

## **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

Plaintiff Veronica Hubbard (“Plaintiff” or “Class Representative”), on behalf of herself and all others similarly situated, and Defendant Livingston Memorial VNA Health Corporation, Livingston Memorial Visiting Nurse Association and Livingston Caregivers (“Defendant” or “Livingston”) (collectively, the “Parties”), hereby enter into this Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), subject to Court approval. In consideration of the mutual promises, agreements, and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, the Parties stipulate and agree as follows:

### **I. RECITALS**

**WHEREAS**, on March 10, 2023, Plaintiff Veronica Hubbard filed her putative class action Complaint against Livingston in the Superior Court of California for the County of Ventura. Plaintiff filed her operative First Amended Complaint on August 15, 2023, asserting causes of action for (1) Negligence, (2) Breach of Implied Contract, and (3) Violation of the Confidentiality of Medical Information Act (Cal. Civ. Code § 56);

**WHEREAS**, the Parties participated in an arms-length mediation on October 5, 2023;

**WHEREAS**, in the Class Action Complaint (the “Complaint”), Class Representatives seek to certify a class affected by the Incident as follows:

All individuals within the State of California that received notice from Livingston Memorial VNA Health Corporation, Livingston Memorial Visiting Nurse Association and/or Livingston Caregivers of a Data Breach occurring between February 6, 2022 and February 11, 2022.

**WHEREAS**, Livingston denies liability, and Plaintiff and Livingston recognize the outcome of the Action and the claims asserted in the Complaint are uncertain, and that pursuing the Action to judgment would entail substantial cost, risk and delay;

**WHEREAS**, the Parties have explored and discussed at length the factual and legal issues in the Action and participated in an arms-length mediation with the Honorable Wayne Andersen, concerning the issues raised by Plaintiff in the Action, and have agreed to a global, final settlement of the Action that renders the need for further litigation unnecessary;

**WHEREAS**, the Parties desire to compromise and settle all issues, claims, and/or facts asserted in the Action, or that could have been asserted based upon the facts alleged in the Action, by or on behalf of Class Representatives and the Class;

**WHEREAS**, Class Representative, by and through Class Counsel, has (a) made a thorough investigation of the facts and circumstances surrounding the allegations asserted in the Action, (b) engaged in investigation of the claims asserted in the Action, including informal discovery obtained by Class Representative in connection with the Action and prior to execution of this Agreement, and (c) evaluated and considered the law applicable to the claims asserted in the Action, including the defenses that Livingston likely would assert;

**WHEREAS**, Plaintiff’s counsel are experienced in this type of class litigation, recognize the costs and risks of prosecution of this Action, and believe that it is in Class Representatives’ interest, and the interest of all Class Members, to resolve this Action, and any and all claims against Livingston arising from the conduct alleged in the Action, and in this Settlement Agreement;

**WHEREAS**, Livingston does not believe Class Representative’s claims are meritorious and has denied and continues to deny any and all claims alleged by Class Representative, and has denied and continues to deny that it is legally responsible or liable to Class Representative or any member of the Class for any of the matters and/or claims asserted in this Action, or that could have been asserted based upon the facts alleged in the Action, but has concluded that settlement is desirable to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of Class Representative and all members of the Class relating to claims which were or could have been asserted by Class Representative and the Class in this Action relating to the alleged practices and Incident at issue;

**WHEREAS**, the Parties agree that the proposed settlement is fair, adequate, and reasonable;

**WHEREAS**, significant arm’s-length settlement negotiations have taken place between the Parties and, as a result, this Settlement Agreement has been reached without collusion, subject to the Court-approval process set forth herein;

**WHEREAS**, the undersigned Parties believe this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate and in the best interest of Class Members; and

**WHEREAS**, this Settlement Agreement is made and entered into by and between Class Representatives, individually and on behalf of the Class, and Livingston;

**NOW, THEREFORE**, it is hereby stipulated and agreed, by and between the Parties, as follows:

## **II. DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the meanings set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. “Action” means the case styled *Veronica Hubbard v. Livingston Memorial VNA Health Corp., Livingston Memorial Visiting Nurse Association, Livingston Caregivers and Does 1 through 100, inclusive*, Case No. 56-2023-00576342-CU-NP (Superior Court of California, County of Ventura).

B. “Class” and “Settlement Class” mean the class defined as: “All individuals within the State of California whose PHI/PII was exposed to unauthorized third parties as a result of the Data Breach occurring between February 6, 2022 and February 11, 2022.” Officers of Defendant, the judges presiding over the Action, their staff, and members of their immediate family, and Class Members who submit a Request for Exclusion, the successors and assigns of any such excluded

persons, and any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Incident or who pleads nolo contendere to any such charge, are excluded from the Class.

