

CASE NO. 2020-CI-18623

KENNETH KESLAR II, individually and on behalf of all others similarly situated, Plaintiff,

v.

EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST EMERGENCY HOSPITAL - SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, and EMERUS HOLDINGS INC., Defendants.

IN THE DISTRICT COURT

73rd JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

STIPULATION OF SETTLEMENT

Plaintiff Kenneth Keslar II (“**Plaintiff**”) and defendants Emerus/BHS SA – Thousand Oaks, LLC d/b/a Baptist Emergency Hospital – Shavano Park (now known as “**Baptist Neighborhood Hospital**” or “**BNH**”), Emerus Hospital Partners, LLC (“**Emerus HP**”), and Emerus Holdings, Inc. (“**Emerus Holdings**”) (collectively, the “**Defendants**,” and together with Plaintiff, the “**Parties**” and each separately a “**Party**” to the above-captioned action (the “**Action**”), by and through their attorneys, have entered into the following Stipulation of Settlement (the “**Settlement Agreement**”), subject to the approval of the Court pursuant to Tex. R. Civ. P. 42(e).

Recitals

WHEREAS, on December 31, 2018, Plaintiff was treated at BNH’s Shavano Park facility; and

WHEREAS, in connection with Plaintiff’s treatment by BNH, two diagnostic laboratory test panels, referred to by BNH as the “**BMP (includes CK)**” and the “**LFT (includes Amylase)**” panels (as those terms are defined in Appendix 1) (together, the “**Current Panels**”) were ordered and performed for Plaintiff at the facility’s onsite point-of-care clinical laboratory; and

WHEREAS, after Plaintiff’s visit, BNH billed Plaintiff for his **Patient Responsibility** (as that term is defined in Appendix 1) in the amount specified by his health insurer; and

WHEREAS, on or about September 25, 2020, Plaintiff brought the Action against Defendants in Texas District Court (Bexar County), alleging, as set forth in the operative First Amended Class Action Petition filed in the Action (the “**Petition**”), that amounts billed to him for the Current Panels and BNH’s disclosures concerning the cost of the Current Panels violated common law and statutory duties under Texas law; and

WHEREAS, Plaintiff asserts his claims in the Action on behalf of himself and a putative class of similarly situated patients treated at facilities operated by Baptist Neighborhood Hospital; and

WHEREAS, Defendants deny and have vigorously contested Plaintiff's allegations; and

WHEREAS, after highly-contested litigation of the Parties' claims and defenses in the Action, the Parties have agreed to settle and resolve, as detailed herein, all claims advanced in the Action on behalf of Plaintiff and a class of all patients treated at any facility operated by Baptist Neighborhood Hospital (formerly Baptist Emergency Hospital) between September 25, 2016 and the date of this Settlement Agreement (the "**Class Period**") for whom one or more of the Current Panels was ordered and performed, and the patient was billed some Patient Responsibility for, at least, one of the Current Panels, but excluding Defendants and their respective parents, subsidiaries, representatives, officers, directors, partners, and co-ventures and on and after the exercise of opt out rights pursuant to Paragraph 8 below, anyone who requests to be excluded from the Settlement (subject to Paragraph 2(a) below, all such persons to be, collectively, the "**Class**," and each person who is included within the Class to be, individually, a "**Class Member**"); and

WHEREAS, based upon their investigation and the pretrial discovery and motion practice in the Action, counsel for Plaintiff, as well as Plaintiff, have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate as to Plaintiff and the Class, and in the best interests of Plaintiff and the Class, after considering (1) the substantial benefits that Plaintiff and the Class Members will receive from settlement of the Action, (2) the attendant risks of continued litigation and the uncertainty of the outcome of the Action, and (3) the desirability of permitting a settlement to be consummated as provided by the terms of this Settlement Agreement; and

WHEREAS, Defendants have at all times denied, and continue to deny, all allegations whatsoever of any wrongdoing, negligence, fault, or liability, and assert that their actions have been lawful and proper in all respects and in compliance with all applicable legal duties, but in order to avoid the uncertainties, risks and expense of further litigation, Defendants have agreed to settle and terminate all existing or potential claims against them pursuant to the terms and provisions of this Settlement Agreement; provided, however, that in agreeing to settle this Action, Defendants in no way acknowledge or admit any wrongdoing, negligence, fault or liability to the Plaintiff or Class Members, and no inference of any such liability is to be drawn from the participation in this settlement by Defendants, which have raised a number of specific defenses to the claims asserted in the Action and assert their intention, absent a settlement, to continue to oppose certification of the Class, and otherwise to continue with a vigorous defense and proceed to further litigation of this Action;

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to approval of the Court pursuant to Tex. R. Civ. P. 42(e) (1) through (3), that in consideration of the benefits flowing to the Parties, all **Settled Class Claims** as against all **Defendants' Released Parties**, and all **Settled Defendant Claims** as against all **Plaintiff's Released Parties**, (as each of those terms are defined below), shall be compromised, settled, released and dismissed with prejudice, upon and subject to the terms and conditions stated below (collectively hereinafter referred to as the "**Settlement**").

