards. Mercy is not required to pay any other amount other than as specifically required by this Settlement Agreement. Mercy is not required to take any actions other than as specifically required by this Settlement Agreement.

56. “Valid Claim Form” is a completed and signed Claim Form that is timely received by the Claims Administrator, whereby the Class Member’s signature indicates the Class Member’s desire to claim benefits under this Settlement. The Claims Administrator will accept Valid Claim Forms either on paper or through electronic submission as provided herein.

57. “Valid Exclusion Statement” means a completed and signed Exclusion Statement substantially in the form set forth in Paragraph 101 that is timely received by the Claims Administrator, wherein the Class Member has stated a desire to exclude himself or herself and not participate in this Settlement. By submitting a Valid Exclusion Statement, the Class Member

has the ability, if the Class Member so chooses, to pursue the Class Member's claim(s) on the Class Member's own.

### **SECTION 3 – SETTLEMENT BENEFITS TO CLASS MEMBERS**

58. Each Class Member who does not submit a Valid Exclusion Statement and submits a Valid Claim Form in accordance with Paragraphs 96-97 of this Settlement Agreement is eligible to choose one, but not both, of the following types of Participating Class Member Payments:

- a. Flat Payment: A Class Member may submit a claim for a payment of \$90.
- b. Time and Expense Reimbursement: A Class Member may submit a claim for reimbursement for the time and expenses that the Class Member actually and reasonably incurred to address concerns of identity theft because of Mercy's notice to the Class Member in December 2020 about the Incident.
  - (i) The total amount of such reimbursement for time and expenses is limited to \$300.
  - (ii) The portion of any such claim for reimbursement for time: (a) shall be limited to no more than five hours at \$30 per hour; and (b) shall be verified by the Class Member with reasonable specificity and attestation, subject to the penalty of perjury, that the Class Member believes that the Class Member expended the time as a result of addressing concerns of identity theft because of Mercy's notice to the Class Member in December 2020 about the Incident.
  - (iii) The portion of any such claim for reimbursement for expenses: (a) shall be accompanied by documentation reflecting the costs

incurred and the payment of the out-of-pocket expense(s) for which reimbursement is sought; and (b) shall be verified by the Class Member with reasonable specificity and an attestation, subject to the penalty of perjury, that the Class Member believes that the Class Member incurred the expenses as a result of addressing concerns of identity theft because of Mercy's notice to the Class Member in December 2020 about the Incident.

- c. If a Class Member submits a Valid Claim Form for both the Flat Payment and the Time and Expense Reimbursement, the Class Member shall be provided the greater of the Flat Payment or the Time and Expense Reimbursement.

59. The total payments to the Class Members under Paragraph 58 shall not exceed the Net Settlement Fund. If the amount of the valid and approved claims exceeds the amount of the Net Settlement Fund, all such valid and approved claims will be reduced on a pro rata basis before payment.

60. If the amount of the valid and approved claims under Paragraph 58 is less than the amount of the Net Settlement Fund, the remaining amount of the Net Settlement Fund, after the payment of the valid and approved claims, shall revert to Mercy.

61. The Claims Administrator shall send to each Participating Class Member a payment equaling the Participating Class Member's Participating Class Member Payment within 21 days following the Effective Date, provided that if this payment date falls on a Saturday, Sunday, or holiday, the deadline will be the next business day that is not a Saturday, Sunday, or holiday. This payment shall be in either the form of a check or electronic transfer.

62. Each settlement check will expire 90 days after it is mailed. If a Participating Class Member does not redeem the Participating Class Member's check within the 90-day period, the settlement check (an "Unclaimed Check") will be void and the Claims Administrator shall promptly issue a stop payment order on the original check. Participating Class Members who do not redeem their settlement checks will remain bound by the Settlement and the Release. The provisions of any unclaimed property statute or law do not apply to this Settlement Agreement or Settlement. The outcome of any proceeding related to the distribution of amounts associated with unclaimed checks shall not terminate this Settlement Agreement or otherwise affect the Court's Judgment.

63. All Unclaimed Checks shall be considered Mercy's property and shall revert to Mercy. Within 125 days after the Effective Date, the Claims Administrator shall return funds totaling the amount of Unclaimed Checks to Mercy.

64. Class Representatives specifically agree that sufficient and adequate consideration is being conveyed through this Agreement to support the Releases of any and all of the Released Claims.

#### **SECTION 4 –PROCEDURE FOR APPROVAL OF SETTLEMENT AGREEMENT**

##### **Stipulation to Certification of the Settlement Class**

65. The Parties stipulate that, for the purposes of settlement only, the requirements of Missouri Rule of Civil Procedure 52.08 are satisfied and that subject to Court approval, the Settlement Class should be certified.

66. Mercy agrees to the appointment of Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel for purposes of settlement only.

### **Preliminary Approval of the Settlement Agreement by the Court**

67. Within 30 days of the complete execution of this Settlement Agreement, Plaintiffs shall file with the Court a Motion for an Order Granting Preliminary Approval (the "Preliminary Approval Motion"). The Preliminary Approval Motion will request entry of a Preliminary Approval Order that will, *inter alia*, preliminarily approve the Settlement, set the date for the Final Approval Hearing, and prescribe the method for giving notice of the Settlement to the Settlement Class. In connection therewith, Plaintiffs will submit to the Court, among other things, the proposed Notice Package and a proposed Preliminary Approval Order. The Preliminary Approval Motion will seek the setting of dates for the submission of Claim Forms, Exclusions Statements, objections, and a Final Approval Hearing. Plaintiffs will provide Mercy with a draft of the Preliminary Approval Motion seven days in advance of filing, and Mercy will have adequate opportunity to review and provide suggested edits. Mercy retains the right to oppose the Preliminary Approval Motion, including in the event that Mercy's suggested edits to the Preliminary Approval Motion are not adopted.

68. All proceedings in the Civil Action will be stayed following entry of the Preliminary Approval Order, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the Preliminary Approval Motion should be granted, the Parties agree not to pursue any claims, defenses, discovery, arguments, or motions otherwise available to them in the Civil Action.

69. Pending the Court's decision on the final approval of the Settlement and entry of the Court's Judgment, Plaintiffs, all Class Members, and anyone acting on behalf of any Class shall be barred and enjoined from: (a) further prosecution of the Civil Action; (b) filing, or taking any action directly or indirectly, to commence, prosecute, pursue or participate on an individual

or class action basis any action, claim, or proceeding against Mercy or the Mercy Released Parties in any forum in which any of the claims subject to the Settlement are asserted, or which in any way would prevent any such claims from being extinguished; or (c) seeking, whether on a conditional basis or not, certification of a class action that involves any such claims.

70. The Parties will agree to the certification of a class for settlement purposes only, with the opportunity for Class Members to opt out of the Settlement Class or object, intervene, or appear at the Final Approval Hearing. The Parties agree that if the Settlement Agreement is not approved by the Court for any reason, Mercy shall have the absolute right to contest the certification of a class and that the Settlement Agreement may not be used as evidence or otherwise be used in any court filing or proceeding.

#### **Notice to Class Members of Preliminary Approval**

71. Within 30 days of the Preliminary Approval Order, or within such other time as may be ordered by the Court, the Claims Administrator shall send the Notice Package to each Class Member as set forth in Section 6 of this Agreement.

#### **Right of Settlement Class Members to Opt Out**

72. Any member of the Settlement Class may be excluded from the Settlement Class as provided under Paragraphs 98-103 of this Settlement Agreement.

#### **Right of Class Members to Object**

73. Any Class Member may object to the Settlement Agreement as provided under Paragraphs 112-118 of this Settlement Agreement.

#### **Right to Withdraw from the Settlement Agreement Based on the Number of Members of the Settlement Class Who Opt Out**

74. Any Party may withdraw the Party's agreement to settle if the number of Settlement Class Members opting out of the settlement reaches or exceeds 5% of the total number



of Settlement Class Members. Any Party may exercise this right only by sending written notice to the other Party that the Party is withdrawing from the Party's agreement to settle within 30 days after the Exclusion Deadline.

75. The Parties agree that if any Party withdraws from the Settlement Agreement under the foregoing paragraph or the Class Settlement is not approved by the Court, this Settlement Agreement shall be null and void and any order or judgment entered by the Court to further this settlement shall be vacated *nunc pro tunc*.

**Final Approval of the Settlement Agreement by the Court**

76. If the Court enters the Preliminary Approval Order, Plaintiffs will move the Court, within the time frames contemplated by the Preliminary Approval Order, for entry of a Judgment (the "Final Approval Motion").

77. This Settlement shall be subject to the Court's approval. If the Court refuses to grant final approval, Mercy shall have the right to withdraw from this Settlement Agreement, in which case this Settlement Agreement (including exhibits) will become void. This Settlement Agreement and any negotiations leading to the Settlement will not and cannot be used for any purpose in connection with any further litigation in the Civil Action or any other lawsuit, administrative or other legal proceeding, claim, investigation, or complaint.

78. In the Final Approval Motion and at the Final Approval Hearing, Plaintiffs will request that the Court, among other things: (a) certify the Settlement Class for purposes of settlement only; (b) enter Judgment in accordance with the terms of this Settlement Agreement; (c) approve the Settlement as fair, adequate, reasonable, and binding on all Class Members; (d) enter an order permanently enjoining all Class Members from pursuing, filing, and/or seeking to reopen claims that have been released by this Settlement Agreement; and (e) incorporate the terms

of this Settlement Agreement. Plaintiffs will provide Mercy with a draft of the Final Approval Motion at least seven days before its filing, and Mercy will have adequate opportunity to review and provide suggested edits. Mercy retains the right to oppose the Final Approval Motion, including in the event that Mercy's suggested edits to the Final Approval Motion are not adopted.

79. The Parties shall agree to the text of a proposed Judgment, substantially in the form attached hereto as **Exhibit E**.

80. Plaintiffs and Class Counsel shall use their best efforts to assist Mercy in obtaining final approval of the settlement of the Civil Action and shall take all steps necessary and appropriate to otherwise effectuate all aspects of this Settlement Agreement.