C. “Class Counsel” means Laura Van Note of Cole & Van Note.

D. “Claim Deadline” means forty-five (45) days from the Class Notice Date, or a date otherwise ordered by the Court.

E. “Claim Form” means the form a Final Settlement Class Member must submit to receive a Settlement Share under this Agreement, substantially similar to **Exhibit 1**.

F. “Class Members” and “Settlement Class Members” mean members of the “Class” and “Settlement Class” as set forth in Paragraph B above.

G. “Class Notice” means the Court-approved form of Notice to the Class posted on the Settlement Website substantially similar to **Exhibit 2** hereto, mutually prepared and agreed upon by the Parties, informing the Class of, among other things, (i) the preliminary approval of the Settlement, (ii) the scheduling of the Final Approval Hearing, (iii) the Settlement benefits available to Final Settlement Class Members, and (iv) their opportunity to participate in, object to or exclude themselves from the Settlement.

H. “Class Notice Date” means twenty (20) calendar days after the Court’s entry of the Preliminary Approval Order.

I. “Class Representative” means Veronica Hubbard.

J. “Court” means the Superior Court of California for the County of Ventura.

K. “Defendant’s Counsel” means James W. Davidson of O’Hagan Meyer.

L. “Effective Date” means the date by when (a) if there are no objections to the Settlement submitted, or any timely objections have been submitted and then withdrawn before entry of the Final Approval Order, then the date the Court enters the Final Approval Order, or (b) if an objection to the Settlement has been submitted by a member of the Final Settlement Class found by the Court to have standing to object, sixty-five (65) calendar days after the Court enters the Final Approval Order, or (c) if any appeal, writ or other appellate proceeding opposing the Court’s Final Approval Order has been filed by a member of the Final Settlement Class found by the Court to have standing to object, five (5) business days after any appeal, writ or other appellate proceedings opposing the Final Approval Order have been finally and conclusively dismissed with no right to pursue further remedies or relief.

M. “Final Approval Hearing” means the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order and at which the Court may or may not consider and finally decide approving payment of any Service Award and Plaintiff’s Counsel’s Fees and Expenses.

N. “Final Approval Order” means the Final Approval Order and separate Judgment of the Court that approves this Settlement Agreement and makes such other final rulings as are contemplated by this Settlement Agreement, substantially similar to the order and judgement collectively attached to this Agreement as **Exhibits 4 and 5**, respectively.

O. “Final Settlement Class” refers to all members of the Settlement Class who do not timely and validly exclude themselves from the Class in compliance with the exclusion procedures set forth in this Agreement.

P. “Final Settlement Class Member” refers to a member of the Final Settlement Class.

Q. “Incident” means the data incident first discovered by Defendant on or about February 19, 2022, and announced by Defendant on or about January 20, 2023.

R. “Livingston” means Livingston Memorial VNA Health Corporation, Livingston Memorial Visiting Nurse Association and Livingston Caregivers.

S. “Objection Date” means forty-five (45) days from the Class Notice Date, or a date otherwise ordered by the Court, for members of the Class to object to the Settlement Agreement’s terms or Plaintiff’s Counsel’s Fees and Expenses, and to submit any required statements, proof or other materials and/or argument.

T. “Parties” means Plaintiff and Defendant.

U. “Plaintiff” or “Class Representative” means Veronica Hubbard.

V. “Plaintiff’s Counsel’s Fees and Expenses” means \$250,000, for attorneys’ fees, plus Plaintiff’s counsel’s actual costs, up to a cap of \$20,000, paid from the Settlement Fund, subject to approval of the Court.

W. “Preliminary Approval Order” means the order of the Court preliminarily approving this Settlement Agreement, substantially similar to the order attached as **Exhibit 3**.

X. “Released Claims” means the claims released by this Settlement Agreement, as set forth in Section X.

Y. “Released Parties” means Livingston, and its parents, subsidiaries, predecessors, successors, divisions, joint ventures, affiliates and related entities of any nature whatsoever, whether direct or indirect, and all of their respective past and present directors, officers, employees, partners, principals, agents, attorneys, insurers, reinsurers, assigns and related or affiliated entities, or any Person related to any such entity who is, was or could have been named as a defendant in the Action.

Z. “Request for Exclusion” means a timely and valid request by any Class Member for exclusion from the Settlement. To the extent any Class Member delivers both a timely and valid Claim Form to the Settlement Administrator and a timely and valid request for exclusion, the request for exclusion will be deemed to be invalid and the Claim Form will be processed.