Definitions

1. **Definitions.** As used in this Settlement Agreement, capitalized terms will have the meanings set forth below in Appendix 1.

Settlement Consideration

2. **Refunds of amounts paid for Current Panels.** Class Members who satisfy the specific terms, conditions, and requirements stated in Paragraphs 2(b)-(c) below will be eligible for repayment of amounts that they actually paid to Defendants in connection with the Current Panels, inclusive of any amounts paid to a collection agency. The amount payable to an eligible Class Member under this Paragraph 2 will constitute a “**Refund.**” Class Members eligible to claim Refunds based on the determinations made under this Paragraph 2 (subject to Paragraph 2(b)(4)) below) will be “**Refund Eligible Class Members.**” Refunds will not include any amounts that were billed to Class Members for the Current Panels, but were not paid to Defendants.

(a) **Patients not eligible to claim a Refund.** For avoidance of doubt, the following patients treated at BNH facilities during the Class Period will not be considered Class Members for purposes of this Settlement and are not eligible for Refunds:

(1) Class Members for whom reimbursement payable to BNH was determined pursuant to the terms of an agreement with or coverage provided by a **Third Party Payor** specifying that BNH would be reimbursed for the Class Members’ treatment at a case rate or per diem rate, without any separate or additional reimbursement for clinical laboratory testing;

(2) Cash-paying Class Members who opted to pay for their visit under Defendants’ “prompt pay” option, which specifies a case rate for treatment that does not vary based on the number or types of clinical laboratory tests that are performed; and

(3) Class Members whose treatment was covered by fee-for-service Medicare and Medicaid under fixed copay plans.

Notwithstanding Paragraph 2(a)(3), patients covered by any managed Medicare or Medicaid plans that separately reimburse clinical laboratory testing performed by BNH and do not have fixed copays would be Class Members and are entitled to claim Refunds to the extent that the determination required under Paragraph 2(b) indicates that they are entitled to claim one.

(b) **Determining Refund amounts.**

(1) **Refunds to be based on Panel Cost Difference.** Refunds will be based on the “**Panel Cost Difference**” which, as more fully described in Paragraphs 2(b)(2)-(3) below, is equal to the difference between (i) the portion of the Patient Responsibility amount that is attributable to the cost of the respective Current Panels (the “**Current Panel Cost**”); and (ii) the portion of the Patient Responsibility amount that would have been attributable to the cost of certain

diagnostic panels with assigned panel codes **CPT no. 80048** and **CPT no. 80076** (as defined in Appendix 1) (together, the “**CPT Code Panels**”), had those CPT Code Panels been performed instead (the Patient Responsibility amount attributable with the CPT Code Panels to be the “**But-For Panel Cost**”). More specifically:

(A) For the BMP (includes CK) panel, the Panel Cost Difference will be equal to the difference between Current Panel Cost for the BMP (includes CK) panel and the But-For Panel Cost of the CPT no. 80048 panel.

(B) For the LFT (includes Amylase) panel, the Panel Cost Difference will be equal to the difference between Current Panel Cost for the LFT (includes Amylase) panel and the But-For Panel Cost of the CPT no. 80076 panel.

(2) **Determining Panel Cost Difference for insured patients.** For each Class Member entitled to claim a Refund whose treatment was covered by a Third Party Payor, Panel Cost Difference will be determined as follows:

(A) Using the applicable Third Party Payor’s contract rates and fee schedules in effect on the Class Member’s **Date of Service**, determine (x) the total reimbursement amount payable to BNH that the payor approved for the Current Panels (the “**Approved Panel Reimbursement**”) ordered and performed for the Class Member; and (y) the total reimbursement amount payable to BNH that the payor would have approved for the associated CPT Code Panels identified in Paragraph 2(b)(1)(A) and (B) (the “**But-For Panel Reimbursement**”).

(B) Subtract the But-For Panel Reimbursement from the Approved Panel Reimbursement to derive the “**Panel Reimbursement Difference.**”

(C) Divide the Patient Responsibility amount that BNH billed to the Class Member by the total reimbursement amount payable to BNH for the Class Member’s visit (inclusive of the Patient Responsibility) that was approved by the Third Party Payor to derive the “**Patient Responsibility Percentage.**”

(D) Multiply the Panel Reimbursement Difference times the Patient Responsibility Percentage to determine the Panel Cost Difference.

