

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between (i) DPP II LLC (“DPP” and “Defendant”) and (ii) Ida Patterson, Michael Lassiter, Selma Earls, and Colette Williams (collectively “Plaintiffs”) both individually and on behalf of the Class, in the case of *Patterson, et al. v. DPP II LLC, et al.*, Case No. DC-23-01733, in the District Court for Dallas County (the “Litigation”). DPP and Plaintiffs are collectively referred to herein as the “Parties.”

I. FACTUAL BACKGROUND AND RECITALS

1. On February 6, 2023, Plaintiff Ida Patterson filed a class action lawsuit against DPP II, LLC, and Home Care Providers of Texas in the District Court for Dallas County, Texas based on a cyberattack on Defendant’s network from June 15, 2022 to June 29, 2022 (the “Data Incident”), alleging claims of negligence, breach of implied contract, negligence *per se*, breach of fiduciary duty, invasion of privacy by public disclosure of private facts, and unjust enrichment. The Complaint alleged the Data Incident impacted Plaintiffs’ and Class Members’ full names, dates of birth, Social Security numbers, health insurance information, medical information, and other Personal Identifying Information and Protected Health Information (collectively referred to in this Settlement Agreement as “Private Information”).

2. Subsequent actions were filed by Plaintiffs Michael Lassiter (*Lassiter v. DPP II, LLC, et al.*, Case No. DC-23-01986), Selma Earls (*Earls v. DPP II, LLC, et al.*, Case No. DC-23-01953), and Colette Williams (*Williams v. Home Care Providers, LLC*, Case No. DC-23-02432) in the District Court of Dallas County and were thereafter consolidated under the caption *Patterson v. DPP II, LLC, et al.*, Case No. DC-23-01733 on March 21, 2023 pursuant to the Court’s Order to Consolidate.

3. On May 16, 2023, Plaintiffs filed a Consolidated Amended Class Action Petition, alleging claims for negligence, breach of implied contract, negligence *per se*, breach of fiduciary duty, public disclosure of private facts, and unjust enrichment. Plaintiffs brought damages claims arising from loss of time, loss of benefit of the bargain (price premium damages), and diminution of value of their PII. Plaintiffs sought compensatory damages and injunctive relief.

4. Prior to engaging in extensive motion practice or formal discovery, the parties agreed to mediation to preserve litigation costs and time. Following extensive arm’s-length negotiations culminating in an August 29, 2023 mediation with experienced data breach class action mediator John DeGroote, the Parties negotiated a settlement by which the Parties agree and hereby wish to resolve all matters pertaining to, arising from, or associated in any way with the Litigation, including all claims Plaintiffs and Class Members have, had, or may have against DPP and related persons and entities related to the Data Incident, as set forth herein.

5. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, uncertainty, discovery, time, and expense for the Parties.

6. DPP denies all claims of wrongdoing or liability that Plaintiffs, Class Members, or anyone else have asserted in this Litigation or may assert in the future. Despite DPP's position that it is not liable for, and has good defenses to the claims alleged in the Litigation, DPP desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation of any action relating to the matters being fully settled and finally resolved and released 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.

7. The Parties now enter into this Settlement Agreement. Plaintiffs' Counsel have conducted a pre-suit investigation reviewed informal discovery materials in preparation for and during the course of the mediation, and fully evaluated the risk of future litigation. Moreover, Plaintiffs' Counsel have fully evaluated the available facts, applicable law, and comparable settlements related to the Litigation and have concluded that the proposed Settlement according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of Plaintiffs and the Class, recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in the litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the proposed 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 whatsoever.

8. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

9. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiffs, Plaintiffs' Counsel, or the Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

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

10. “**Approved Claims**” shall mean complete and timely Claim Forms submitted by Class Members that have been approved by the Settlement Administrator.

11. “**Claim Form**” shall mean the form that Class Members may submit to obtain compensation under this Settlement Agreement, which is attached as **Exhibit A**.

12. “**Claims Deadline**” shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set

as a date ninety (90) days after the Notice Deadline is entered. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

13. “**Class,**” or “**Class Member**” shall mean the individuals identified on the Class List whose certain personal information may have been involved in the Data Incident who does not timely elect to be excluded from the Class. Excluded from the Class are: (1) the judge presiding over this Action, and members of his direct family; (2) DPP, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers and directors; and (3) Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

14. “**Class Counsel**” shall mean; Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC.