AA. “Request for Exclusion Deadline” means forty-five (45) days from the Class Notice Date, or a date otherwise ordered by the Court, for Class Members to request exclusion from the Settlement.

BB. “Service Award” means the amount to be paid to the Class Representative to compensate her for the time and effort on behalf of the Class, subject to approval of the Court, and which shall not exceed an amount of five thousand dollars (\$5,000).

CC. “Settlement” and “Settlement Agreement” mean the agreement by the Parties to resolve this Action, the terms of which have been memorialized herein.

DD. “Settlement Administrator” means CPT Group.

EE. “Settlement Share” refers to the pro rata payment as calculated in Section IV.E. to which a member of the Final Settlement Class who timely submits a valid Claim Form becomes entitled pursuant to this Settlement. To be timely, a member of the Final Settlement Class must submit a timely and valid Claim Form by the Claim Deadline.

FF. “Settlement Website” means the website with a URL to be agreed upon by the parties, which is to be established by the Settlement Administrator that will inform members of the Settlement Class of the terms of this Settlement Agreement, their rights, dates and deadlines and related information, and shall include in .pdf format and available for download the following: (1) the Class Notice, (2) the Claim Form, (3) the Preliminary Approval Order, (4) this Settlement Agreement, (5) the Complaint, and (6) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide the members of the Settlement Class with the ability to complete and submit the Claim Form electronically.

### **III. REQUIRED EVENTS**

Promptly after execution of this Settlement Agreement by all Parties:

A. Class Counsel and Defendant’s Counsel shall take all reasonable and necessary steps to obtain entry of the Preliminary Approval Order and obtain entry of the Final Approval Order. Class Counsel shall prepare and file all documents in connection with the Motion for Preliminary Approval and the Motion for Final Approval.

B. In the event that the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court. If, despite their best efforts, the Parties cannot cure said defects, the Settlement Agreement is voidable at the election of Class Representative or Defendant with each party returning to their respective pre-settlement posture and without prejudice or waiver to any party’s pre-settlement position on any legal or factual issue.

C. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement as set forth in this Agreement is essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials

and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

D. Upon Entry of the Final Approval Order, the Court must enter Judgment in accordance with the terms of this Settlement Agreement, substantially as provided in the Final Approval Order. The Final Approval Order must enjoin the prosecution of any litigation or class action by Plaintiff or any Class Member related to or arising out of the Complaint and Action.

#### **IV. SETTLEMENT TERMS**

A. Cash Payment: Livingston agrees to pay six hundred and seventy-five thousand dollars (\$675,000) to a Qualified Settlement Fund (QSF) established by the Settlement Administrator. The cash payment of six hundred and seventy-five thousand dollars (\$675,000) will be referred to as the "Settlement Fund." No later than thirty (30) calendar days after entry of the Preliminary Approval Order, and upon the receipt of sufficient payment information from the Settlement Administrator, Defendant will advance to the Settlement Administrator the estimated cost of preparing and mailing the Postcard Notice to Class Members. The balance of the amount required by Defendant to be paid to the Settlement Administrator in connection with the Final Approval Order will be due within ten (10) business days of the Effective Date. The Settlement Administrator shall establish a QSF, as defined by 26 C.F.R. 1.468B-1, for the deposit of the payment of the balance of the Settlement Fund. Under no circumstances will Livingston have any further monetary payment obligation other than the payment of the Settlement Fund. There will be no reversion of the Settlement Fund to Livingston.

B. Payments from Settlement Fund: The costs of settlement administration, including notice and distributions to members of the Final Settlement Class, the costs of administering the Settlement Fund, and reasonable fees of the Settlement Administrator, Plaintiff's Counsel's Fees and Expenses and Class Representative's Service Award shall be paid exclusively from the Settlement Fund. There will be no reversion of the Settlement Fund to Livingston.

C. Service Awards to the Class Representatives: Class Counsel will move the Court for a Service Award payment from the Settlement Fund for the Class Representative in an amount not to exceed five thousand dollars (\$5,000), in recognition of the risks taken by her as the Class Representative in commencing the Action, both financial and otherwise. Defendant will not oppose Class Counsel's request for a Service Award payment from the Settlement Fund in this amount. The Service Award shall be in addition to the other benefits provided by the Settlement to Final Settlement Class Members. If awarded by the Court, the Settlement Administrator shall pay from the Settlement Fund the Service Award to the Class Representative in the manner directed by Class Counsel within fourteen (14) business days after the Effective Date.