Table 2(b)(2) illustrates how the Panel Cost Difference could be calculated with respect to a BMP (includes CK) panel that was performed and billed to a patient covered by a Third Party Payor:

Table 2(b)(2)

Panel Reimbursement Difference Calculation	Amount	Notes
(1) Approved Panel Reimbursement for BMP (includes CK)	\$50	Hypothetical Figure
(2) But-For Panel Reimbursement for CPT no. 80048 Panel	<u>\$10</u>	Hypothetical Figure
(3) Panel Reimbursement Difference	\$40	Equals (1) minus (2)
Patient Responsibility Percentage Calculation		
(4) Total Payor Approved Charges	\$100	Hypothetical Figure
(5) Total Charges Billed to Patient	<u>\$70</u>	Hypothetical Figure
(6) Patient Responsibility Percentage	70%	Equals (5) divided by (4)
Panel Cost Difference	<u>\$28</u>	Equals (3) times (6)

(3) **Cash-paying patients:** For Class Members entitled to receive refunds whose treatment was not covered by a Third Party Payor, Panel Cost Difference will be determined by:

(A) Using the Class Member’s billing record and the prices in effect on the Class Member’s Date of Service in the BNH **Chargemaster** (as that term is defined in Appendix 1), determine (x) the amount that BNH billed for the Current Panels (the “**Actual Panel Billed Amount**”) ordered and performed for the Class Member (before any adjustments); and (y) the amount that BNH would have billed for the associated CPT Code Panels set forth in Paragraphs 2(b)(1)(A) and (B) (before any adjustments) (the “**But-For Panel Billed Amount**”).

(B) Subtract the But-For Panel Billed Amount from the Actual Panel Billed Amount to derive the panel billed amount difference (the “**Panel Billed Amount Difference**”).

(C) Divide the Patient Responsibility amount that BNH billed to the Class Member by the total amount billed for the Class Member’s visit (inclusive of the Patient Responsibility, and before any adjustments made to derive the Patient Responsibility) to derive the Patient Responsibility Percentage.

(D) Multiply the Panel Billed Amount Difference times the Patient Responsibility Percentage to determine the Panel Cost Difference.

Calculation of the Panel Cost Difference for cash-paying patients would be consistent with the illustration set out below in Table 2(b)(3).

Table 2(b)(3)

Panel Reimbursement Difference Calculation	Amount	Notes
(1) Actual Panel Billed Amount for BMP (includes CK)	\$50	Hypothetical Figure
(2) But-For Panel Billed Amount for CPT 80048 Panel	\$10	Hypothetical Figure
(3) Panel Billed Amount Difference	\$40	Equals (1) minus (2)
Patient Responsibility Percentage Calculation		
(4) Total Billed Amount by BNH	\$100	Hypothetical Figure
(5) Total Patient Responsibility after adjustments, if any, by BNH	\$35	Hypothetical Figure
(6) Patient Responsibility Percentage	35%	Equals (5) divided by (4)
Panel Cost Difference	\$14	Equals (3) times (6)

(4) **Treatment of Class Members with de minimis Panel Cost Difference amounts.** In the interests of administrative efficiency, Class Members whose Panel Cost Difference is less than \$5.00 will not be eligible to receive payment of Refunds under Paragraphs 2(e), or to be refunded amounts paid to BNH pursuant to Paragraph 3(c). For the avoidance of doubt, Class Members whose Panel Cost Difference is less than \$5.00 will remain a part of the Class and may, as described in Paragraph 3, be eligible for forgiveness of their Unpaid Panel Balance (as that term is defined in Paragraph 3) and will be subject to the release of claims against the Released Parties as described in Paragraphs 23 and 25 below.

(c) **Offsets for unpaid balances owed by Class Members.** Class Members' entitlement to any Refund will be reduced, dollar for dollar, by the amount of their unpaid portion of the Panel Cost Difference. If the total unpaid portion of any Class Member's Patient Responsibility equals or exceeds the Panel Cost Difference, the Class Member will not be a Refund Eligible Class Member, but will be treated subject to Paragraph 3 below.

(d) **Determining Refund Eligible Class Members.** Based on the billing records for the Class, Defendants will make the determinations required under Paragraphs 2(a)-(c) and compile a list that identifies the Refund Eligible Class Members, including last known contact information, and the Refund amounts that they are entitled to claim (the "**Refund Eligible Class Member List**"). Defendants will provide the Refund Eligible Class Member List to the Settlement Administrator no later than ten (10) business days after entry of an order preliminarily approving the Settlement, as contemplated in Paragraph 5 below.