15. “**Class List**” means a list of each Class Member’s full name, current or last known contact information (U.S. Mail address, email address, or both where available), which DPP or DPP’s agent shall provide to the Settlement Administrator within fourteen (14) days of the entry of the Preliminary Approval Order.

16. “**Class Member**” means an individual who falls within the definition of the Class.

17. “**Counsel**” or “**Parties’ Counsel**” means both Class Counsel and DPP’s Counsel, collectively.

18. “**Court**” shall mean the Honorable Judge Eric V. Moyé of the District Court for Dallas County, 14th Judicial District.

19. “**Defendant**” shall mean DPP II, LLC d/b/a Home Care Providers of Texas.

20. “**Defendant’s Counsel**” shall mean Noah H. Nadler and Dana M. Hilzendager of Wick Phillips Gould & Martin, LLP, and Bryan T. Kostura of McDonald Hopkins, LLC.

21. “**Effective Date**” shall mean the date when the Settlement Agreement becomes Final, which is 35 days after the Court’s grant of the Final Approval Order assuming no appeals have been filed. If an appeal is filed, the Effective Date will become 35 days from when the appeal is finalized and a final judgment is entered in this case.

22. “**Fee and Expense Application**” shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys’ fees and litigation expenses.

23. “**Fee Award and Expenses**” means the amount of attorneys’ fees and reimbursement of litigation expenses awarded by the Court to Class Counsel.

24. “**Final**” means the Final Approval Order has been entered on the docket, and: (1) the time to appeal from such order has expired and no appeal has been timely filed; (2) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final

Approval Order; or (3) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

25. “**Final Approval Hearing**” means the hearing before the Court where Plaintiffs will request a judgment to be entered by the Court approving the Settlement Agreement and approving the Fee Award.

26. “**Final Approval Order**” shall mean an order entered by the Court that:

- i. Certifies the Class pursuant to Texas Rule of Civil Procedure 42;
- ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;
- iii. Dismisses Plaintiffs’ claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
- iv. Approves the Release provided in Section VIII and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties;
- v. Reserves jurisdiction over the Settlement and this Settlement Agreement; and
- vi. Finds that there is no just reason for delay of entry of Final Approval Order with respect to the foregoing.

27. “**Frequently Asked Questions**” or “**FAQs**” are questions and answers to those questions that are frequently posed by Class Members about class action settlements and specifically about this Settlement.

28. “**Litigation**” shall mean the action captioned caption *Patterson, et al. v. DPP II, LLC, et al*, Case No. DC-23-01733, District Court for Dallas County, 14th Judicial District.

29. “**Long Form Notice**” is the content of the notice substantially in the form as **Exhibit B** is the detailed, long form notice that will be posted on the Settlement Website that will include robust details about the Settlement.

30. “**Notice**” means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement and **Exhibits B and D** and is consistent with the requirements of Due Process.

31. “**Notice Deadline**” means the last day by which Notice must be issued to the Class Members, the Long Form and Short Form Notices will be posted to the Settlement Website, and will occur thirty (30) days after the Court enters the Preliminary Approval Order.

32. “**Notice and Administrative Expenses**” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Class, locating Class Members, processing claims, determining the eligibility of any person to be a Class Member, and administering, resolving deficiencies in submitted claims, and calculating and distributing the Settlement Fund to Class Members. Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Settlement Agreement. Notice and Administrative Expenses shall be paid through and using the Settlement Fund.

33. “**Objection Deadline**” means the date by which a written objection to this Settlement Agreement must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as a date approximately sixty (60) days after Notice Deadline, or such other date as ordered by the Court.

34. “**Opt-Out Deadline**” is the last day on which a Class Member may file a request to be excluded from the Class, which will be sixty (60) days after the Notice Deadline. This Deadline will also be known as the Exclusion Deadline. Class Members’ opt-out requests may also be referred to herein as a Request for Exclusion.

35. “**Out-of-Pocket Losses**” means out-of-pocket costs or expenditures that a Class Member actually incurred that are supported by reasonable documentation not self-prepared documents. “Out-of-Pocket Losses” include things such as unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Data Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. .

36. “**Parties**” shall mean Plaintiffs and Defendant, collectively.