D. Payment of Plaintiff's Attorneys' Fees and Costs: Class Counsel will move the Court for an award of Plaintiff's Counsel's attorneys' fees to be paid from the Settlement Fund in an amount not to exceed Two Hundred and Fifty Thousand dollars (\$250,000), plus reasonable litigation costs and expenses, up to a cap of Twenty Thousand dollars (\$20,000). Defendant will not oppose Class Counsel's request for reasonable attorneys' fees and litigation costs from the Settlement Fund in this amount. Class Counsel, in their sole discretion, shall allocate and distribute any amounts of attorneys' fees, costs and expenses awarded by the Court among Plaintiff's

counsel. If awarded by the Court, the Settlement Administrator shall pay from the Settlement Fund any Plaintiff's Counsel's Fees and Expenses in the amounts awarded by the Court within fourteen (14) business days after the Effective Date. Payment will be made as directed by Class Counsel.

E. Payment of Settlement Share to Class Members: Each member of the Final Settlement Class who submits a timely and valid Claim Form electing the Settlement Share benefit shall be entitled to receive to a *pro rata* cash distribution payment from the Settlement Fund referred to as the "Settlement Share." As set forth below, the Settlement Fund will be used to pay for: (1) Cash payments to Final Settlement Class members that submit a valid Claim Form, (2) notice and administration costs, (3) the service award payment approved by the Court, and (4) attorney's fees and expenses awarded by the Court.

Cash Payments will be paid last and will be increased or decreased *pro rata* to consume the remaining amount of the Settlement Fund after payment for notice and administration costs, service award payments approved by the Court, and attorney' fees and expenses awarded by the Court.

## V. REQUESTS FOR CASH PAYMENTS BY CLASS MEMBERS

A. Members of the Final Settlement Class will be required to submit a Claim Form to receive a distribution payment from the Settlement Fund referred to as the "Settlement Share." Each Final Settlement Class Member is limited to the submission of one Claim Form and in no event shall a Final Settlement Class Member receive more than one Settlement Share. The Settlement Administrator will issue Settlement Share checks only to Final Settlement Class Members who submit timely and valid Claim Forms electing a Settlement Share. To be entitled to receive a Settlement Share under this Agreement, Class Members must properly complete a Claim Form and timely deliver it to the Settlement Administrator within forty-five (45) days from the Class Notice Date. The delivery date for submission of a Claim Form is deemed to be the date (a) the form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. Mail, or (b) in the case of submission electronically through the Settlement Website, the date the Settlement Administrator receives the form, as evidenced by the transmission receipt. Any Class Member who fails to submit a valid and timely Claim Form will not receive a Settlement Share under this Agreement.

B. All Settlement Class Members may make claims under the Settlement Fund as set forth below:

1. **Cash Payments.** Settlement Class Members may elect to receive a cash payment in an amount equal to the "Settlement Share" as defined below.
2. **Identity-Theft Protection:** Settlement Class Members may elect to receive one year of complimentary single-bureau identity theft prevention in addition to their Cash Payment.

C. Each member of the Final Settlement Class who submits a timely and valid Claim Form shall be entitled receive a pro rata cash distribution payment from the Settlement Fund referred to as the “Settlement Share.” The Settlement Administrator shall calculate the Settlement Share by (i) taking the Settlement Fund, (ii) subtracting the amounts to be paid for cost of settlement administration, including notice to Class Members and reasonable fees of the Settlement Administrator, Class Counsels’ Fees and Expenses and Class Representatives’ Incentive Awards, as approved by the Court (= Z), and (iii) dividing the sum of such number by the number of Class Members who do not opt out of the Settlement and who submit a timely and valid Claim Form within forty-five (45) days from the Class Notice Date (= X) as represented in the following formula:

$$\text{Settlement Share} = \frac{\text{Settlement Fund} - Z}{X}$$

D. Together with the data security measures Defendant had employed prior to the alleged confidentiality breach, which Defendant contends were adequate, reasonable and legally compliant, Defendant has provided or will provide additional remedial measures and Defendant values these measures at approximately sixty-four thousand dollars (\$64,000.00). Defendant, by executing this Agreement, acknowledges and stipulates that Defendant’s additional security measures include or will include:

1. \$59,500 in estimated expenses for Cybersecurity Infrastructure.
2. \$4,500 in estimated expenses for Annual HIPPA Privacy and Security Risk Assessments.

E. As a result of the forgoing value, the Parties agree that the Settlement Benefits to the Class are valued at approximately seven hundred thirty-nine thousand dollars (\$739,000.00) , as consideration to settle this matter on a class-wide basis.