(e) **Requirements for payment of Refunds:** Defendants will pay Refunds in the amounts set forth on the Refund Eligible Class Member List to Refund Eligible Class Members who timely submit a valid **Claim Form** (as that term is defined in Paragraph 5(d) below) when and as specified under this Settlement Agreement. Defendants will not be obligated to pay any amounts to or on behalf of any Refund Eligible Class Member who fails to submit a timely and valid claim in the manner required under this Settlement Agreement. Refund amounts not timely and validly claimed by any Refund Eligible Class

Members will be retained by Defendants, and Defendants will not be obligated to make any payments or distributions to or for the benefit of the Class or any Class Members (whether by *cy pres* distribution or otherwise) of any unclaimed Refund amounts. The failure of any Refund Eligible Class Member to submit a valid and timely Refund claim shall not impair or in any respect limit the releases to be given by and on behalf of such Refund Eligible Class Member to or for the benefit of Defendants in connection with the Settlement. Payments to Refund Eligible Class Members of amounts timely and validly claimed will be made according to Paragraph 16 below.

3. Non-retention and forgiveness of unpaid Panel Cost Difference

(a) If the total unpaid portion of any Class Member's Patient Responsibility equals or exceeds the Panel Cost Difference, the unpaid portion of the Panel Cost Difference (the "**Unpaid Panel Balance**") will be forgiven from the Class Member's Patient Responsibility. For avoidance of doubt, the Panel Cost Difference for the purposes of this paragraph will be calculated as described in Paragraphs 2(b)(2)-(3) above. Class Members eligible to get their Unpaid Panel Balance forgiven based on the determinations made under this Paragraph will be referred to as "**Forgiveness Eligible Class Members.**"

(b) The **Summary Notice** (as defined below) will inform Class Members that their Unpaid Panel Balance is eligible to be forgiven, in accordance with Paragraph 6(e). Within thirty (30) days of the Settlement Effective Date, Defendants shall forgive the Unpaid Panel Balance and the accounts of the Forgiveness Eligible Class Members shall reflect this adjustment. After the settlement Effective Date, Defendants and any collection agencies with which they contract will cease any actions to collect any Unpaid Panel Balance from Class Members; provided, however, that Defendants will not be required to issue new bills or statements that deduct the Unpaid Panel Balance from amounts otherwise owed, or to cease any activities to collect other balances owed by Class Members for their treatment at BNH. Class Members may however contact the Settlement Administrator to inquire about the amount of the Unpaid Panel Balance, if any, that has been forgiven.

(c) If, nonetheless, subject to Paragraph 2(b)(4), BNH receives any payments from Class Members that include any portion of the Unpaid Panel Balance, BNH will refund the portion of such payments that is allocable to the Unpaid Panel Balance within fifteen (15) business days after the conclusion of the calendar quarter during which BNH receives such payment. The obligation to identify and make refunds pursuant to this Paragraph 3(c) terminates after the conclusion of the calendar quarter during which the two-year anniversary of the Effective Date occurs.

(d) The non-retention and forgiveness of unpaid Unpaid Panel Balances will apply to all Class Members, and not be limited to Refund Eligible Class Members who submit Claim Forms.

(e) Based on the billing records for the Class, Defendants will make the determinations required under Paragraph 3(a) and compile a list that identifies the Forgiveness Eligible Class Members and the Unpaid Panel Balances for each such Forgiveness Eligible Class Member (the "**Forgiveness Eligible Class Member List**").

Defendants will provide the Forgiveness Eligible Class Member List to the Settlement Administrator no later than ten (10) business days after entry of an order preliminarily approving the Settlement, as contemplated in Paragraph 5 below.

4. Changing the practice going forward

(a) **Including CPT Code Panels as a lab test option.** No later than sixty (60) days after the Effective Date of the Settlement, the Baptist Neighborhood Hospital will include the CPT Code Panels as laboratory testing options that will be available in all of its facilities' onsite point-of-care laboratories. The CPT Code Panels will be included in all menus for in-house lab options available to clinicians in whatever form they are available, whether on paper or through the electronic medical record. Nothing in the Settlement will forbid BNH from ceasing to provide the Current Panels at its facilities' onsite point-of-care laboratories. Further, nothing in the Settlement will forbid BNH from ceasing to provide the CPT Code Panels at its facilities' onsite point-of-care laboratories only under the following circumstances:

(1) In BNH's reasonable clinical judgment, the CPT Code Panels are inconsistent with current standards of practice recommended by any medical professional organization or any state or federal regulatory authority concerning the use of clinical laboratory testing in emergency medicine; provided, however, that BNH is not currently aware of any such recommendations for the applicable standards of practice and has no current intention to decline to use the CPT Code Panels in its onsite point-of-care laboratories on that basis; or

(2) BNH cannot source the CPT Code Panels from the market, on account of them no longer being manufactured or widely available.