81. Plaintiffs and Class Counsel agree to return and/or destroy all documents produced to them in the Civil Action that were marked confidential under the protective order entered in the Civil Action within 60 days of the Effective Date.

#### **SECTION 5 – RELEASE AND TERMINATION OF LAWSUIT**

82. On the Effective Date, the Plaintiff Releasors fully, finally, completely, and forever release, relinquish, acquit, and discharge each of the Mercy Released Parties from any and all Released Claims. Accordingly, upon entry of the Judgment, all Plaintiff Releasors hereby fully, finally, completely, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against the Mercy Released Parties, and shall be forever barred and enjoined from instituting any action, prosecuting any action, and/or receiving or accepting any other relief from any other action, suit, administrative claim, and/or other claim or proceeding of any sort or nature whatsoever against the Mercy Released Parties, up to and including the date of the Judgment, relating to the Incident or the claims being settled under this Settlement Agreement. Upon the Effective Date, and without any further action, the

Plaintiff Releasers further agree not to knowingly and voluntarily assist in any way any third party in commencing or prosecuting any suit against the Mercy Released Parties relating to any Released Claims. Upon the Effective Date, and without any further action, the Plaintiff Releasers shall forever be barred and enjoined, without the necessity of any of the Mercy Released Parties posting a bond, from commencing, instituting, prosecuting, or maintaining any of the Released Claims.

83. Final approval of this Settlement Agreement will fully settle and resolve with finality, on behalf of Plaintiffs and the Settlement Class, the Civil Action, the Released Claims, and any other claims that have been brought or could have been brought against the Mercy Released Parties by the Plaintiff Releasers in the Civil Action or any other proceeding arising out of, related to, or connected with the Released Claims or the Incident.

84. Upon the entry of the Judgment, each Plaintiff Releaser waives any and all defenses, rights, and/or benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement.

85. Class Counsel and Plaintiffs, on behalf of the Settlement Class and each individual Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she, or they may have against Mercy or the Mercy Released Parties for attorney's fees, costs, or expenses associated with Class Counsel's representation of Plaintiffs, the Settlement Class, and the Class Members in this Civil Action, the Settlement, or any Released Claims. Class Counsel further understand and agree that any Fee Award approved by the Court will be the full, final, and complete payment of all attorney's fees, costs, and expenses associated with Class Counsel's representation in the Civil Action.

## **SECTION 6 – ADMINISTRATION OF THE SETTLEMENT AND CLASS NOTICE**

86. Claims Administrator. The Claims Administrator shall be responsible for the claims administration process and distributions to Participating Class Members as provided herein, as well as for making any mailings and performing other services as required under this Agreement. The Parties, through their counsel, will cooperate in good faith to assist the Claims Administrator in administering the Settlement and/or to resolve any disputes regarding the Claims Administrator's ability or need to perform certain duties under this Agreement, and any unresolved disputes shall be decided by the Claims Administrator. If for any reason the Court does not enter a Preliminary Approval Order or Judgment, and the Settlement does not become Effective, the Parties shall bear Administration Expenses equally. Counsel have the right to make inquiries and receive any information from the Claims Administrator as is necessary to the administration of this Settlement.

### **Notice to the Class Members**

87. Notice Process. The Claims Administrator shall provide notice to the Class Members and administer the Settlement under the Parties' supervision and subject to the exclusive jurisdiction of the Court.

88. Class List. Within fourteen days of the date of entry of the Preliminary Approval Order, Mercy will provide the Claims Administrator with a list, in electronic form, of the names, addresses, and any known email addresses of the Class Members ("Class List") as determined by Mercy in 2020 and recorded in the spreadsheets produced by Mercy during discovery in the Civil Action. The Class List will be produced to the Claims Administrator as "Confidential," subject to the Protective Order entered in this Civil Action, after the Claims Administrator agrees to be bound by the Protective Order.

89. Claims Administrator to Update Addresses. Before mailing the Notice Package, the Claims Administrator will update the addresses of the Class Members on the Class List using the U.S. Postal Service's National Change of Address Database and other available resources deemed suitable by the Claims Administrator to verify and correct addresses to attempt to reduce the number of returned mail items.

90. Timing and Type of Notice. Within 14 days after receiving the Class List, or as soon thereafter as practicable, the Claims Administrator shall send, via First Class United States mail, postage prepaid, the Notice Package, using each Class Member's last known address as provided by Mercy and/or as updated by Class Counsel or the Claims Administrator. The Claims Administrator shall give the Parties two business days' notice before the Notice Packages are sent out. The Notice Form shall inform all Class Members of their rights under this Settlement Agreement.

91. Returned Notice Packages. If any Notice Package is returned as undeliverable, the Claims Administrator shall promptly re-send the applicable Notice Package to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Claims Administrator shall perform a skip trace in the manner that the Claims Administrator customarily performs skip traces in an effort to determine the Class Member's current address. If a new address is obtained, the Claims Administrator will promptly re-mail the applicable Notice Package to the Class Member. If a new address is not obtained from the U.S. Post Office or through skip tracing, no further efforts are required, and these shall be deemed adequate notice.

92. Email Notice. In addition, for those Class Members for whom Mercy has provided an email address, the Notice Package shall also be sent to such Class Members by email.

93. Reminder Notice. Fourteen days after the Notice Package is initially sent, the Claims Administrator shall send a Reminder Notice, substantially in the form of **Exhibit C**, to the Class Members who have not yet submitted a claim. For those Class Members for whom Mercy has provided an email address, the Reminder Notice shall also be sent to such Class Members by email. For those Class Members for whom Mercy has not provided an email address, the Reminder Notice shall be mailed only to such Class Members in the form of a postcard.

#### **Settlement Website and Call Center**

94. Prior to the dissemination of the Notice Package, the Claims Administrator shall create a website dedicated to providing information related to the Incident, the Civil Action, and this Settlement, including the Notice Form and the Claim Form. The website will include the information in the Notice Form, provide access to relevant publicly available court documents related to the Civil Action, and provide Class Members with the ability to submit claims for Settlement benefits and submit documents to supplement or cure deficient claims. The website will make clear that Class Members who have opted-out of the Settlement in accordance with Court-approved deadlines and procedures have not released any claims they may have related to the Incident and may still file claims related to the allegations in the Civil Action. The website will also give notice that there is a statute of limitations for filing claims and inform individuals that their claims may have been tolled, but that the Parties are not providing legal advice and that they should contact an attorney immediately if they believe they have a claim.

95. The Claims Administrator shall establish and maintain a call center with staff trained to respond to inquiries from Class Members and shall maintain a dedicated e-mail address to which the Claims Administrator will respond to inquiries from Class Members.

## Claims Process

96. Claims Process. To receive a Participating Class Member Payment, a Class Member must submit to the Claims Administrator a Valid Claim Form that must be postmarked or electronically submitted on or before the Claims Deadline. Any Claim Form that is not completed, not signed by the Class Member, or not postmarked/electronically submitted on or before the Claims Deadline shall be deemed untimely, and the Class Member shall not receive a Participating Class Member Payment. The postmark or electronic submission of the Valid Claim Form mailed by the Class Member to the Claims Administrator shall be deemed the exclusive means for determining whether a Class Member timely submitted his/her Claim Form. In the event that there is no postmark date on the paper Claim Form that is mailed by the Class Member to the Claims Administrator, it shall be presumed that the Claim Form was mailed three days before the Claims Administrator's receipt of the Claim Form, excluding any Sunday or other day for which no postal service was provided. Any Class Member who does not submit a timely and Valid Claim Form and who does not submit a Valid Exclusion Statement will be bound by the Settlement but will not be entitled to receive a Participating Class Member Payment.

97. Electronic Submission of Claims. The settlement website will be programmed to allow Class Members to submit their claims through the website without the need to print a paper copy of the Claim Form. Electronic signatures shall be accepted by the Claims Administrator and the Claims Administrator shall make provision for receiving such electronic signatures. The Claims Administrator, however, shall provide a paper copy of the Claim Form to any Class Member and will process timely received paper copies of the Claim Form in the same manner as those provided electronically. No preference will be given to Claim Forms based upon whether it was submitted electronically or on paper. The settlement website will further be programmed to

provide a unique confirmation number along with a recitation of the Class Member's name, details of the claim made, as well as the date and time of the claim submission. This confirmation information will include a statement advising Class Members to print or save a copy of the confirmation information.

98. Reporting. The Claims Administrator will provide to Counsel a weekly report of the Class Members who have submitted Valid Claim Forms.

99. Deficient Claims. In the event that the Claims Administrator determines that some or all of a claim is deficient, the Claims Administrator shall respond to the Class Member with a written or electronic notice of deficient claim, explaining the deficiency. Notices of deficient claims shall (i) be written or electronic, in plain, easily understandable English, (ii) explain the reason for the deficiency(ies), (iii) explain what type of documentation or other proof, if any, can cure the deficiency(ies), (iv) explain the available procedures for submitting documents or other proof to supplement or cure the deficiencies, and (v) advise the Class Member that he or she must provide information sufficient to cure the identified deficiencies within seven days. Class Members who timely cure the deficiency shall be deemed to have submitted a Valid Claim Form. The Claims Administrator shall adjudicate claims and issue notices of deficient claims on a rolling basis.

#### **Exclusion Requests by Class Members**

100. The Notice Form shall advise Class Members of their rights, including the right to be excluded from the Settlement Agreement and its terms.

101. Any Class Member may request to be excluded from the Settlement Class. In order to validly be excluded from the Settlement Class, the Class Member must send a signed statement to the Claims Administrator through the Settlement Website or by mail that states he or she is



excluding himself or herself from the Settlement Class (“Exclusion Statement”). To be valid, the Exclusion Statement must be signed by the Class Member and contain his or her name, address, and telephone number and the words: “I elect to exclude myself from the settlement in *T.D. v. Mercy*.” To be effective, an Exclusion Statement must be submitted or mailed before the Objection/Exclusion Deadline.

102. Any request for exclusion must be personally signed by the Class Member requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.