F. The Settlement Administrator shall provide Class Counsel and Defendant’s counsel with a weekly report informing them of any and all Claim Forms received by the Settlement Administrator during each week following the Class Notice Date. The Settlement Administrator must file a Declaration reporting on the mailing of the Class Notice and identifying the number of Claim Forms, Requests for Exclusion and objections received no later than sixteen (16) court days prior to the Final Approval Hearing.

G. The amount of each Settlement Share check sent to members of the Final Settlement Class who submit a timely and valid Claim Form will be determined by the Settlement Administrator by making a calculation of a pro rata cash distribution payment from the Settlement Fund to all members of the Final Settlement Class who submit a timely and valid Claim Form. If the Court approves the amounts to be requested for settlement administration, including notice to Class Members and reasonable fees of the Settlement Administrator, Plaintiff’s Counsel’s Fees and Expenses, and Class Representative’s Service Award, a Settlement Share check is estimated to be approximately four hundred and forty-four dollars and forty-four cents (\$444.44) if the total



number of timely and valid Claim Forms electing a Settlement Share equals eight hundred and ten Class Members (810) (or 3% of the 27,000 Settlement Class Members).

H. Within thirty (30) days of the Effective Date, the Settlement Administrator will disburse Settlement Share checks to each Final Settlement Class Member who submits a timely and valid Claim Form. For any Settlement Share check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator will make reasonable efforts to find a valid address, including skip tracing, and will resend any returned Settlement Share check within thirty (30) days after the Settlement Share check is returned to the Settlement Administrator as undeliverable.

I. Absent a demonstration of reasonable circumstances for excuse, any Settlement Share check not cashed within ninety (90) days of issuance (based on the date of the check) will be deemed expired. Any member of the Final Settlement Class who does not cash their Settlement Share check within the aforementioned time period may petition the Settlement Administrator within thirty (30) days of the expiration of their uncashed check to reissue their Settlement Share check, and the Settlement Administrator will issue a new check. Members of the Final Settlement Class are entitled to only one petition on this basis, and any Settlement Share check reissued for such reasonable circumstances will expire within thirty (30) days of issuance (based on the date of the check). Final Settlement Class Members who do not timely cash their Settlement Share checks and who fail to petition for a reissuance of the uncashed Settlement Share check will be considered as having waived any right to a cash payment under the Settlement Agreement but will still be able to obtain other benefits provided by the Settlement. In no event will a Final Settlement Class Member be permitted to cash a check once the value of uncashed checks has been paid to a *cypres* organization.

J. The total amount of uncashed Settlement Share checks will be paid to a charitable organization to be agreed upon by Livingston and Class Counsel, and approved by the Court, for the provision of services to victims of identity theft and fraud-related crimes or, alternatively, to a charitable organization that conducts services the Court deems appropriate given the facts underlying the Action.

## **VI. IDENTITY THEFT PROTECTION PACKAGE ACTIVATION**

A. Disbursement of Activation Codes for Identity Theft Protection Package: Within fourteen (14) days following entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator a list of all Class Members in Excel format that also includes each Class Member's Date of Birth information which is necessary for the processing of Identity Theft Protection Package benefits. Livingston agrees that the Settlement Administrator can disclose the total number of Class Members who will be eighteen (18) years old through the end of the activation period with Class Counsel. No later than thirty (30) days after the Effective Date, the Settlement Administrator will send to Experian (i) payment to Experian for Identity Theft Protection Package for all Final Settlement Class members and (ii) a list of Final Settlement Class members to Experian in order to allow Experian to send the Settlement

Administrator activation codes for each member of the Final Settlement Class in order to activate their Identity Theft Protection Package subscription.

B. Activation of Identity Theft Protection Package subscription: Final Settlement Class Members will have ninety (90) days after the code is sent by Experian to them to activate their Identity Theft Protection Package subscription. Any member of the Final Settlement Class who fails to activate their Identity Theft Protection Package subscription by the activation deadline will be considered as having waived any right to activate their Identity Theft Protection Package subscription but will still be able to obtain other benefits provided by the Settlement.

## **VII. SETTLEMENT ADMINISTRATION**

A. Engagement of Settlement Administrator. Promptly upon entry of the Preliminary Approval Order (if not sooner), the Parties shall engage CPT Group as the Settlement Administrator, which shall be paid reasonable fees, estimated not to exceed \$58,500, exclusively from the Settlement Fund.

B. Class Member Information. No later than fourteen (14) days after entry of the Preliminary Approval Order, Livingston shall provide the Settlement Administrator with Settlement Class Member information necessary for the Settlement Administrator to mail the Postcard Notice to Settlement Class Members.