37. “**Plaintiffs,**” “**Class Representatives,**” or “**Class Plaintiffs**” shall mean the named class representatives Ida Patterson, Michael Lassiter, Selma Earls, and Colette Williams.

38. “**Plaintiffs’ Counsel**” shall mean Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, Joseph M. Lyon of The Lyon Firm, Brian C. Gudmunson of Zimmerman and Reed, LLP, Benjamin Johns of Shub and Johns, LLC, Terence Coates of Markovits, Stock & Demarco LLC, and Joe Kendall of Kendall Law Group, LLC.

39. “**Preliminary Approval Order**” shall mean the Court’s Order preliminarily approving the Settlement Agreement, certifying the Class for settlement purposes, and directing notice of the Settlement to the Class substantially in the form of the Notice set forth in this Settlement Agreement in a form substantially similar as that attached as **Exhibit C**.

40. “**Private Information**” means Plaintiffs’ and Class Members’ names, addresses, phone numbers, dates of birth, Social Security numbers, and other demographic (“PII”) as well as information relating to Plaintiffs’ and Class Members’ dental and medical history and insurance information and coverage (“PHI”).

41. “**Released Claims**” shall have the meaning ascribed to it as set forth in Section VIII of this Settlement Agreement.

42. “**Released Parties**” shall have the meaning ascribed to it as set forth in Section VIII of this Settlement Agreement.

43. “**Releasers**” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

44. “**Remainder Funds**” means any funds that remain in the Settlement Fund after all deductions from the Settlement Fund and for settlement payments to Class Members. Often in class actions settlements, some number of class members submitting valid claims and who are then issued a settlement check fail to cash and/or deposit their settlement payments. The funds remaining in the Settlement Fund after settlement payments have been distributed and the time for cashing and/or depositing checks has expired will be Remainder Funds. The Remainder Funds will be sent to one or more court-approved charitable organizations as a *cy pres* distribution. The Parties will jointly recommend the entity or entities to the Court that will be the recipient(s) of the *cy pres* distribution.

45. “**Service Awards**” shall have the meaning ascribed to it as set forth in Section IX of this Settlement Agreement. The Service Awards requested in this matter will be \$5,000 to each of the Plaintiffs, subject to court approval.

46. “**Settlement Administrator**” means, subject to Court approval, Epiq, an entity jointly selected and supervised by Class Counsel and Defendant to administer the settlement.

47. “**Settlement Fund**” means the amount to be paid by, or on behalf of Defendant, totaling one million four hundred thousand dollars and zero cents (\$1,400,000.00), including any interest accrued thereon after payment to the Settlement Administrator, this being the full and complete limit and extent of Defendant’s obligations with respect to the Settlement.

48. “**Settlement Payment**” means the payment to be made via mailed check and/or electronic payment to any Class Members who submitted valid Claim Forms from the Settlement Administrator from the Settlement Fund.

49. “**Settlement Website**” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of **Exhibits A-D** (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. The Settlement Website, www.DPPdatasettlement.com, will be publicly viewable and contain broad information about the Settlement, including but not limited to, copies of the Complaint filed in this matter, a copy of the Long Form Notice, Short Form Notice, FAQs, Claim Form that may be submitted online through the Settlement Website or mailed to the Settlement Administrator, and the deadlines for filing a

Claim, Objection, Exclusion requests, Fee and Expense Application, and the date of the Final Approval Hearing. The Settlement Website is viewed as an important piece of the notice plan to Class Members. The Settlement Website will remain active until 90 days after the Effective Date.

50. “**Short Form Notice**” is the postcard notice that will be mailed to each available Class Member attached as **Exhibit D**.

51. “**Taxes and Tax-Related Expenses**” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendant with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

III. SETTLEMENT FUND

52. **Establishment of Settlement Fund.** Within forty-five (45) days after the entry of the Preliminary Approval Order, Defendant shall cause to be deposited the Notice and Administrative Expenses through the date of final approval, as estimated by the Settlement Administrator, into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, Defendant, and Class Counsel, to cover the Settlement Administrator’s reasonable set-up costs, notice, and early administration costs. Defendant shall deposit the balance of the Settlement Fund into the same account within thirty (30) days of the Effective Date. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9, along with any other necessary forms, to Defendant within ten (10) days of the entry of the Preliminary Approval Order.

53. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Settlement Agreement, upon request of any of the Parties.

54. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance

returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraphs 77-78.