103. If a Class Member timely submits a Claim Form and Exclusion Statement indicating that he/she wishes to opt in and opt out of the Settlement, the Claims Administrator shall contact said Class Member to verify if a mistake was made. If the Claims Administrator is not able to reach said Class Member or is not able to verify a mistake was made, the Class Member will be deemed to have excluded himself or herself from the Settlement and will not be entitled to a Participating Class Member Payment.

104. If a Class Member submits a deficient Exclusion Statement, the Claims Administrator shall contact said Class Member to notify that Class Member of the deficiency within seven days of the Claims Administrator’s receipt of the deficient Exclusion Statement, and explain the reason for the deficiency. If the Claims Administrator is not able to reach said Class Member or the Class Member does not timely cure the deficiency, the Class Member’s attempted Exclusion Statement will be rejected. If the Claims Administrator is able to reach said Class Member, the Class Member shall have seven days to cure any identified deficiencies. To be valid, the Class Member’s corrected Exclusion Statement must cure all identified deficiencies and must be postmarked or submitted by the eighth day from the date the Claims Administrator contacted

the Class Member (including the date of the Claims Administrator's contact). Class Members submitting untimely or deficient Exclusions Statements shall be bound by the Settlement.

105. A request to be excluded that is not submitted via the Settlement Website or mailed to the address designated in the Notice Form within the Objection/Exclusion Deadline shall be invalid, and the person serving such a request shall be considered a member of the Settlement Class, as applicable, and shall be bound by the Settlement Agreement and will be deemed a Plaintiff Releasor as defined herein if a Judgment is entered.

106. If a Judgment is entered, all Class Members who have not submitted a Valid Exclusion Statement will be bound by the Settlement Agreement and will be deemed a Plaintiff Releasor as defined herein, and the relief provided by the Settlement Agreement will be the sole and exclusive remedy for the claims alleged by the Settlement Class.

107. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

108. Within seven days after the Objection/Exclusion Deadline, the Claims Administrator shall provide Counsel a written list reflecting a list of all Excluded Persons who submitted timely and Valid Exclusion Statements. The Claims Administrator shall also provide this information weekly as part of its weekly status update.

109. The Parties' Counsel shall have seven days after the date they receive the final list of "Excluded Persons" to audit and challenge any person on that list.

110. The final list reflecting all Excluded Persons who submitted timely and Valid Exclusion Statements (as agreed to by the Parties' Counsel and the Claims Administrator) shall also be filed with the Court at the time of filing of the Final Approval Motion.

111. Plaintiffs shall not exclude themselves from the Settlement. Plaintiffs' execution of this Agreement shall signal their agreement to all of the terms of the Settlement.

**Objections to the Settlement**

112. The Notice Form shall advise the Class Members of their rights, including the right to object to the Settlement Agreement and its terms. The Notice Form will further inform Class Members that to be considered timely, any valid objection in the appropriate form must be mailed to the following three different places postmarked no later than the date set by the Court and outlined in the Notice:

COURT	CLASS COUNSEL	DEFENDANT'S COUNSEL
Clerk of Circuit Court of St. Louis County 105 South Central Avenue, Clayton, MO 63105	Todd C. Werts Lear Werts LLP 103 Ripley Street Columbia, MO 65201	Jeffrey R. Fink Thompson Coburn LLP One US Bank Plaza Suite 2700 St. Louis, MO 63101

113. Class Members who wish to object to the Settlement Agreement must do so in writing. To be considered, such objection must be filed with the Court and served upon both Class Counsel and Mercy's Counsel (by United States mail, hand delivery, overnight delivery, or via the Settlement Website) by no later than the Objections/Exclusion Deadline, which applies notwithstanding any argument regarding non-receipt of the Notice Package. A copy of the objection must also be mailed or submitted through the Settlement Website to the Claims Administrator at the address that the Claims Administrator establishes to receive requests for

exclusion or objections and any other communication relating to this Settlement Agreement. Anyone who fails to file and serve timely written objections in this manner shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement Agreement and from filing any appeal from any Judgment entered by the Court.

114. To be considered, any written objection must include or attach: (a) the Class Member objector's full name, address, and current telephone number; (b) the case name and number of this Civil Action; (c) a statement of such Class Member's specific objections; (d) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (e) the identification of any other objections the Class Member objector has filed, or has had filed on his/her behalf in any other class action cases in the last four years; and (f) the Class Member objector's signature. If represented by counsel, the objecting Class Member must also provide the name and telephone number of his/her counsel.

115. No objector may appear at the Final Approval Hearing unless he/she has filed a timely objection that complies with the procedures provided in this Section. Only Class Members may object to the Settlement. Plaintiffs shall not object to the Settlement.

116. An objector may withdraw his/her objection(s) at any time.

117. The Parties may file with the Court written responses to any filed objections at or before the Final Approval Hearing. The Parties agree that Class Counsel will take the lead in drafting responses to any objections to the Settlement, including any appeals filed by the objectors. However, both Parties retain their rights to make any argument(s) in response to any objector.

118. Any Class Member who has submitted a Valid Claim Form or Valid Exclusion Statement may not submit objections to the Settlement Agreement. Class Members cannot both

object to and exclude themselves from the Settlement Agreement. Any Class Member who attempts to both object to and exclude himself/herself from this Settlement Agreement will be deemed to have excluded himself/herself and will forfeit the right to object to the Settlement Agreement or any of its terms.

119. Any Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement shall not be permitted to object to the approval of the Settlement Agreement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement Agreement or the terms of the Settlement Agreement by appeal or other means.

120. The Parties will request that the Court, within its discretion, exercise its right to deem any objection as frivolous and award appropriate costs and fees to the Parties opposing such objection(s).

**SECTION 7 – ATTORNEYS’ FEES & EXPENSES  
AND CLASS REPRESENTATIVE SERVICE AWARDS**

**Attorneys’ Fees & Expenses**

121. Before the Final Approval Hearing, Class Counsel shall file their Fee and Expense Application, moving the Court for an award of attorneys’ fees and costs and expenses incurred by Class Counsel in the Civil Action, in an amount not to exceed \$600,000.

122. Mercy agrees not to oppose this Fee and Expense Application provided that Class Counsel has abided by the terms of this Settlement Agreement. Class Counsel, in turn, agree not to seek or accept attorneys’ fees or costs or expenses of litigation in excess of \$600,000 from the Court. Mercy shall have no additional liability for attorneys’ fees, costs, or expenses relating to this Settlement Agreement, the Civil Action, the Settlement, or any Released Claims.

123. The amount of the Fee Award shall be at the discretion of the Court, and this Settlement Agreement is not contingent upon the Court's approval of the full or any partial amount of the Fee Award sought by Class Counsel. In no case shall Mercy be requested or required to pay any attorney's fees, costs, or expenses in excess of those set forth in this Settlement Agreement.

124. The substance of Class Counsel's Fee and Expense Application is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Civil Action. The outcome of any proceeding related to Class Counsel's Fee and Expense Application shall not terminate this Agreement or otherwise affect the Court's ruling on the Final Approval Motion.

125. Class Counsel shall provide the Claims Administrator with their completed IRS W-9 forms and wiring instructions before the payment of the Fee Award is due. The Claims Administrator shall pay to Class Counsel the Fee Award by wire transfer as directed by Lear Werts LLP, according to the wire instructions provided by Class Counsel, within 21 days following the Effective Date, provided that if this payment date falls on a Saturday, Sunday, or holiday, the deadline will be the next business day that is not a Saturday, Sunday, or holiday.

#### **Class Representative Service Awards**

126. Before the Final Approval Hearing or at the same time that Plaintiffs seek final approval of the Settlement Agreement, Class Counsel shall move the Court for an Incentive Award for each Class Representative in an amount not to exceed \$5,000.

127. Such Incentive Awards shall be at the discretion of the Court, and this Settlement Agreement is not contingent upon the Court's approval of such Incentive Award. Mercy will not oppose such application provided that it is made in accordance with the terms of this Settlement

Agreement. The outcome of the Court's ruling on the application for Incentive Awards shall not terminate this Settlement Agreement or otherwise affect the Court's ruling on the Final Approval Motion.

128. The Claims Administrator will distribute the Incentive Awards to the Class Representatives in a manner designated by Class Counsel within 21 days following the Effective Date, provided that if this payment date falls on a Saturday, Sunday, or holiday, the deadline will be the next business day that is not a Saturday, Sunday, or holiday.

### **SECTION 8 – WAIVER OR TERMINATION**

129. Mercy shall have the right to terminate the Settlement Agreement at any time prior to entry of the Judgment if: (a) more than 25 persons opt out of the Settlement Class; (b) the Court does not certify the Settlement Class; (c) the Court otherwise makes an order materially inconsistent with any of the terms of this Settlement (other than with respect to the Fee and Expense Application and/or the Incentive Awards); or (d) the opposing Party breaches the Settlement Agreement. If Mercy chooses to exercise this provision, the case will resume as if the Settlement never took place.

130. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement and all terms and conditions thereof without material change, amendment, or modification by the Court (except to the extent such change, amendment, or modification is agreed to in writing by the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement.

131. In the event that the Court does not preliminarily or finally approve the Settlement Agreement (other than Class Counsel's attorneys' fees or the Incentive Awards), the Parties shall first attempt renegotiate the Settlement Agreement in good faith for a period of 60

days for the purpose of obtaining Court approval of a renegotiated settlement agreement before resuming the Civil Action and/or either or both Parties may seek reconsideration or appellate review of the decision denying approval of the Settlement Agreement. In the event reconsideration and/or appellate review is denied or a mutually agreed-upon settlement modification is not approved or no renegotiated settlement can be reached after 60 days, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Civil Action.

132. If the Effective Date of the Settlement Agreement does not occur, or if the Settlement Agreement is terminated or fails to become effective for any reason, then the Parties shall be deemed to have reverted to their respective statuses in the Civil Action as of the date and time immediately prior to the execution of this Settlement Agreement, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered.