(b) **Disclosure of panel test options:** No later than sixty (60) days after the Effective Date of the Settlement, so long as Baptist Neighborhood Hospital continues to utilize the Current Panels as available testing options in its facilities' on-site laboratories, Baptist Neighborhood Hospital will include the following disclosure in its facilities' admissions consent forms:

“Depending on your ER physician's medical judgment, he or she may order you a liver/pancreatic function panel or metabolic panel that can be run for a quick turnaround in our in-house laboratories. Based on the tests included in the panels, certain of those in-house panels could potentially be more expensive to you than other in-house alternatives. Please speak with your physician to determine what option is best for you.

For your information, the available in-house panel options are as follows:

In-House Panel Types	Potentially Less Expensive Options	Potentially More Expensive Options
Metabolic Function Panels	Basic Metabolic Panel (CPT code 80048)	BMP (includes CK)
Liver/Pancreatic Function Panels	Hepatic Function Panel (CPT code 80076)	LFT (includes Amylase)
Combined Panel	Comprehensive Metabolic Panel (CPT code 80053) (combines portions of the Basic Metabolic Panel and Hepatic Function Panel)	None

If any of these tests are required, your doctor will choose a panel for you based on his or her judgment as to what test is medically necessary. For many insured patients the doctor’s choice of one panel over the other will result in no cost difference to you. For other patients there may be a difference in cost. If you have insurance coverage, we encourage you to contact your insurance provider to discuss patient payment obligations as defined under your insurance plan.”

(c) **Changes to pricing transparency file:** No later than sixty (60) days after the Effective Date of the Settlement, so long as BNH continues to utilize the Current Panels as available testing options in its facilities’ on-site laboratories, BNH will disclose the price of the Current Panel as the sum of its individual component tests in the **Pricing Transparency** (as that term is defined in Appendix 1) available on its website.

(d) **No change to billing practices:** Nothing in this Settlement will prohibit BNH from continuing to bill the Current Panels in such amounts and in such manner as may be required by patients’ insurers or under BNH billing policies, as applicable.

Notice, Claims, Opt Outs, Objections, and Settlement Approval

5. **Preliminary approval proceedings.** Promptly after execution of this Settlement Agreement, Plaintiff’s Counsel (as defined in Paragraph 10(a) below) will submit this Settlement Agreement together with its Exhibits to the Court, and will file an assented-to motion seeking entry of an order substantially in the form attached hereto as Exhibit A (the “**Preliminary Approval Order**”), requesting, among other things:

- (a) Preliminary approval of the Settlement;
- (b) Approval of **Notice** in the form attached hereto as Exhibit B;
- (c) Approval of the **Summary Notice** in the form attached hereto as Exhibit C;
- (d) Approval of the **Claim Form** in the form attached hereto as Exhibit D;

(e) Establishment of (1) a deadline for the Settlement Administrator to deliver Summary Notice to Class Members; (2) a deadline for the Settlement Administrator to create and maintain a website with the Notice; (3), a deadline for Class Members to lodge an objection to the Settlement pursuant to Tex. R. Civ. P. 42(e)(4), or opt out of the Class pursuant to Tex. R. Civ. P. 42(c)(2)(v) (the “**Response Deadline**”); and (4) the date (the “**Final Approval Hearing Date**”) on which to conduct a hearing (the “**Final Approval Hearing**”) to determine whether to approve the Settlement and other related matters pursuant to Tex. R. Civ. P. 42;

(f) Establishment of a deadline for Class Members to submit a Claim Form in the manner and form provided for in this Agreement (“**Claim Submission Deadline**”);

(g) Appointment of the **Settlement Administrator**; and

(h) Entry of a **Qualified Protective Order** in the form attached hereto as Exhibit E.

6. Requirements for delivery of Notice.

(a) In order to enable the Settlement Administrator to send out notices, the Defendants agree to provide to the Settlement Administrator, within ten (10) business days after the Court enters the Preliminary Approval Order, a notice database in an electronically searchable and readable format, which includes the names and last known mailing addresses, and, if known or reasonably practicable to obtain, telephone numbers and email addresses, for all Class Members. Any personal information relating to Class Members provided to the Settlement Administrator pursuant to this Settlement will be provided solely for the purpose of providing Notice and Summary Notice to Class Members; will be kept in strict confidence and subject to the Qualified Protective Order entered in this Action; and, will not be used for any other purpose.

(b) Within ten (10) business days after the Settlement Administrator’s receipt of the Notice database from Defendants, the Settlement Administrator will, by first class mail, send the Summary Notice to each Class Member. The last known address of Class Members will be subject to confirmation or updating as follows: (i) the Settlement Administrator will check each address against the United States Post Office National Change of Address Database before the initial mailing; (ii) the Settlement Administrator will conduct a reasonable search to locate an updated address for any Class Member whose Summary Notice is returned as undeliverable; (iii) the Settlement Administrator will update addresses and re-mail the Summary Notice based on any forwarding information received from the United States Post Office; and (iv) the Settlement Administrator will update addresses based on any requests received from Class Members. The Parties agree to cooperate in good faith in connection with the Settlement Administrator’s reasonable efforts to locate Class Members for whom Summary Notice is returned as undeliverable.