55. **Use of the Settlement Fund.** As further described in this Settlement Agreement and in **Exhibit A**, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (1) Documented Out-of-Pocket Losses; (2) Attested Lost Time; (3) Pro-Rata Cash Compensation; (4) Notice and Administrative Expenses; (5) Fee and Expenses Award, as approved and awarded by the Court; and (5) transfer of Remainder Funds to the extent any exist following the preceding administration of payments. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Settlement Agreement or approved by the Court. Responsibility for effectuating payments described in this Paragraph shall rest solely with the Settlement Administrator and neither Defendant nor Defendant's agents shall have any responsibility whatsoever with respect to effectuating such payments.

56. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund, if any, shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty, and have no responsibility, with respect to the tax treatment by any Class Representative or any Class Member of any payment or transfer made pursuant to this Settlement Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Settlement Agreement.

IV. SETTLEMENT BENEFITS AND ADMINISTRATION

57. The Settlement Administrator will agree to make the following compensation available to Class Members who submit valid and timely claim forms. Claims will be subject to review for completeness and plausibility by a Settlement Administrator, and Claimants will have the opportunity to seek review by the Parties' counsel, if they dispute the Settlement Administrator's initial determination. Class members may submit claims for one or more of the following:

- i. **Compensation for Documented Out-of-Pocket Losses:** The Settlement Administrator, from the Settlement Fund, will provide compensation, up to a total of \$5,000.00 per person who is a member of the Class, upon submission of a claim and supporting documentation, for out-of-pocket monetary losses incurred as a result of the Data Incident, including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Data Incident through the date of claim submission;

and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and/or,

Class Members submitting claims for Monetary Losses must submit documentation supporting their claims. This can include receipts or other documentation that document the costs incurred but does not include documentation that is “self-prepared” by the claimant. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

- ii. **Compensation for Attested Lost Time**: The Settlement Administrator, from the Settlement Fund, will provide compensation for up to 5 hours of lost time at \$25.00/hour (\$125 cap) for time spent responding to or mitigating the effects of the Data Incident. Class Members may submit claims for up to 5 hours of lost time with only an attestation demonstrating that they spent the claimed time responding to issues raised by the Incident. This attestation may be completed by checking a box next to the sentence: “I swear and affirm that I spent the amount of time noted in response to the DPP Data Incident.” Claims for lost time can be combined with claims for out-of-pocket loss but are subject to the \$5,000.00 cap.
- iii. **\$50 Cash Compensation (Pro Rata Cash Payment)**: After the distribution of attorneys’ fees, Class Counsel’s Litigation Expenses, Administrative Fees, Compensation for Out-of-Pocket Losses, and Lost Time, the Settlement Administrator will make pro rata settlement payments of any remaining funds to each Class Member who submits a claim. This may pro rata increase or decrease the \$50.00 cash payment;

58. **Settlement Administration Fees**: The Settlement Fund will pay the entirety of the Notice and Administrative Expenses, including the cost of Notice. The Parties agree to review competitive bids for the settlement administration fees in order to minimize the administration costs while still providing effective notice to the Class. Notice and Administrative Expenses shall be paid through the Settlement Fund and are limited to the common fund amount.

59. Defendant will reasonably cooperate on establishing the appropriateness of the settlement terms as contemplated under Tex. R. Civ. P. 42, including, but not limited to, a full class list that identifies each class member and their address and non-opposition to any motion for approval of the settlement or any Fee and Expense Application or motion for Service Awards.

60. Upon the Effective Date, and receipt of payee instructions and a Form W-9 for the payee, Defendant or its insurer shall pay to the Settlement Administrator the Settlement Fund to satisfy the payments in Paragraphs 45 and 57. Provided that Final Approval of this Settlement Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy Approved Claims for Class Members in exchange for a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Litigation with prejudice.

61. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement. Defendant's contribution to the Settlement Fund shall be fixed under this Settlement Agreement and shall be final. Defendant shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund, except insofar as such obligations are explicitly provided for in this Settlement Agreement.

62. Once a Settlement Administrator is mutually agreed to by the Parties and after the Administrator and the Settlement are preliminarily approved by the Court, the Settlement Administrator will provide Notice in a manner mutually agreed upon by the Parties.

63. After the Court enters an order approving the final Settlement Agreement, the Settlement Administrator shall provide the requested relief to all Class Members that made a valid timely claim, subject to the procedure set forth herein.