C. Duties of Settlement Administrator. In addition to other duties as set forth in this Agreement, the Settlement Administrator shall be solely responsible for the following:

1. Preparing, printing, and disseminating the Postcard Notice to Class Members;
2. No later than the Class Notice Date, sending by First Class Mail the Postcard Notice to all known Class Members. The Parties agree to use their best efforts and to work cooperatively to obtain the best practicable Class Member contact information prior to the date of mailing of the first Postcard Notice. For those Postcard Notices that are returned as undeliverable with a forwarding address, the Settlement Administrator will forward the Postcard Notice to the new address. For those Postcard Notices that are returned as undeliverable with no forwarding address, the Settlement Administrator will run a skip trace in an attempt to obtain a current address and re-mail Postcard Notices to any current addresses it locates;
3. From the date of mailing of the first Postcard Notice, and thereafter for six (6) months after the Effective Date, maintaining (i) the Settlement Website, and (ii) a toll-free number with recorded answers to commonly asked settlement questions, the ability to leave a message and request a call back, and reference to the Settlement Website;
4. Keeping track of Requests for Exclusion, including maintaining the original mailing envelope in which each request was mailed;

5. Keeping track of Claim Forms, including maintaining the original mailing envelope in which each form was mailed;
6. Keeping track of objections, including maintaining the original mailing envelope in which each objection was mailed;
7. Keeping track of all other communications from Class Members, including maintaining the original mailing envelope in which any communication was mailed;
8. Maintaining adequate records of its activities, including the dates of each mailing of Class Notices, returned mail and other communications, and attempted written or electronic communications with Class Members;
9. Promptly furnishing to counsel for the Parties (i) copies of any Requests for Exclusion, (ii) copies of any objections, and (iii) all other written or electronic communications received from Class Members;
10. Determining whether Requests for Exclusion comply with the terms of this Agreement and are timely and valid and effective to exclude the submitting Class Member from the Class;
11. Determining whether Claim Forms comply with the terms of this Agreement and are timely and valid;
12. Promptly preparing and distributing any rejection of a Request for Exclusion to the submitting Class Member. Rejections shall set forth the reason(s) for rejection, including the reason(s) the Request for Exclusion fails to comply with the terms of this Agreement;
13. Promptly preparing and distributing notices of deficiencies to the submitting Class Member that set forth the reasons their Claim Form is deficient, including the reason(s) the Claim Form fails to comply with the terms of this Agreement;
14. Delivering to the Parties' counsel in a reasonably timely manner, but in no event later than sixteen (16) court days before the Final Approval Hearing, a written report concerning all Requests for Exclusion (valid and invalid), all Claim Forms (valid and deficient), and all objections;
15. Establishing a Qualified Settlement Fund (QSF), as defined by 26 C.F.R. 1.468B-1, for the deposit of the Settlement Fund payment, ensuring that all taxes associated with the administration of the Settlement Fund are timely paid to the appropriate tax authorities and all tax filings are timely filed, which taxes shall be paid from the Settlement Fund;
16. Determining the Settlement Share of each member of the Final Settlement Class in accordance with this Agreement;

17. Preparing a list of Final Settlement Class Members;
18. No later than thirty (30) days after the Effective Date, distributing the Settlement Share of each Final Settlement Class Member who submitted a timely and valid Claim Form by sending a check by First Class Mail to each such member in the amount of the Settlement Share;
19. No later than thirty (30) days after the Effective Date, sending payment to Experian for Identity Theft Protection Package for all members of the Final Settlement Class who elected to receive the Identity Theft Protection Package benefit;
20. No later than fourteen (14) calendar days after the Effective Date, distributing any Service Award approved by the Court in the amount of the award approved by the Court to their attorneys of record;
21. No later than fourteen (14) days after the Effective Date, preparing and distributing, in accordance with this Agreement and the Final Approval Order, Plaintiff's counsel's reasonable attorneys' fees and costs as directed by Class Counsel; and
22. Confirming in writing its completion of the administration of the Settlement.

D. Costs of Settlement Administration. All expenses incurred in administering this Settlement Agreement, including, without limitation, the cost of the Postcard Notice, Settlement Website, and toll-free telephone line, the cost of distributing and administering the benefits of the Settlement Agreement, and the Settlement Administrator's reasonable fees shall be paid to the Settlement Administrator from the Settlement Fund, subject to the approval of the Court.