(c) The Notice and Summary Notice shall conform to all applicable requirements of the Texas Rules of Civil Procedure, specifically Tex. R. Civ. P. 42(e)(B),

and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

(d) Notice shall consist of the Notice substantially in the form attached hereto as Exhibit B. Summary Notice shall consist of the notice substantially in the form attached hereto as Exhibit C. The Settlement Administrator may make non-substantive changes to the formatting of the Notice and Summary Notice for purposes of printing and/or display on the Settlement website.

(e) Summary Notices provided to Class Members (i) will inform them that they may be eligible either to claim a Refund or to obtain forgiveness of their unpaid Patient Responsibility; (ii) will provide them with login details to the Settlement Administrator's online portal to check how much Refund or forgiveness they are eligible for, if any; (iii) will instruct them when and how to submit a Claim Form to obtain a Refund if they are eligible to receive one; and (iv) provide them with a telephone number should Class Members want to call and inquire about the amount of Refund or forgiveness, if any.

(f) Before Summary Notice is mailed to the Class Members, the Settlement Administrator shall create and maintain a settlement website which will contain, at a minimum, the Petition, this Settlement Agreement, a complete copy of the Notice, the Preliminary Approval Order, and the Claim Form. The Settlement Administrator may make non-substantive changes to the formatting of the Claim Form for purposes of printing and/or display on the Settlement website. The settlement website shall remain active until ninety (90) days after the Claim Submission Deadline.

(g) The Settlement Administrator shall ensure that the Notice, Claim Form and the landing page of the settlement website be made available to Class Members in both English and Spanish, and shall ensure that their call-center representatives assigned to this Action are bilingual in English and Spanish.

7. Settlement Administration.

(a) The Settlement Administrator shall be responsible for (1) sending the Summary Notice to Class Members as set forth herein and in the Preliminary Approval Order; (2) creating and maintaining a settlement website in accordance with Paragraphs 6(f) and (g); (3) responding to inquiries from Class Members; (4) identifying and mailing Refunds to Refund Payment Class Members; (5) filing any required reports with the Court; (6) sending out deficiency letters as described in Paragraph 7(c) below; and (7) such other tasks as the Parties mutually agree or that the Court orders the Settlement Administrator to perform. If any Class Member contacts the Settlement Administrator and inquires or complains about having been sent to collections, the Settlement Administrator shall liaise with the Class Member and Defendants to ensure no further steps are taken by the collections agency to collect the Unpaid Panel Balance.

(b) The Settlement Administrator shall prepare declarations confirming that the Notice and Summary Notice have been provided to the Class Members in accordance with this Settlement Agreement and that the Settlement Administrator has complied with the

provisions of the Preliminary Approval Order. Such declarations shall be provided to Class Counsel and Defendants' Counsel and filed with the Court by Plaintiff's Counsel no later than ten (10) days prior to the Final Approval Hearing.

(c) Only Refund Eligible Class Members will be entitled to submit a Claim Form to seek a Refund under the Settlement. Any Refund Eligible Class Member who wishes to claim a Refund must, no later than the Claim Submission Deadline, submit a Claim Form to the Settlement Administrator in the manner specified in the Notice. Refund Eligible Class Members who fail to submit a timely Claim Form will not be entitled to receive Refunds under the Settlement. No later than ten (10) business days after the Claim Submission Deadline, the Settlement Administrator shall send out a deficiency letter to any Class Member who has submitted a Claim Form that is in any respect deficient or otherwise insufficient to permit the Class Member to receive a Refund. This letter shall inform the Class Member about the deficiency in the Claim, inform the Class Member what needs to be done to correct the deficiency and make them eligible for a Refund, and inform the Class Member that the deadline to correct such deficiencies shall be no later than fifteen (15) business days from the receipt of the deficiency letter.

(d) No later than thirty (30) business days after the Claim Submission Deadline, the Settlement Administrator will provide to the Parties (i) a list of all Refund Eligible Class Members who have timely submitted a valid Claim Form (the "**Refund Payment Class Members**"); (ii) the Refund amounts to which each Refund Payment Class Member is entitled; and (iii) the sum of the Refunds to be paid to the Refund Payment Class Members (the "**Total Refund Payment Amount**"). Payment of the Total Refund Payment Amount and distribution of Refunds to Refund Payment Class Members shall occur when and as specified below in Paragraph 16.