#### **SECTION 9 – NO ADMISSION OF WRONGDOING**

133. The terms of this Settlement Agreement (whether the Settlement Agreement becomes final or not), the negotiations leading up to this Settlement Agreement, the fact of the Settlement Agreement, and the proceedings taken pursuant to the Settlement Agreement shall not: (a) be construed as an admission of liability or an admission of any claim or defense on the part of any party, in any respect; (b) form the basis for any claim of estoppel by any third-party against any released party; or (c) be admissible in any action, suit, proceeding, or investigation as evidence, or as an admission, of any wrongdoing or liability whatsoever by any party, or as evidence of the truth of any of the claims or allegations contained in the Civil Action.



134. Mercy denies that it breached any duty or that it violated the law in any manner alleged in or related to the Civil Action. Nothing relating to this Settlement Agreement, or any communications, papers, or orders related to the Settlement Agreement, shall be cited to as, construed to be, admissible as, or deemed to be an admission by Mercy or the Mercy Released Parties of any violation, liability, culpability, negligence, misconduct or other wrongdoing toward Plaintiffs, the Class Members, Plaintiff Releasers, or any other person. Mercy and the Mercy Released Parties specifically disclaim any liability, culpability, negligence, misconduct or other wrongdoing toward Plaintiffs, the Class Members, Plaintiff Releasers, or any other person, or that class certification is appropriate in this Civil Action or any other matter. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of the Agreement is, may be deemed to be, may be cited to, or may be used as any admission or evidence of the validity of any of the Class Members' Released Claims, class certification, or of any wrongdoing, fault or liability of Mercy in any civil, criminal or administrative proceeding. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant risks, uncertainty, burden, inconvenience, expenses, and contingencies. There has been no determination by any court as to the merits of the Civil Action, including any claims asserted by Plaintiffs against Mercy or whether a class should be certified, other than for settlement purposes only. Furthermore, nothing in this Settlement Agreement shall be cited to as, construed to be, admissible as, or considered any form of waiver of any alternative dispute resolution agreements, provisions, or policies by Mercy or the Mercy Released Parties.

#### **SECTION 10 – MISCELLANEOUS PROVISIONS**

135. The Claims Administrator shall be responsible for filing and sending a Form 1099, if necessary, to any applicable recipient of any payment made pursuant to this Settlement

Agreement solely in the name and amount of said recipients. The Claims Administrator shall handle all tax reporting with respect to the payments made pursuant to the Settlement Agreement and shall report the payments in accordance with applicable law.

136. Payment of the Fee Award to Class Counsel shall be reported by the Claims Administrator on the applicable IRS Form 1099, solely in the name of Class Counsel, as required by the Internal Revenue Code and shall be made without withholding, provided the Claims Administrator has timely received a duly completed W-9 from Class Counsel.

137. Plaintiffs and each Participating Class Member will be solely responsible for all taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to the Settlement Agreement. Plaintiffs, on behalf of all Class Members and Participating Class Members, acknowledge and agree that they have not relied upon any advice from Mercy or Mercy's Counsel as to the taxability of any payments made or received pursuant to the Settlement Agreement.

138. The Parties shall cooperate fully with each other and the Claims Administrator and shall use their reasonable best efforts to accomplish the terms of this Settlement Agreement, including, but not limited to, to obtain the Court's approval of this Settlement Agreement and all of its terms and to defend the Settlement Agreement from any legal challenge. If any deadlines related to the Settlement Agreement cannot be met, the Parties' Counsel shall meet and confer to reach agreement on any necessary revisions of the deadlines and timetables set forth in this Settlement Agreement. In the event that the Parties fail to reach such agreement, either Party may apply to the Court via a noticed motion for modification of the dates and deadlines in this Settlement Agreement. Each of the Parties, upon the request of any other Party, agrees to

perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Settlement Agreement.

139. The Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement, and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Counsel agree to cooperate with each other in seeking entry of a Preliminary Approval Order and a Judgment and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

140. Except as provided herein and prior to final approval of the Settlement Agreement, there shall be no public comments made to the press or any third party, or any other public disclosure by or through the Parties or their attorneys or agents, comprising opinions as to the Civil Action or this Settlement Agreement, aside from the following agreed upon statement: “The Parties have reached a proposed agreement and look forward to the Court’s review and decision.” This paragraph shall not be construed to limit or impede any Notices or prevent Class Counsel or Mercy from notifying or explaining to potential Class Members or others that this case has settled and/or how to obtain settlement benefits, nor shall this paragraph limit the representations that the Parties or their Counsel may make to the Court to assist in its evaluation of the Settlement Agreement. This paragraph shall not be construed to limit or impede the Parties’ Counsel from posting already-published articles regarding the Civil Action or this Settlement Agreement to their websites.

141. The Parties agree that all of the exhibits attached hereto are material and integral parts of the Settlement Agreement and are hereby incorporated by reference as though fully set forth herein.

142. The Parties intend and agree that the Settlement Agreement is a final and complete resolution of all disputes related to the Civil Action by Mercy, the Class Representatives, and each Class Member who has not submitted a Valid Exclusion Statement. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation and a fair, equitable, and just process for determining eligibility for compensation for any given Class Member related to the Released Claims.

143. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, carefully considered, arm's length, good faith negotiations between the Parties and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

144. The Parties have relied upon the advice and representation of their respective counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its exhibits, and have been fully advised as to the legal effects thereof by counsel of their own selection and intend to be legally bound by the same.

145. This Settlement Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Settlement Agreement. The Parties agree not to assert in any forum that the Civil Action was brought by Plaintiffs or defended by Mercy, or each or any of them, in bad faith or without a reasonable basis. No

representation, promise, or inducement has been offered or made to induce any Party to enter into this Settlement Agreement, which contains the entire, complete, and integrated statement of all negotiations, understandings, and settlement terms and supersedes all previous oral or written agreements. The Parties enter into this Settlement Agreement knowingly, voluntarily, and with full knowledge of its significance. The Parties have not been coerced, threatened, or intimidated into signing this Settlement Agreement and have consulted with legal counsel regarding the Settlement Agreement.

146. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties; but this Agreement is not designed to and does not create any third party beneficiaries other than third parties that are identified as Released Parties in this Settlement Agreement. Nothing express or implied in this Settlement Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Released Parties, and Class Members any right or remedy under or by reason of this Agreement. Each of the Released Parties is an intended third-party beneficiary of this Settlement Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her or its favor against all Releasers.

147. This Settlement Agreement shall be binding upon the Parties and Class Counsel, with respect to Plaintiffs, the Class Members, and each of their respective heirs, assigns, spouses, children, beneficiaries, conservators, executors, administrators, attorneys and agents.

148. This Settlement Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest. No waiver, modification or amendment of the terms of this Settlement Agreement, whether purportedly made before or after the Court's approval of this Settlement Agreement, shall be valid

or binding unless in writing, signed by or on behalf of all Parties., and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party(ies) of any of the provisions of this Settlement Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

149. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Settlement Agreement.

150. Except as otherwise provided herein, each Party shall bear his, her or its own costs, attorneys' fees and other expenses.

151. Class Counsel and Plaintiffs, on behalf of the Settlement Class and each individual Class Member, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any full or partial claim, right, or interest, including but not limited to, any interest in the Civil Action as against the Mercy Released Parties.

152. The headings and caption herein are used for the purpose of convenience only and are not meant to have legal effect. They shall in no way define, limit, extend or describe the scope of this Settlement Agreement or any provision hereof and shall in no way have any effect upon the construction or interpretation of any part of this Settlement Agreement.

153. The Parties hereby irrevocably submit to the continuing and exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement as embodied in the Settlement Agreement or its applicability, and agree that they will

not oppose the designation of such suit, action, proceeding, or dispute as a related case to the Civil Action..

154. Unless otherwise stated herein, any notice or communications required or provided for under this Settlement Agreement shall be in writing and shall be sent to the Parties at the addresses of their respective counsel as follows:

CLASS COUNSEL	MERCY'S COUNSEL
Todd C. Werts Lear Werts LLP 103 Ripley Street Columbia, MO 65201 Phone: (573) 875-1991 werts@learwerts.com	Jeffrey R. Fink Thompson Coburn LLP One US Bank Plaza Suite 2700 St. Louis, MO 63101 Phone: (314) 552-6145 jfink@thompsoncoburn.com

155. The Settlement Agreement may be executed in one or more counterparts exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one binding Settlement Agreement.

156. The construction, interpretation, operation, effect, and validity of the Settlement Agreement, and all documents necessary to effectuate it, shall be governed by the laws of the State of Missouri without regard to choice of law or conflicts of laws principles, except to the extent that the law of the United States requires that United States federal law govern, in which case such federal law (as interpreted by the Eighth Circuit Court of Appeals) shall govern. The Parties understand and agree that any disputes arising out of the Settlement Agreement shall be

governed and construed by and in accordance with the laws of the State of Missouri without reference or regard to choice-of-law principles.

157. This Agreement shall not be construed more strictly in favor of or against either of the Parties merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Settlement Agreement is the result of arm's-length negotiation between the Parties, and all Parties have contributed substantially and materially to the preparation of the Settlement Agreement. The determination of the terms and conditions of this Settlement Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Settlement Agreement, and therefore the terms and conditions of this Settlement Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

158. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of the rules of evidence and any other equivalent or similar rule, and shall not (a) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Civil Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (b) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

159. The Parties also agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance



of this Settlement Agreement are not intended to establish grounds for certification of any class involving any Class Member other than for certification of the Settlement Class for settlement purposes.

160. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto shall not be admissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Judgment.

161. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely: (a) to enforce the terms and provisions hereof or thereof, (b) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (c) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (d) in connection with any motion to enjoin, stay or dismiss any other action, or (e) to obtain Court approval of the Settlement Agreement.

162. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms. The Parties represent that they have reviewed and understand this Settlement Agreement and all of the exhibits hereto.

163. This Settlement Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

164. Except for provisions of this Settlement Agreement requiring any Party to act or seek Court action prior to Court approval, which provisions are intended to be binding on the Parties upon mutual execution hereof, this Settlement Agreement shall become fully effective upon the Effective Date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]


IN WITNESS WHEREOF, the Parties have, through their respective counsel, voluntarily and without coercion, executed this Agreement as of the date written below:

\_\_\_\_\_  
Plaintiff T.D.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff Monica Gama, on behalf of herself,  
as next friend of A.L.