### **VIII. REQUESTS FOR EXCLUSION BY CLASS MEMBERS**

A. Any Class Member may make a Request for Exclusion by mailing such request in writing to the Settlement Administrator at the address set forth in the Class Notice. Any Request for Exclusion must be postmarked no later than forty-five (45) days after the Class Notice Date or such other date specified in the Court's Preliminary Approval Order. The Request for Exclusion shall (i) state the Class Member's full name and current address, and be personally signed, and (ii) specifically state his or her desire to be excluded from the Settlement and from the Class. Failure to comply with these requirements and to timely submit the Request for Exclusion will result in the Class Member being bound by the terms of the Settlement.

B. Any Class Member who submits a timely Request for Exclusion may not make any objections to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

C. The Settlement Administrator shall provide Class Counsel and Defendant's counsel with a weekly report informing them of any Requests for Exclusion received by the Settlement Administrator during each week following the Class Notice Date. The Settlement Administrator

must provide Class Counsel with a declaration identifying all Class Members who requested exclusion from the Settlement and indicating those requests that were untimely no later than sixteen (16) court days prior to the Final Approval Hearing. Class Counsel will file with the Court and serve Livingston with the declaration along with their motion for final approval of the Settlement.

D. No Party will solicit or encourage Requests for Exclusion. Any attempt to do so by Plaintiff or Defendant will be deemed a breach of this Settlement Agreement.

## **IX. OBJECTIONS TO SETTLEMENT BY CLASS MEMBERS**

A. Any Class Member may make an objection to the proposed Settlement by mailing a letter to the Settlement Administrator at the address set forth in the Class Notice. Any objection to be considered valid must be mailed and postmarked no later than the Objection Date, i.e., forty-five (45) days from the Class Notice Date. Any Class Member who has submitted a Request for Exclusion may not submit any objections or speak at the Final Approval Hearing.

B. To state a valid objection to the Settlement, an objecting Class Member must mail a letter to the Settlement Administrator setting forth all of the following information in writing: (i) the objector's full name, current address, current telephone number and be personally signed, (ii) the case name and case number—*Veronica Hubbard v. Livingston Memorial VNA Health Corp., Livingston Memorial Visiting Nurse Association, Livingston Caregivers and Does 1 through 100, inclusive*, Case No. 56-2023-00576342-CU-NP (Superior Court of California, County of Ventura), (iii) documentation sufficient to establish membership in the Class, such as a copy of the Postcard Notice he or she received, (iv) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position, (v) a statement whether the Settlement Class member has received any payment in exchange for his or her making the objection (vi) copies of any other documents that the objector wishes to submit in support of his/her position, (vii) whether the objecting Class Member intends to appear at the Final Approval Hearing, and (viii) whether the objecting Class Member is represented by counsel and, if so, the name, address, and telephone number of his/her counsel.

C. Subject to approval of the Court, any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court. By this provision, the Parties are not waiving and are expressly preserving their right to contest any appearance by an objector on any grounds, or from asserting any and all other potential defenses and privileges to any such appearance.

D. The agreed-upon procedures and requirements for submitting objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement Agreement, in accordance with the due process rights of all Class Members. The Preliminary Approval Order and Class Notice will require all Class Members who have any objections to submit the objections to the Settlement Administrator at the address set forth in the Class Notice, by no later than the Objection Date.

E. Class Counsel will defend the Court's Final Approval Order and any related orders in the event of an appeal.

## **X. RELEASE OF CLAIMS**

A. Plaintiff and Class Members who fail to timely make a Request for Exclusion from the Settlement release Defendant and Released Parties from any and all claims or causes of action which the Plaintiff or any Class Member has against Defendant or the Released Parties as well as any and all claims, causes of action, damages, penalties, attorneys' fees, costs, and any other form of relief or remedy in law, equity, of whatever kind or nature and for any relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect for any acts that were pled or could have been pled in the Action based on the facts, subject matter, or the factual or legal allegations in the Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law ("Released Claims"). Further, upon the Effective Date, and to the fullest extent permitted by law, each Class Member, including the Class Representative, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the Agreement as provided herein) in which any of the Released Claims are asserted.

B. Class Representatives expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code with respect to the Released Claims. Section 1542 of the California Civil Code provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

C. Upon the Effective Date, Livingston shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, each and all of the Settlement Class Members, and Plaintiff's counsel of all claims based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, except for enforcement of the Settlement Agreement and except as to Class Members who submit a timely and valid Request for Exclusion from the Settlement.

D. This Settlement Agreement does not affect the rights of Class Members who submit a timely and valid Request for Exclusion from the Settlement.