(e) The Parties will have the responsibility for determining and resolving all disputes that arise during the Settlement administration process, including without limitation, disputes regarding whether a Class Member fully completed and timely submitted a valid Claim Form. In making such determinations and resolutions, the information provided by Defendants at Paragraphs 2(d) and 3(e) to the Settlement Administrator shall be presumed to be accurate and correct, and shall be final and binding, unless information voluntarily submitted by the Class Member (e.g., EOBs, proofs of payment, etc.) proves otherwise. In the event that the Parties cannot determine and resolve a dispute based upon a review of the information provided by Defendants at Paragraphs 2(d) and 3(e), the Parties will request a teleconference with the Court to discuss the dispute. After such teleconference, the Court will determine and resolve the dispute and such decision of the Court shall be final and binding on the Class Member. This provision is not intended to bar any Party from bringing a motion to enforce this Settlement Agreement or initiating an action for breach of this Settlement Agreement.

(f) No Class Member shall have any claim against Defendants' Released Parties (as defined at Paragraph 23(a) below), Plaintiff's Released Parties (as defined at Paragraph 25 below) or the Settlement Administrator, or any other person designated by Plaintiff's Counsel based on the determination or distributions made in accordance with this Settlement Agreement, this Settlement or any order of the Court.

8. **Opt Outs.** Any Class Member who wishes to be excluded from the Settlement pursuant to Tex. R. Civ. P. 42(c)(2)(v) (to “**Opt Out**”) may do so by submitting a written notice to Opt Out to the Court, Class Counsel (defined in Paragraph 10(a) below), Defendants, and the Settlement Administrator in the manner prescribed in the Notice. No request to Opt Out will be valid unless submitted on or before the Response Deadline. In the event that the Court approves the Settlement and the Settlement becomes Final, Class Members who fail to submit any request to Opt Out, or who submit a request to Opt Out after the Response Deadline, will be bound by the terms of the Settlement, including the Releases of claims against Defendants that are set forth in this Settlement Agreement. The Settlement Administrator will keep and maintain a list of all Class Members who timely Opt Out from the Class (including the dollar value of any Refunds to which they may be entitled), and will provide the final list of such Class Members to Class Counsel and Defendants no later than five (5) business days after the Response Deadline. Any Class Member who timely Opts Out will cease to be a Class Member and for the avoidance of doubt, will not receive any payment of any kind from the Settlement and will not be eligible for the benefits available under Paragraphs 2 and 3 of this Settlement Agreement by virtue of not being a Class Member but will not be releasing any claims against the Released Parties pursuant to Paragraphs 23 and 25 below.

9. **Objections.** Any Class Member who does not Opt Out from the Class may object to the Settlement pursuant to Tex. R. Civ. P. 42(e)(4) by submitting a written objection to the Court, Class Counsel, and the Defendants’ Counsel on or before the Response Deadline in the manner and to the addressees specified in the Notice. Class Members who object to the Settlement may appear and speak at the Final Approval Hearing, either individually through the Class Member appearing on her or his own behalf, or through counsel retained and compensated individually by the objecting Class Member.

10. **Motions for final approval and for attorneys’ fees, expenses and class representative service award:** No later than ten (10) business days before the Final Approval Hearing Date, Plaintiff will file with the Court an assented-to motion (the “**Final Approval Motion**”) requesting entry of an order substantially in the form attached hereto as Exhibit F (the “**Proposed Final Order and Judgment**”); seeking, among other things, the following relief:

(a) Appointment of Wolf Popper LLP as class counsel (the “**Class Counsel**”) and Hilder & Associates P.C. as liaison counsel (“**Liaison Counsel**”) (together referred to as “**Plaintiff’s Counsel**”) pursuant to Tex. R. Civ. P. 42(g);

(b) Certification of the Class solely for purposes of this Settlement pursuant to Tex. R. Civ. P. 42(b)(3) and (c)(1)(A);

(c) Final approval of the Settlement, as set forth in this Settlement Agreement, pursuant to Tex. R. Civ. P. 42(e);

(d) An award of fees and expenses to Plaintiff’s Counsel pursuant to Tex. R. Civ. P. 42(i) (“**Plaintiff’s Counsel Fees and Expenses**”) in the amount of, and not to exceed, Eight Hundred Thousand Dollars (\$800,000.00);

(e) A “**Class Representative Service Award**,” payable to Plaintiff, of up to \$5,000 from the Court; and

(f) Dismissal, with prejudice, of the Action.

11. **The Final Approval Hearing.** The Final Approval Hearing shall consist of such proceedings as the Court shall deem appropriate to determine whether to allow, in whole or in part, the Final Approval Motion. Class Members may participate in the Final Approval Hearing in the manner and to the extent permitted under Tex. R. Civ. P. 42(e)(4) and as may otherwise be ordered or directed by the Court.