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Todd C. Werts  
Lear Werts LLP  
Class Counsel

3/11/2024  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant Mercy Hospitals East Communities

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant Mercy Health

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeffrey R. Fink  
Thompson Coburn LLP  
Mercy Counsel

\_\_\_\_\_  
Date

# **EXHIBIT A**

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

T.D., et al.,	)	
	)	
Plaintiffs,	)	Case No. 20SL-CC05974
	)	
v.	)	Division No. 6
	)	
MERCY HOSPITALS EAST COMMUNITIES,	)	
d/b/a Mercy Hospital St. Louis et al.,	)	
	)	
Defendants.	)	

**ORDER GRANTING**  
**PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This case comes before the Court for hearing on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“the Motion”), which is subject to approval by the Court.

WHEREAS, after full consideration of the Parties’ Settlement Agreement and Plaintiffs’ Motion, along with its supporting documents, and good cause appearing therefor pursuant to Rule 52.08,

IT IS HEREBY ORDERED THAT:

1. Capitalized terms used in this Preliminary Approval Order that are not otherwise defined herein shall have the same meaning assigned to them as in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter of this action, Plaintiffs, the Class Members, and the Mercy Defendants.
3. The Court orders that, in order to effectuate the proposed settlement and for settlement purposes only, this action shall be maintained as a class action under Rule 52.08, subject to final approval of the Settlement, on behalf of the following Settlement Class:

All individuals who, as determined by Mercy in 2020, were patients of Mercy (or were the patient’s parents if the patient was a minor at the time of the Incident) and had their protected health information and/or

personally identifiable information improperly accessed by a certain Mercy employee. Excluded from the Settlement Class are: (a) any individuals who submit a Valid Exclusion Statement; and (b) all individuals who, as of the date of the Settlement Agreement, have reached settlements with Mercy or have commenced other litigation against Mercy concerning the actions of the Mercy employee who caused the Incident.

4. For settlement purposes only, T.D. and Monica Gama, on behalf of herself, as next friend to A.L., are appointed as Class Representatives.

5. The following persons are appointed as Class Counsel: Todd C. Werts of Lear Werts LLP, Maureen M. Brady of McShane & Brady LLC and Christopher E. Roberts of Butsch Roberts & Associates, LLC.

6. The Court recognizes that, pursuant to the Settlement Agreement, Mercy retains all rights to object to the propriety of class certification in the Civil Action in all other contexts and for all other purposes if the Settlement is not finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

7. The Court preliminarily approves the settlement of this Civil Action as set forth in the Settlement Agreement as being fair, just, reasonable and adequate to the Class Members, subject to further consideration at the Final Approval Hearing described below. The Court further finds the likelihood of final approval of the Settlement Agreement is sufficient to warrant notice to the Class Members as specified in the Settlement Agreement. There is good cause to find that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel.

8. For settlement purposes only, the Court finds that the Settlement Class as defined herein meets the requirements of Rule 52.08 as follows:

- a. The Class Members are sufficiently ascertainable and will be specifically identified on the Class List;
- b. All Class Members have standing as the Petition alleges a sufficient concrete harm;
- c. Though not adopted by the Missouri Supreme Court, Fed. R. Civ. P. 23(e)(2) sets forth certain additional factors a court should consider when evaluating a class action settlement. *Cf. State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 735 n.5 (Mo. banc 2004) (interpretations of Fed. R. Civ. P. 23 may be considered in interpreting Rule 52.08). The relief proposed to be provided to the Settlement Class preliminarily appears adequate taking into account the factors stated in Rule 23(e)(2)(c), in that:
  - (1) it appears that continued litigation would entail significant costs, risks, and delay as compared to the proposed Settlement as the Settlement was reached relatively early in the litigation process and before the expenditure of much more significant costs in time and money by both Parties;
  - (2) the Settlement provides meaningful payments to Class Members who submit a Valid Claim Form;
  - (3) the terms of the proposed Fee Award do not appear unreasonable; and
  - (4) there are no “side-deals” as part of this Settlement.

- d. The Settlement Class numbers more than 11,100 people, which is sufficiently numerous that joining all parties into a single action would be impractical;
- e. The Class Members assert common claims challenging Mercy's acts and omissions concerning the Incident through the same legal theories under Missouri law;
- f. The Class Members' claims are typical of one another in that they seek the same sorts of relief for the same alleged wrongs;
- g. The Class Representatives have adequately represented the Settlement Class in that they have taken the steps necessary to achieve this Settlement, including, but not limited to, by hiring competent counsel who have no conflicts of interest with the class and by vigorously litigating this case to its proposed conclusion;
- h. The common questions related to Mercy's acts and omissions concerning the Incident predominate over any individual questions that might arise; and
- i. Class certification is superior to individual adjudication of the claims asserted here due to the similarities between the Class Members' claims and that managing those claims together would be significantly more efficient than litigating them separately.

9. The Court approves, in form and content, the Notice Form, substantially in the form as Exhibits B and C to the Settlement Agreement, and finds that the Notice Form accurately reflects the nature of the claims and the proposed Settlement, states the exclusion and objection procedure in clear language, and is reasonably and practicably calculated to inform Class Members of the



pendency of the Civil Action and their rights, among other things, to opt out of the Settlement, to object to the Settlement, and to attend the Final Approval Hearing. The Notice Form, therefore, meets the requirements of Rule 52.08 and the requirements of due process. The Court further finds that the procedure for dissemination of the Notice Package in the manner described in the Settlement Agreement has a reasonable chance of reaching a substantial percentage of the Class Members and constitutes the best notice practicable under the circumstances. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Civil Action. The Parties, by agreement, may revise the Notice Form and Claim Form by agreement in ways that are not material or are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. The Court appoints Atticus Administration to serve as the Claims Administrator and to perform duties in accordance with the Settlement Agreement.

11. The mailing and distribution of the Notice Form and Notice Package as set forth in the Settlement Agreement shall proceed. The Claims Administrator is authorized to mail the Notice Form and Notice Package, after they are updated with the appropriate dates and deadlines consistent with the Settlement Agreement, to the applicable Class Members as provided in the Settlement Agreement.

12. The Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons validly exclude themselves from the Settlement Class in a timely and proper manner, as hereinafter provided. Class Members who do not timely and validly exclude themselves from the Settlement shall be bound by the terms of the Settlement Agreement.

13. As explained on the long-form Class Notice attached to the Settlement Agreement as Exhibit B, Class Members shall be entitled to exclude themselves by written statement expressly requesting exclusion from the Settlement on or before the applicable Objection/Exclusion Deadline. To be valid, the Exclusion Statement must contain the Class Members' name, address, and intention to be excluded. To be valid, the Exclusion Statement must be personally signed by the person requesting exclusion. Any such Exclusion Statement must be submitted to the Claims Administrator in the manner, form, and by the deadline as explained on the Class Notice. No Class Member, or any person acting on behalf of, in concert with, or in participation with that Class Member, may request exclusion from the Settlement Class of any other person within the Settlement Class.

14. Any Class Member who submits a valid Exclusion Statement shall not: (i) be bound by any orders or the Judgment ; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

15. Any Class Member who has not submitted a valid Exclusion Statement from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorney's fees, costs, and expenses that Class Counsel intends to seek and the payment of the Incentive Awards to the Class Representatives, may do so, either personally or through an attorney, by filing a written objection, together with any supporting documentation, as set forth in the Settlement Agreement, with the Clerk of the Court, and serving it upon Class Counsel, Mercy's Counsel, and the Claims Administrator no later than the Objection/Exclusion Deadline. Addresses for Class Counsel, Mercy's Counsel, and the Clerk of Court are as follows:

CLERK OF THE COURT	CLASS COUNSEL	MERCY'S COUNSEL
St. Louis County Circuit Clerk 105 S. Central Avenue Clayton, MO 63105	Todd C. Werts Lear Werts LLP 103 Ripley Street Columbia, MO 65201	Jeffrey R. Fink Thompson Coburn LLP One US Bank Plaza St. Louis, MO 63101

A copy of any objection must also be mailed or submitted through the Settlement Website to the Claims Administrator at the following address: 1295 Northland Dr Suite 160, Mendota Heights, MN 55120.

16. Any Class Member who has not submitted a Valid Claim Form or Valid Exclusion Statement and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also include or attach: (i) the Class Member's full name, address, and telephone number; (ii) the case name and number of this Civil Action; (iii) a statement of such Class Member's specific objections; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections the Class Member has filed, or has had filed on the Class Member's behalf, in any other class action cases in the last four years; and (vi) the Class Member's signature. The Class Member must also provide the name, address, and telephone number of any counsel representing the Class Member.

17. Objections not filed and served in accordance with this Preliminary Approval Order shall not be received or considered by the Court. Any Class Member who fails to timely file and serve a written objection in accordance with this Preliminary Approval Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorney's fees, costs, and

expenses, to the payment of any Incentive Awards, and to the Judgment and the right to appeal same. Only Class Members may object to the Settlement. An objector may withdraw his/her objection(s) at any time. The Parties may file with the Court written responses to any filed objections at or prior to the Final Approval Hearing.

18. No Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Preliminary Approval Order and in the Settlement Agreement are fully satisfied. Any Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, or who does not appear at the Final Approval Hearing, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Judgment.

19. Any Class Member who has submitted a Valid Claim Form or Valid Exclusion Statement may not submit objections to the Settlement. Class Members cannot both object to and exclude themselves from the Settlement. Any Class Member who attempts to both object to and exclude himself/herself from the Settlement will be deemed to have excluded himself/herself and will forfeit the right to object to the Settlement or any of its terms.

20. The Court hereby adopts the settlement approval process as set forth in the Settlement Agreement.

21. Class Counsel may file any motion seeking an award of attorney's fees, costs, and expenses not to exceed one-third of the Gross Settlement Fund (*i.e.*, up to \$600,000), as well as Incentive Awards of \$5,000 per Class Representative (the "Fee and Expense Application"), by no later than 14 days before the Final Approval Hearing.