64. The Parties, Plaintiffs' Counsel, and Defendant's Counsel shall not have any liability whatsoever with respect to: (1) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (2) the management, investment or distribution of the Settlement Fund; (3) the formulation, design or terms of the disbursement of the Settlement Fund; (4) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (5) any losses suffered by or fluctuations in the value of the Settlement Fund; or (6) the payment or withholding of any Taxes and Tax-Related Expenses.

65. **Business Practices Changes**: Plaintiffs have received assurances that Defendant has undertaken reasonable steps to further secure its systems and environments.

V. **CLASS NOTICE, OPT-OUTS, AND OBJECTIONS**

66. **Notice**. Within fourteen (14) days after the date of the Preliminary Approval Order, Defendant shall provide the Class List to the Settlement Administrator. Within twenty-three (23) days after receipt of the Class List the Settlement Administrator shall begin to disseminate Notice to the Class Members. Notice shall be disseminated via U.S. mail to all Class Members and also via e-mail to Class Members whose personal e-mail addresses are known. The process to issue Notice as described in this Paragraph and the creation and maintenance of the Settlement Website www.DPPdatasettlement.com shall constitute the "Notice Plan."

67. **Final Approval Hearing**. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

68. **Opt-Outs**. The Notice shall explain the procedure for Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The Request for Exclusion must

include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement. The Notice must state that any Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

69. **Objections.** The Notice shall explain the procedure for Class Members to object to the Settlement or Fee and Expense Application by submitting written objections to the Court no later than the Objection Deadline. For an objection to be a valid objection under the Settlement, it must be in writing, postmarked by the Objection Deadline, filed with/or mailed to the Court and the Settlement Administrator and must include: (1) the name of the proceedings; (2) the Class Member's full name, current mailing address, email address, and telephone number; (3) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (4) the identity of any attorneys representing the objector; (5) a statement regarding whether the Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (6) a statement identifying all class action settlements objected to by the Class Member in the previous five (5) years; and (7) the signature of the Class Member or the Class Member's attorney.

70. **Claim Validation, Cure, and Deficiency Process.** After the Settlement Administrator reviews all claims submitted under this Settlement, it will send a summary to the Parties' Counsel identifying the number of valid claims and invalid claims. For invalid claims, the Settlement administrator will send Class Members submitting such claims a deficiency notice giving the class members 21 days to cure any deficiencies. The cost of the deficiency process is included in the Notice and Administrative Expenses. After all claims have been fully processed, including reviewing all claims that have been cured through the deficiency process, the Settlement Administrator will send a list of all valid claims to the Parties' Counsel.

VI. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

71. **Certification of the Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Class, which is contingent upon both the Court entering the Final Approval Order of this Settlement and the occurrence of the Effective Date.

72. **Preliminary Approval.** Following execution of this Settlement Agreement, Class Counsel shall file a motion for preliminary approval of the Settlement, in a form agreeable to the Parties, within 30 days after the Court enters the Preliminary Approval Order.

73. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order of this Settlement; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline.

74. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the

Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Plan and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

VII. MODIFICATION AND TERMINATION

75. **Modification.** The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Preliminary Approval Order the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Class Members under this Settlement Agreement.

76. **Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order; (2) the Effective Date does not occur; or (3) any court alters or modifies the Final Approval Order in any material respect, the Parties shall have sixty (60) days from the date of such non-occurrence to work together in good faith in considering, drafting, and submitting reasonable modifications to this Settlement Agreement to address any issues identified by the Court or that otherwise caused the Preliminary Approval Order or Final Approval Order not to issue or the Effective Date not to occur. If such efforts are unsuccessful, either Party may at their sole discretion terminate this Settlement Agreement on seven (7) days written notice to the other Party. For avoidance of any doubt, neither Party may terminate the Settlement Agreement while an appeal from an order granting approval of the Settlement is pending.

77. **Termination.** Defendant may also unilaterally terminate this Settlement Agreement on seven (7) days written notice to Class Counsel if more than the agreed-upon number of individuals (more than 250 Class Members) submit valid Requests for Exclusion, as agreed to by the Parties and as communicated to the Court *in camera*.

78. **Effect of Termination.** In the event of a termination as provided in Paragraph 76, this **Settlement** Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into this Settlement Agreement. Further, in the event of such a termination, any certification of the Class for settlement purposes shall be void. In the event of such a termination, all of the Parties' respective pre-Settlement Agreement claims and defenses will be preserved.