E. Upon issuance of the Final Approval Order (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have opted out in accordance with the provisions hereof, (ii) Defendant and Released Parties shall not be subject to liability or expense of any kind to any Class Member(s) for reasons related to the Action except as set forth herein, and (iii) Class Members shall be permanently barred from initiating, asserting or prosecuting any and all Released Claims against Defendant and Released Parties.

**XI. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

A. Class Counsel represent and warrant that they have the authority, on behalf of Plaintiff, to execute, deliver and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiff and constitutes their legal, valid and binding obligation.

B. Livingston, through its undersigned attorneys, represents and warrants that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Livingston of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by Livingston. This Settlement Agreement has been duly and validly executed and delivered by Livingston and constitutes its legal, valid and binding obligation.

**XII. MISCELLANEOUS PROVISIONS**

A. This Settlement Agreement is not to be used in evidence (except in connection with obtaining approval of this Settlement Agreement and enforcing its terms) and shall not at any time be construed or deemed to be any admission or concession by Livingston with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Livingston specifically denies all of the allegations made in connection with the Action. Neither this Settlement Agreement nor any class certification pursuant to it shall constitute, in this or in any other proceeding, an admission by Livingston, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Action, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' express understanding and agreement that if for any reason this Settlement is not approved by the Court, Livingston may continue to contest and deny that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction.

B. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Final Approval Order is not entered, or a Final Approval Order is subsequently reversed on appeal, the Parties agree to use their best efforts to cure any defect(s) identified by the Court. If, despite their best efforts, the Parties cannot cure said defects, this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Action, and all Parties shall be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

C. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

D. Capitalized words, terms and phrases are used as defined in Section II, above.

E. This Settlement Agreement may not be modified or amended except in writing and signed by all of the Parties.

F. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

G. Except as otherwise provided in this Settlement Agreement, each Party shall bear his, her or its own costs of the Action.

H. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers.

I. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the release. The Final Approval Order will provide that the Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of this Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to this Settlement Agreement as provided herein, and allowing for discovery related to objectors, if any.

J. The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. The Parties were represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

K. This Settlement Agreement constitutes the entire, fully integrated agreement among the Parties and cancels and supersedes all prior written and unwritten agreements and understandings pertaining to the Settlement of the Action.

L. The Parties agree that any unresolved disputes regarding the meaning of the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or as to any disagreement regarding the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, shall be submitted to the Court for resolution.

M. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, or default, from which the designated period



of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement, and to modify or supplement any notice contemplated hereunder.

N. Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this Agreement shall not be deemed a waiver of any provision 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 herein.

O. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

For Class Counsel:

Laura Van Note  
lvn@colevannote.com  
Cole & Van Note  
555 12<sup>th</sup> St., Suite 2100  
Oakland, CA 94607

For Livingston:

James W. Davidson  
O'Hagan Meyer  
One E Wacker Drive, Suite 3400  
Chicago, IL 60601

IN WITNESS WHEREOF, Plaintiffs and Livingston, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: 12/19/2023

veronica hubbard  
ID rwSY4wS6PhYYhRNofuyN7Sw

Veronica Hubbard  
Plaintiff

Dated: 1/10/2024

Laura Van Note

Laura Van Note, Esq.  
Cole & Van Note  
**Attorneys for Plaintiff Veronica**

Dated: \_\_\_\_\_

Print: \_\_\_\_\_  
As the Duly Authorized Corporate Representative of  
Defendant Livingston

of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement, and to modify or supplement any notice contemplated hereunder.

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lvn@colevannote.com  
Cole & Van Note  
555 12<sup>th</sup> St., Suite 2100  
Oakland, CA 94607

For Livingston:

James W. Davidson  
O'Hagan Meyer  
One E Wacker Drive, Suite 3400  
Chicago, IL 60601

IN WITNESS WHEREOF, Plaintiffs and Livingston, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Veronica Hubbard  
Plaintiff

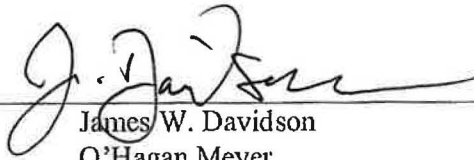
Dated: \_\_\_\_\_

\_\_\_\_\_  
Laura Van Note, Esq.  
Cole & Van Note  
Attorneys for Plaintiff Veronica

Dated: 1/8/2024

Maureen Corbett  
Print: Maureen Corbett  
As the Duly Authorized Corporate Representative of  
Defendant Livingston

Dated: 1/9/24

  
James W. Davidson  
O'Hagan Meyer  
**Attorneys for Defendant  
Livingston**