22. All papers in support of final approval of the proposed Settlement shall be filed no later than 14 days before the Final Approval Hearing.

23. In the event that the Effective Date as defined in the Settlement Agreement does not occur, the Settlement, the Settlement Agreement, and this Preliminary Approval Order shall be deemed null and void and shall have no effect whatsoever. In such case, nothing in the Settlement Agreement or this Preliminary Approval Order shall be relied upon, cited as, constitute evidence of, or constitute an admission of liability or that class action certification is or may be appropriate in this action or any other matter.

24. Pending the Court's final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, Plaintiffs and all Class Members and anyone acting on behalf of any Class Member are barred and enjoined from: (a) further litigation in this Civil Action; (b) instituting, filing, or taking any action directly or indirectly, to commence, prosecute, pursue or participate on an individual or a class or collective action basis any action, claim or proceeding against Mercy or the Mercy Released Parties in any forum in which any of the claims subject to the Settlement are asserted, or which in any way would prevent any such claims from being extinguished; and/or (c) seeking, whether on a conditional basis or not, certification of a class or collective action that involves any such claims.

25. The Final Approval Hearing is hereby scheduled to be held before the Court on \_\_\_\_\_, 2024, at \_\_\_\_\_ (or at such other time or location as the Court may without further notice direct). The purpose of the Final Approval Hearing will be as follows:

- a. To determine whether the proposed Settlement of this Action, as set forth in the Motion, should be approved as fair, reasonable, and adequate to the

Settlement Class, and whether a Judgment approving the Settlement should be entered;

- b. To consider Class Counsel's Fee and Expense Application;
- c. To consider any Incentive Awards for the service of the Class Representatives; and
- d. To rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to the Settlement Class. Notice of the postponement, adjournment, transfer, or continuance of the hearing shall be posted on the Settlement Website when available. At or following the Final Approval Hearing, the Court may enter a Judgment that approves the Settlement Agreement and, in accordance with the Settlement Agreement, adjudicates the rights of all Class Members.

27. All discovery and other proceedings in the Civil Action as between Plaintiffs and Mercy are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Preliminary Approval Order.

28. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

IT IS SO ORDERED:

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Date

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Hon. John N. Borbonus  
Circuit Judge, Division 6

# **EXHIBIT B**

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI  
*T.D. v. Mercy Health*, Case No. 20SL-CC05974

**Notice of Class Action Settlement**

*A Missouri court authorized this notice. You have not been sued. This is not a solicitation from a lawyer.*

A class action settlement has been reached in the above lawsuit. On [Month/Day], 2024, the Court preliminarily approved this settlement and, by agreement of the Parties, certified this lawsuit to proceed as a class action for settlement purposes only. This notice is to advise you of the status of the lawsuit, the terms of the proposed settlement, and your rights as to the proposed settlement. A full copy of the settlement agreement may be reviewed at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com). This notice contains only a summary of it.

If you were notified by Mercy in December 2020 that a Mercy employee improperly accessed your or your child’s protected health information and/or personally identifiable information (the “Incident”), then you are a member of the settlement class unless you timely and validly request exclusion from the settlement class. If you remain a member of the settlement class: (a) you may be entitled to compensation under a proposed settlement if you submit a claim as set forth in this notice; and (b) you may object to the settlement.

**This notice discusses your legal rights and options. Please read this notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>		
<b>ACTION</b>	<b>EXPLANATION</b>	<b>DUE DATE</b>
<b>DO NOTHING</b>	You will be included in the settlement class, <b><u>but you will receive no payment.</u></b> If the Court approves the settlement, you will be bound by the Court’s final judgment, and you will release any claims that you may have against Mercy related to the Incident.	No deadline
<b>SUBMIT A CLAIM FORM</b>	<b>By submitting a claim form, you will receive payment of up to \$90 or up to \$300 of documented time and expenses.</b> For more information about submitting a claim, see Question 7 below. If the Court approves the settlement and you have submitted a valid and timely claim form, you will receive a payment, you will be bound by the Court’s final judgment, and you will release any claims that you may have against Mercy related to the Incident.	Month/Day, 2024
<b>ASK TO BE EXCLUDED</b>	If you choose to exclude yourself (opt out), you will not be included in the settlement. You will receive no benefits, and you will not release any claims that you may have against Mercy related to the Incident.	Month/Day, 2024
<b>OBJECT</b>	If you wish to object to the settlement, you must put your objections in a written statement and send your written statement to the Clerk of the Court, the attorneys for Plaintiffs and Mercy, and the Class Administrator as set forth below. If you exclude yourself from the settlement, you cannot file an objection. Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the settlement. If the Court approves the settlement, you will be bound by the Court’s final judgment, and you will release any claims that you may have against Mercy related to the Incident.	Month/Day, 2024



## BASIC INFORMATION

### 1. Why did I get this notice?

You received this notice because the records of Mercy Health (“Mercy”) show that you were notified by Mercy in December 2020 about the Incident. Because of this, you are a member of the settlement class, you may be affected by this class action settlement, and you are entitled to receive settlement benefits if you submit a valid claim form to the Claims Administrator before the deadline and the Court grants final approval of the settlement. You also have other options as described in this notice.

### 2. What is the lawsuit about?

The lawsuit claims that Mercy is liable to certain Mercy patients because one of its employees improperly accessed the protected health information and/or personally identifiable information of these Mercy patients (the “Incident”). Mercy denies that it did anything wrong.

### 3. Why is this a class action?

In a class action lawsuit, one or more people called “class representatives” (in this case T.D. and Monica Gama) sue on behalf of themselves and other people who have similar claims (the “class members”). This lawsuit is a class action because the Court has decided that it meets the legal requirements to be a class action solely for the purposes of settlement. Because the lawsuit is a class action, one court resolves the issues for everyone in the class, except for those people who choose to exclude themselves from the class.

### 4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Mercy. Instead, both sides agreed to a settlement to avoid the cost of a trial and the risks of either side losing and ensure that the affected people receive compensation. Mercy does not in any way acknowledge, admit to, or concede any of Plaintiffs’ allegations and expressly denies any and all fault or liability for the charges alleged in the lawsuit. The parties think that the settlement is best for everyone involved under the circumstances. The Court will evaluate the settlement to determine whether it is fair, reasonable, and adequate before it approves the settlement.

### 5. How do I know if I am part of the settlement?

If you received this notice addressed to you, then you are a member of the settlement class, and you will be a part of the settlement unless you exclude yourself.

## THE SETTLEMENT BENEFITS

### 6. What does the settlement provide?

Mercy has agreed to create a gross settlement fund of \$1,800,000 to settle this lawsuit. As discussed below, administrative expenses for the Claims Administrator, attorneys’ fees, litigation costs, and a service award

to the class representatives will be deducted from and paid out of the gross settlement fund. After these deductions, there will be a net settlement fund available for distribution to the class members who submit valid claims. Each class member who submits a valid claim form is eligible to choose one, but not both, of the following types of payment benefits:

Flat Payment: A class member may submit a claim for a payment of up to \$90.

Time and Expense Reimbursement: Alternatively, a class member may submit a claim for reimbursement for the time and expenses that he/she actually and reasonably incurred to address concerns of identity theft because of Mercy's notice to him/her in December 2020 about the Incident. The total amount of such reimbursement for time and expenses is limited to up to \$300. The portion of any such claim for reimbursement for time is limited to no more than five hours at \$30 per hour and must be verified by the class member with reasonable specificity and attestation, subject to the penalty of perjury, that he/she believes that he/she expended the time as a result of addressing concerns of identity theft because of Mercy's notice to him/her in December 2020 about the Incident. The portion of any such claim for reimbursement for expenses must be accompanied by documentation reflecting the costs incurred and the payment of the out-of-pocket expense(s) for which reimbursement is sought and must be verified by the class member with reasonable specificity and an attestation, subject to the penalty of perjury, that he/she believes that he/she incurred the expenses as a result of addressing concerns of identity theft because of Mercy's notice to him/her in December 2020 about the Incident.

If a Class Member submits a valid claim form for both types of payment benefits, he/she will be deemed to have chosen the greater of the Flat Payment or the Time and Expense Reimbursement. The total payments to the class members shall not exceed the net settlement fund. If the amount of the valid and approved claims exceeds the amount of the net settlement fund, all such claims will be reduced on a pro rata basis before payment. If the amount of such claims is less than the amount of the net settlement fund, the remaining amount of the net settlement fund, after the payment of the valid and approved claims, shall revert to Mercy.

#### 7. How and when do I receive a payment from the settlement?

If you are an eligible class member and you do not exclude yourself from the settlement, and if you wish to receive a payment from the settlement, then you must submit a valid claim form by Month/Day, 2024. Claim forms can be filed online at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) by Month/Day, 2024, mailed to the Claims Administrator at \_\_\_\_\_ or e-mailed to the Claims Administrator at \_\_\_\_\_ by Month/Day, 2024. You may also contact the Claims Administrator toll-free at [phone number] with any questions.

The Court will hold a hearing on Month/Date, 2024, at Time, to decide whether to give final approval to the settlement. If the Court finally approves the settlement (and there are no appeals), and if you have timely submitted a valid claim form by the deadline of Month Day, 2024, the Claims Administrator will issue a settlement check to you. The Parties cannot predict exactly when (or whether) the Court will give final approval to the settlement (or whether there will be any appeals), so please be patient. After you have submitted a valid claim form, you do not need to do anything further. If your address has changed, please call the number at the bottom of this notice to report the address change.

8. What am I giving up to get a payment?

Unless you exclude yourself, you remain in the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Mercy relating to the claims that were or could have been brought in this lawsuit, and all of the Court's orders will apply to you. Once the settlement is final, your claims relating to claims that were or could have been brought in this lawsuit will be released and forever barred.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you want to keep the right to sue or continue to sue Mercy on your own about the issues in this lawsuit, then you must take steps to get out. This is called excluding yourself from the settlement class (also sometimes referred to as opting out of the settlement class).