VIII. RELEASES

79. Upon Final Approval of this Settlement Agreement, Class Members release, acquit, and forever discharge Defendant and its past or present agents, subsidiaries, parents, and affiliates, and their respective employees, officers, directors, shareholders, partners, members, managers,

owners, heirs, executors, predecessors, successors, assigns, insurers (including excess insurers and reinsurers), vendors, attorneys, and/or sureties (“Released Parties”) from any claims, demands, rights, actions, or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters, and issues of any kind or nature, whether known or unknown, that each Class member has, had, or may ever have, now or in the future, known or unknown, arising out of or in any way related to the Data Incident whether or not those claims, demands, rights, actions, or causes of action have been pleaded or otherwise asserted, including any and all damages, losses, or consequences thereof (“Released Claims”).

80. Each Releasor waives any and all defenses, rights, and 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.

81. **Release of Class Representatives and Plaintiffs’ Counsel.** Upon the Effective Date, Defendant and its representatives, officers, agents, directors, principals, affiliates, employees, insurers, and attorneys shall be deemed to have released, acquitted, and forever discharged the Class Representatives and Plaintiffs’ Counsel from any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys’ fees, costs, interest or expenses), whether known or unknown, that arise out of, are based upon, or relate to prosecution of the Action, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of the Settlement or this Settlement Agreement).

82. **Bar to Future Suits.** Upon entry of the Final Approval Order, the Class Representatives and other Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Defendant or based on any actions taken by any of the Released Parties that are authorized or **required** by this Settlement Agreement or by the Final Approval Order. Likewise, Defendant and its representatives, officers, agents, directors, principals, affiliates, employees, insurers, and attorneys shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Class Representatives and Plaintiffs’ Counsel or based on any actions taken by Class Representatives and Plaintiffs’ Counsel that are authorized or required by this Settlement Agreement or by the Final Approval Order. It is further agreed that the Settlement Agreement may be pleaded as a complete defense to any proceeding subject to this section.

IX. ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS

83. **Attorneys’ Fees and Expenses.** Within forty-five (45) after the Notice Deadline, Class Counsel will file a Fee and Expense Application for an award of attorneys’ fees to be paid from the Settlement Fund not to exceed one-third (33.33%) of the Settlement Fund for fees, or \$466,666.66, and for their reasonable litigation expenses. Before the disbursement or payment of the Fee Award and Expenses under this Settlement Agreement to the IOLTA trust account of

Markovits, Stock & DeMarco, LLC (“MSD”), MSD shall provide to the Settlement Administrator a properly completed and duly executed IRS Form W-9. Fee Award and Costs (plus any interest accrued thereon) shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

84. **Service Awards.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, **Class Counsel** will file a Fee and Expense Application that will include a request for a Service Award for each of the Class Representatives not to exceed \$5,000.00 in recognition for this or her contributions to this Litigation. Within three (3) days after filing the Fee and Expense Application, the Fee and Expense Application shall be posted on the Settlement Website. The Settlement Administrator shall make the Service Award payments to the Class Representatives from the Settlement Fund. Such Service Award payments shall be paid by the Settlement Administrator in the amount approved by the Court no later than thirty (30) days after the Effective Date.

85. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of Service Awards and/or Attorneys’ Fees and Expenses in the amounts requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court concerning the amount of the Service Awards and/or Attorneys’ Fees and Expenses shall constitute grounds for termination of this Settlement Agreement.

X. NO ADMISSION OF LIABILITY

86. **No Admission of Liability.** The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Settlement Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever.

87. **No Use of Agreement.** Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of it: (1) is, or may be deemed to be, or may be used as, an admission of or evidence of the validity of any claim made by Plaintiffs or on behalf of the class; or (2) is or may be deemed to be, or may be used as, an admission of or evidence of any fault or omission by Defendant in the Litigation or in any proceeding in any court, administrative agency or other tribunal.