9. How do I get out of the settlement?

You have the right to exclude yourself from (i.e., "opt out" of) the settlement class. If you exclude yourself, you will be giving up the right to receive any payment and the right to object, but you will not be releasing the claims that are released in the settlement.

To exclude yourself from the class, you must inform the Claims Administrator in writing of your name, address, and your intention to be excluded. To be valid, your exclusion statement must be signed by you and contain your name, address, and telephone number and the words: "I elect to exclude myself from the settlement in *T.D. v. Mercy Health*." Your exclusion statement must be submitted through the settlement website or mailed to the Claims Administrator at [address] by Month/Day, 2024. If you submit or mail a late request for exclusion, your exclusion request will be deemed invalid and you will remain a member of the class and will be bound by all of the terms of the settlement. You cannot exclude yourself by telephone or by email.

Do not submit both a claim form and a request for exclusion. If you submit both a claim form and a request for exclusion, your claim form will be disregarded, and you will be excluded from the settlement class.

10. If I don't exclude myself, can I sue later for the same thing?

No. Unless you exclude yourself, you give up the right to sue Mercy for the claims that this settlement resolves. If you have a pending case, speak to your lawyer in that case immediately. You must exclude yourself from this lawsuit to continue your own case.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the settlement or some part of it.

11. How do I tell the Court that I don't like the settlement?

If you are a class member, you have the right to object to the settlement if you wish. To object, you must state your objections in a written statement and mail a copy of your written statement to the following three places postmarked no later than Month/Day, 2024:

COURT	CLASS COUNSEL	DEFENDANT'S COUNSEL
Clerk of Circuit Court of St. Louis County 105 South Central Avenue, Clayton, MO 63105	Todd C. Werts Lear Werts LLP 103 Ripley Street Columbia, MO 65201	Jeffrey R. Fink Thompson Coburn LLP One US Bank Plaza Suite 2700 St. Louis, MO 63101

A copy of your objection must also be mailed or submitted through the Settlement Website to the Claims Administrator at the following address: [INSERT]

Your objection must: (i) include your full name, address, and telephone number; (ii) state the case name and number of this case; (iii) include a statement of your specific objections; (iv) state all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) identify any other objections you have filed, or have had filed on your behalf, in any other class action lawsuits in the last four years; and (vi) be signed by you. If you are represented by an attorney, you must also provide the name and telephone number of your attorney.

You will not be excluded from the settlement by filing an objection. If you exclude yourself from the settlement or submit a valid claim form, you cannot file an objection.

Any class member who does not timely file and serve a written objection will not be permitted to raise an objection to the settlement, except for good cause shown, and any class member who fails to object in the manner described above will be deemed to have waived objections to the settlement and will be foreclosed from raising any objections.

#### 12. What happens if I do nothing at all?

If the Court grants final approval of the settlement, and you do nothing, then you will be bound by the Court's final judgment that will forever bar you from pursuing any claims against Mercy and the Mercy Released Parties related to the Incident and you will receive no payment from the Claims Administrator.

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

For purposes of this settlement, the class representatives and the settlement class are represented by Todd C. Werts of Lear Werts LLP, 103 Ripley Street, Columbia, Missouri 65201, Maureen M. Brady and Christopher E. Roberts of Butsch Roberts & Associates, LLC. You will not be personally charged for their work on the case (which is being paid out of the gross settlement fund). If you want to be represented by your own lawyer, you may hire one at your own expense.

#### 14. How will the lawyers and class representatives be paid?

Class counsel will ask the Court for attorneys' fees and expenses of up to one-third of the gross settlement fund (*i.e.*, up to \$600,000) and a service payment of up to \$5,000 for each of the class representatives, to

be paid from the gross settlement fund. The amount of these fees, expenses, and service payments must be approved by the Court.

15. When and where will the Court decide whether to approve the settlement?

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to. The Court has already granted preliminary approval of the settlement. The Court will hold a final approval hearing on Month/Day, 2024, at Time in the St. Louis County Courthouse, Division 6, 105 South Central Avenue, Clayton, Missouri 63105. The final approval hearing may be continued to a future date without further notice. At the final approval hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider and rule on them. The Court may also decide how much to pay class counsel and the class representatives. After the hearing, the Court will decide whether to approve the settlement.

If the Court does not approve the settlement, if it approves the settlement and the approval is reversed on appeal, or if the settlement does not become final for any other reason, you will not be paid at this time and class members will receive no benefits from the settlement. Plaintiffs, Mercy, and the putative class members will be in the same position as they were prior to the execution of the settlement, and the settlement will have no legal effect, no class will remain certified (subject to approval or otherwise), and Plaintiffs and Mercy will continue to litigate the lawsuit. There can be no assurance that if the settlement is not approved, the settlement class will recover more than is provided in the settlement, or indeed, anything at all.

16. Do I have to come to the hearing?

No. Class counsel will answer questions that the Court may have. But you are welcome to come at your own expense. You may also pay your own lawyer to attend, but it's not necessary.

17. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in the settlement agreement, which can be found at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) or by calling the Claims Administrator at [phone number].

**Please do not contact the Court Clerk, the Judge, Mercy's Counsel, or Mercy; they are not in a position to give you any advice about the Settlement.**

# Exhibit C

Atticus Administration  
Address 1  
City, State ZIP



LEGAL NOTICE BY ORDER  
OF THE CIRCUIT COURT OF  
ST. LOUIS COUNTY, MISSOURI

<MAILER ID>  
<NAME>  
<ADDRESS 1>  
<ADDRESS 2>  
<CITY, STATE ZIP>

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

**If you were sent a notification in December 2020 that a Mercy employee improperly accessed your or your minor child's protected health information and/or personally identifiable information (the "Incident"), you could get benefits from a class action settlement.**

You were previously sent a Notice that contains information about a proposed class action settlement with Defendant. More information can be found at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) or by calling toll-free at **1-877-123-4567**. Your rights may be affected whether you act or not.

**What are my options?** You can file a claim to receive Settlement benefits, do nothing and stay in the case, exclude yourself, or object to the Settlement. The deadline to take action is **Month Day**, 2024. If you do not exclude yourself, and the Court approves the Settlement, you will be bound by the Court's orders and judgments, even if you do not file a claim.

**How do I file a claim?** You will be considered a member of the Settlement Class unless you timely file a Valid Exclusion Statement. Class Members may submit a claim online at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com), via mail to Atticus Administration, 1295 Northland Dr Suite 160, Mendota Heights, MN 55120, or via email to [xxxxxxxxx@atticusadmin.com](mailto:xxxxxxxxx@atticusadmin.com) by **Month Day**, 2024

**What happens next?** The Court will hold a Final Approval Hearing on **Month Day**, 2024 to decide whether the Settlement is fair, reasonable, and adequate. You or your attorney may ask permission to speak at the hearing at your own cost.



# **EXHIBIT D**

*T.D. v. Mercy Health* Settlement Class Member Claim Form  
Circuit Court of St. Louis County, Missouri, Case No. 20SL-CC05974

**DEADLINE: THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [NOTICE + 45 DAYS] AND MUST BE FULLY COMPLETED, BE SIGNED UNDER OATH, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT. YOUR FAILURE TO SUBMIT A TIMELY CLAIM FORM WILL RESULT IN YOU FORFEITING ANY PAYMENT FOR WHICH YOU MAY BE ELIGIBLE UNDER THE SETTLEMENT.**

Instructions: Please read carefully the Notice of Class Action Settlement (“Notice”), which is included with this Claim Form. If you were notified by Mercy in December 2020 that a certain Mercy employee improperly accessed your or your minor child’s protected health information and/or personally identifiable information (the “Incident”), then you may be entitled to monetary benefits from the Settlement.

**YOU MUST SUBMIT THIS CLAIM FORM IN ORDER TO RECEIVE A SETTLEMENT PAYMENT.**

If you wish to receive monetary benefits from the Settlement, you must take all of the following steps:

- Complete all gray-highlighted sections of this Claim Form in black or blue ink or electronically.
- Sign and date this Claim Form below, attesting that the statements, information, and documents that you have provided are true and correct to the best of your knowledge.
- Return this Claim Form by the Deadline to: \_\_\_\_\_, Claims Administrator, [address] via [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com), or via e-mail at XXXXXX. For questions, visit [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) or call [phone number].

YOUR CONTACT INFORMATION		
<b>Name:</b>		
First	Middle	Last
<b>Address:</b>		
(You must provide a street address. A P.O. Box will not be accepted.)		
City	State	ZIP Code
Current Phone Number: ( ____ ) ____ - ____		
(Please provide a phone number where you can be reached if further information is required).		
<b>CLASS MEMBERSHIP</b>		
Records indicate that you were notified by Mercy in December 2020 that a certain Mercy employee improperly accessed your or your minor child’s protected health information and/or personally identifiable information (the “Incident”).		
By signing and submitting this Claim Form, you acknowledge that you were notified by Mercy in December 2020 about the Incident, that you have received and reviewed the Notice of Class Action Settlement (the “Notice”), that you understand the terms and statements in the Notice, and that you submit this Claim Form under the terms of the Notice and the Settlement Agreement described in the Notice.		

SETTLEMENT BENEFITS

As a Class Member, you are entitled to receive either: (1) a flat payment of up to \$90; or (2) reimbursement of up to \$300 for time and expense (but no more than \$150 for time) that you actually and reasonably incurred to address concerns of identity theft because of Mercy’s notice to you in December 2020 about the Incident. You cannot choose both the Flat Payment and the Time and Expense Reimbursement. If you do so, you will be deemed to have chosen the Flat Payment. Please check one (and only one) of the following boxes:

\_\_\_ Flat Payment. I choose to receive a flat payment of up to \$90.

\_\_\_ Reimbursement for Time and Expense.

The Settlement allows for reimbursement of up to 5 hours of time at \$30 per hour that you expended as a result of addressing concerns of identity theft because of Mercy’s notice to you in December 2020 about the Incident.

I attest, under penalties of perjury, that I expended \_\_\_ hours of time as a result of addressing concerns of identity theft because of Mercy’s notice to me in December 2020 about the Incident.

You must also provide a description of the time that you claim to have expended to allow for validation of your claim. Please provide that description here:

The Settlement allows for reimbursement of up to \$300 (less the amount claimed by you for time expended by you) in expenses that you incurred as a result of addressing concerns of identity theft because of Mercy’s notice to you in December 2020 about the Incident.

I attest, under penalties of perjury, that I incurred \$ \_\_\_\_\_ in expenses as a result of addressing concerns of identity theft because of Mercy’s notice to me in December 2020 about the Incident.

You must also provide a description of these expenses and documentation of these expenses. Please provide that description here and include that documentation with this claim form:

Please note that if the amount of the valid and approved claims exceeds the amount of the net settlement fund, all such valid and approved claims will be reduced on a pro rata basis before payment. The Claims Administrator may audit any and all claims and may require the submission of supplemental information reasonably required to evaluate any claims. Persons making false claims may be subject to civil or criminal penalties.

I hereby agree to participate in the settlement entered in the Civil Action and approved by the Court. I also consent and agree to be bound by any adjudication of the Civil Action by the Court. By signing below, I fully and finally discharge and release any and all of the Released Claims against Mercy and the Mercy Released Parties. I agree to be bound by this settlement and not to sue or otherwise make a claim against any of the Mercy Released Parties as to any of the Released Claims.

I declare under penalty of perjury that the foregoing is true and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

# **EXHIBIT E**

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

T.D., et al.,	)	
	)	
Plaintiffs,	)	Case No. 20SL-CC05974
	)	
v.	)	Division No. 6
	)	
MERCY HOSPITALS EAST COMMUNITIES,	)	
d/b/a Mercy Hospital St. Louis et al.,	)	
	)	
Defendants.	)	

**JUDGMENT GRANTING**  
**FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

This case comes before the Court for hearing on Plaintiffs’ Motion for Final Approval of Class Action Settlement (“the Motion”), which is subject to approval by the Court, due and adequate notice having been given to the Settlement Class and the Court having considered the papers filed and proceedings in this matter and being fully advised,

WHEREAS, the Court preliminarily approved the Settlement Agreement on \_\_\_\_\_, 2024, finding that “the likelihood of final approval of the Settlement Agreement is sufficient to warrant notice to the class members as specified in the Settlement Agreement.” *See* Order, ¶ 7.

WHEREAS, the Court conducted a final approval and fairness hearing on \_\_\_\_\_, 2024.

WHEREAS, having duly considered the Motion and supporting memorandum of law and other materials presented with respect to the Settlement addressing the class claims asserted in the litigation under Missouri law,

The Court hereby finds that the Settlement is a fair, adequate, and reasonable resolution of a bona fide dispute in contested litigation.

NOW THEREFORE, after due deliberation, IT IS HEREBY ORDERED THAT:

1. Unless otherwise defined herein, all terms used in this Judgment have the same meaning as defined in the Settlement Agreement. The terms of the Settlement Agreement are hereby incorporated by reference into this Judgment.

2. This Court has jurisdiction over the subject matter of this Civil Action and personal jurisdiction over all Parties to the Civil Action, including all Class Members.

3. This Judgment is binding on the Settlement Class as defined in the Settlement.

4. The Settlement was negotiated at arm's length and is fair, reasonable, and adequate; is in the best interests of the Settlement Class; provides adequate relief to the Settlement Class; treats class members equitably; and should be, and hereby is, approved, especially in the light of the benefits to the class accruing therefrom the discovery, investigation, and litigation conducted by Class Counsel prior to the proposed Settlement, and the complexity, expense, risks and probable protracted duration of further litigation.

5. Likewise, the Settlement has the support of Class Counsel and Mercy's Counsel, both of whom have significant experience representing parties in the complex class actions.

6. The Court finally approves the Settlement Agreement and the Settlement claims brought in the above-captioned Civil Action under the terms of that Settlement Agreement.

7. The claims process and formula for allocation of Participating Class Member Payments as set forth in the Settlement Agreement is approved as fair, equitable, and reasonable measures for calculating and distributing the settlement payments to the Class Representatives and the Class Members.

8. The Court finds that adequate notice of the Settlement was given to all Class Members pursuant to the terms of the Preliminary Approval Order. The Notice Package that was

disseminated to Class Members adequately informed the Settlement Class of the terms of the Settlement Agreement, the type of relief available, the process available to them to submit a claim, their right to request exclusion from the Settlement and pursue their own remedies, and their opportunity to submit objections and appear and be heard at the Final Approval Hearing. The Notice Package also adequately informed Class Members of additional resources available to obtain further information, including the identity of Class Counsel and how to contact the Court-approved Claims Administrator. The Court finds that the Notice Package satisfied the requirements of Rules 52.08(c)(2) and 52.08(e).

9. The Court held a Final Approval Hearing on \_\_\_\_\_, at which time the Parties and all other interested persons were afforded the opportunity to be heard in support of and in opposition to the Settlement.

10. The Court finally certifies, for settlement purposes only, the Settlement Class:

All individuals who, as determined by Mercy in 2020, were patients of Mercy (or were the patient's parents if the patient was a minor at the time of the Incident) and had their protected health information and/or personally identifiable information improperly accessed by a certain Mercy employee. Excluded from the Settlement Class are: (a) any individuals who submit a Valid Exclusion Statement; and (b) all individuals who, as of the date of the Settlement Agreement, have reached settlements with Mercy or have commenced other litigation against Mercy concerning the actions of the Mercy employee who caused the Incident.

11. The persons who are listed on Exhibit 1 to this Judgment have made timely and valid requests for exclusion and are excluded from the Settlement Class and are not bound by this Final Judgment of Dismissal. [OR] The Court finds that no Class Member excluded himself or herself from the Settlement following the issuance of the Notice Package. The absence of any requests by Class Members for exclusion from the Settlement supports approval of the Settlement.

12. Any objections to the Settlement are overruled and denied in all respects. [OR] The Court finds that no Class Member objected to the Settlement. The absence of any objections to the Settlement by Class Members supports approval of the Settlement.

13. For settlement purposes only, the Court confirms the appointment of T.D. and Monica Gama, on behalf of herself, as next friend to A.L., as Class Representatives of the Settlement Class.

14. For settlement purposes only, the Court confirms the appointment of the following counsel as Class Counsel and finds that they are experienced in class action litigation and have adequately represented the Settlement Class: Todd C. Werts of Lear Werts LLP, Maureen M. Brady McShane & Brady LLC and Christopher E. Roberts of Butsch Roberts & Associates, LLC.

15. With respect to the Settlement Class, the Court finds, for settlement purposes only, that: (a) the Settlement Class defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class, and those common questions predominate over any questions affecting only individual members; (c) the Class Members' claims are typical of one another in that they seek the same sorts of relief for the same alleged wrongs; (d) the Class Representatives and Class Counsel have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Settlement Class; and (e) certification of the Settlement Class is the superior method for the fair and efficient adjudication of this controversy.

16. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.



17. The Court adjudges that the Released Claims and all of the claims described in the Settlement Agreement are released against Mercy and the Mercy Released Parties.

18. The Court adjudges that Plaintiffs and all Class Members who have not opted out of the Settlement Class shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against Mercy and the Mercy Released Parties, as defined under the Settlement Agreement. The Released Claims specifically extend to claims that Plaintiffs and the Class Members do not know or suspect to exist in their favor at the time that the Settlement Agreement, and the releases contained therein, become effective.

19. The Court further adjudges that, upon entry of this Judgment, the Settlement Agreement and the above-described release of the Released Claims will be binding on, and have res judicata preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Class Members who did not validly and timely exclude themselves from the Settlement, and their respective affiliates, assigns, heirs, executors, administrators, successors, and agents, as set forth in the Settlement Agreement. The Mercy Released Parties may file the Settlement Agreement and/or this Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

20. Plaintiffs and all Class Members who did not validly and timely request exclusion from the Settlement are, for all purposes, conclusively and permanently barred and enjoined from commencing, prosecuting, asserting, filing, pursuing, continuing, seeking to reopen, and/or

otherwise maintaining in any court or forum any of the Released Claims or any of the claims described in the Settlement Agreement against any of the Defendant Released Parties.

21. Plaintiffs' request for an Incentive Award in the amount of \$5,000 to each of the Class Representatives, who have adequately represented the Class, is hereby approved. The Court specifically finds such amount to be reasonable in light of the services performed by the Class Representatives for the Settlement Class, including taking on the risks of litigation, responding to discovery, participating in depositions, and helping achieve the results to be made available to the Settlement Class. This amount shall be paid from the Gross Settlement Fund in accordance with the terms of the Settlement Agreement.

22. The Court approves payment of attorney's fees, costs and expenses to Class Counsel in the amount of \$600,000.00. This amount shall be paid from the Gross Settlement Fund in accordance with the terms of the Settlement Agreement. Class Counsel has adequately represented the Settlement Class and Class Counsel has applied for a Fee Award, based on a one-third contingency fee from the common benefit created to settle this case. A one-third common benefit contingency fee is reasonable in class action cases like the Civil Action and is reasonable in this Civil Action.

23. Neither this Judgment, nor the Settlement Agreement, nor the payment of any consideration in connection with the Settlement shall be construed or used as an admission or concession by or against Mercy or any of the Mercy Released Parties of any fault, omission, liability, or wrongdoing, or of the validity of any of the Released Claims. This Judgment is not a finding of the validity or invalidity of any claims in this Civil Action or a determination of any wrongdoing by Mercy or any of the Mercy Released Parties. The final approval of the Settlement

does not constitute any position, opinion, or determination of this Court, one way or another, as to the merits of the claims or defenses of Plaintiffs, the Class Members, or Mercy.

24. The Court finds that no reason exists for delay in entering this Judgment.

25. The Parties, without further approval from the Court, are hereby permitted to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with the Judgment and do not limit the rights of the Class Members.

IT IS SO ORDERED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hon. John N. Borbonus  
Circuit Judge, Division 6