XI. MISCELLANEOUS

88. **Publicity.** The Parties agree that they shall not publicize this settlement, Settlement Fund or Settlement Payment, the amount or sum of individual Class Representative’s or Class Members’ shares or the events and negotiations surrounding this Settlement Agreement in any way except by joint pleadings or unopposed motions filed with the Court, if required. Subject to prior approval from Defendant, which shall not be unreasonably withheld, Class Counsel and Plaintiffs’ Counsel may post information on their law firm websites about the Settlement that is consistent with the notice program and Settlement. If any Party believes a statement is made in

violation of this provision, the Parties shall meet-and-confer informally in an effort to resolve the dispute. If the dispute cannot be resolved informally, it shall be submitted to the Court for resolution.

89. **Integration of Exhibits.** Any exhibits to this Settlement Agreement are a material part of the Settlement and are incorporated and made a part of the Settlement Agreement.

90. **Entire Agreement.** This Settlement Agreement, including all exhibits hereto, shall constitute the entire agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, **communications**, and understandings among the Parties. This Settlement Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible and where such changes are non-material, the exhibits to this Settlement Agreement may be modified by subsequent agreement of counsel for the Parties prior to dissemination of the Class Notice to the Class.

91. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to “days” in this Settlement Agreement shall refer to calendar days unless otherwise specified.

92. **Construction.** For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that this Settlement Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed for or against any Party on those grounds.

93. **Cooperation of Parties.** The Parties to this Settlement Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the settlement described in this Settlement Agreement.

94. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Settlement Agreement, the Parties shall meet and confer with each other in good faith prior to seeking Court intervention.

95. **Governing Law.** The Settlement Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to the principles thereof regarding choice of law.

96. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically through e-mail of an Adobe PDF shall be deemed an original.

97. **Notices.** All notices to Class Counsel provided for herein shall be sent by overnight mail and email to:

Gary M. Klinger
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
(866) 252-0878

All notices to Defendant provided for herein shall be sent by overnight mail and email to:

Bryan T. Kostura
MCDONALD HOPKINS LLC
600 Superior Avenue, East, Suite 2100
Cleveland, Ohio 44114
bkostura@mcdonaldhopkins.com

The notice recipients and addresses designated above may be changed by written notice to the other Party.

98. **Authority.** Any person executing this Settlement Agreement in a representative capacity **represents** and warrants that he or she is fully authorized to do so and to bind the Party or Parties on whose behalf he or she signs this Settlement Agreement to all of the terms and provisions of this Settlement Agreement.

By: _____
DPP II, LLC d/b/a
Home Care Providers of Texas
Defendant

Date: _____

By: _____
Bryan T. Kostura
McDonald Hopkins, LLC
Counsel for Defendant

Date: _____

By: _____
Ida Patterson
Plaintiff

Date: _____

By: _____
Michael Lassiter
Plaintiff

Date: _____

By: _____
Selma Earls
Plaintiff

Date: _____

By: _____
Colette Williams
Plaintiff

Date: _____

By: Gary M. Klinger
Gary M. Klinger
Counsel for Plaintiffs and the Class

Date: October 20, 2023

SETTLEMENT TIMELINE

<u>Grant of Preliminary Approval</u>	
DPP provides list of Class Members to the Settlement Administrator	+7 days after Preliminary Approval
Settlement Administrator provides W-9 to DPP	+10 days after Preliminary Approval Order
Notice Deadline	+30 days after Preliminary Approval
Deadline for Defendant to deposit funds for notice and administration costs through Final Approval to the Settlement Fund	+45 days after Preliminary Approval
Class Counsel's Fee and Expense Application, and Request for Class Representative Service Awards	+45 days after Notice Deadline
Objection Deadline	+60 days after Notice Deadline
Exclusion Deadline	+60 days after Notice Deadline
Claims Deadline	+90 days after Notice Deadline
Settlement Administrator Provide List of Objections/Exclusions to the Court and Class Counsel	+70 days after Notice Deadline
Initially Approved Claims List	+35 days after Claims Deadline
Initially Rejected Claims List	+35 days after Claims Deadline
Parties' Challenge to Any Claims	+ 35 days from Initially Approved Claims List
<u>Final Approval Hearing</u>	+150 days after Preliminary Approval Order (at minimum)
Motion for Final Approval	-14 days before Final Approval Hearing Date
Settlement Administrator Provide Notice of Opt-Outs and/or Objections	-14 days before Final Approval Hearing Date
<u>Final Approval</u>	
Effective Date	+35 days after Final Approval Order
Payment of Attorneys' Fees and Expenses, and Class Representative Service Awards	+30 days after Effective Date
Settlement Website Deactivation	+90 days after Effective Date