12. **Defendants’ obligations with respect to Plaintiff’s Counsel Fees and Expenses.** Defendants agree not to oppose, object to, or seek appellate review of Plaintiff’s request for or the Court’s award of Plaintiff’s Counsel Fees and Expenses in an amount not to exceed \$800,000.00. As specified in Paragraph 18 below, Defendants agree to pay Plaintiff’s Counsel Fees and Expenses in any amount ordered by the Court in connection with the Settlement not exceeding \$800,000.00. Defendants reserve the right to appeal any award of Plaintiff’s Counsel Fees and Expenses that exceeds the \$800,000.00 award requested in the Final Approval Motion. To the extent that any final order of the Court, or any appellate court, orders or approves payment of Plaintiff’s Counsel Fees and Expenses in an amount that is less than \$800,000.00, neither the Class, nor Defendants, nor any of the **Defendants’ Released Parties** (as defined in Paragraph 23(a) below) shall have any obligation or liability to compensate Plaintiff’s Counsel or Plaintiff for the difference between the amount so ordered or approved and the \$800,000.00 award requested by Plaintiff in the Proposed Final Order and Judgment.

13. **Defendants’ obligations with respect to Class Representative Service Award.**

(a) Defendants agree not to oppose, object to, or seek appellate review of Plaintiff’s request to the Court to approve a Class Representative Service Award in an amount not to exceed \$5,000. As specified in Paragraph 18 below, Defendants agree to pay the amount of the Class Representative Service Award ordered by the Court not exceeding \$5,000.

(b) Defendants agree that Plaintiff’s individual claim as a Class Member will be treated in parity with the other Class Members, as described in Paragraphs 2 or 3 above, as applicable.

14. **Effective Date.** The Effective Date of the Settlement shall be the first business day following (a) entry of a final order of the Court approving the Settlement substantially in the form of the Proposed Final Order and Judgment (the “**Court-Approved Final Order and Judgment**”); and (b) the expiration of the period in which to appeal from the Court-Approved Final Order and Judgment (thirty days after the Judgment is signed) without an appeal having been filed. In the event an appeal is filed, the Parties will cooperate in seeking to have any such appeal(s) resolved as promptly as possible, and the Effective Date shall become the first business day following the expiration of the time for further appellate review of any appellate order affirming the Court-Approved Final Order and Judgment.

Settlement Funding and Distribution

15. **Settlement funding.** Defendants will pay the Total Refund Payment Amount to the Settlement Administrator no later than thirty (30) days upon receipt from the Settlement Administrator of the list of Refund Payment Class Members and the Total Refund Payment Amount as specified in Paragraph 7(d) above.

16. **Payment of Refunds to Refund Payment Class Members.** No later than thirty (30) days after receipt of the Total Refund Payment Amount from Defendants (the “**Refund Issue Date**”), the Settlement Administrator will pay the Refund amounts due to each of the Refund Payment Class Members by check or electronic transfer, as may be elected by such Refund Payment Class Members when submitting their Claim Forms to the Settlement Administrator.

17. **Uncashed checks.** No later than one hundred and twenty (120) days after the Refund Issue Date, the Settlement Administrator shall send a reminder to Refund Payment Class Members who have not yet cashed their checks issued under this Settlement Agreement. Should any checks issued to such Class Members remain uncashed for more than 365 days after the Refund Issue Date, despite a reminder from the Settlement Administrator, the amount of the uncashed checks will be returned to Defendants.

18. **Payment of Plaintiff’s Counsel Fees and Expenses and Class Representative Service Award.** No later than thirty (30) days after the Effective Date, Defendants will pay the Plaintiff’s Counsel Fees and Expenses and the Class Representative Service Award in the amount ordered pursuant to Paragraph 12 and 13 of this Settlement Agreement.

19. **Payment of Settlement Administration Costs.** Defendants will promptly pay all Settlement Administration Costs, as that term is defined in Appendix 1.

20. **Effect of Defendants’ payments.** Upon Defendants’ fulfillment of their payment and forgiveness obligations under Paragraphs 3(b), 16, 18 and 19 the Settlement shall become final and binding (“**Final**”) as to all Parties and all Class Members.

Termination of the Settlement

21. **Termination of the Settlement.**

(a) Either Plaintiff or Defendants may terminate the Settlement and this Settlement Agreement by providing written notice of their election to do so (“**Termination Notice**”) to all other Parties, through their counsel, no later than ten (10) days after the occurrence of any of the following:

(1) The refusal of the Court to enter the Preliminary Approval Order in any material respect;

(2) The refusal of the Court to approve this Settlement Agreement or any material part of it;

(3) The refusal of the Court to enter the Proposed Final Order and Judgment in any material respect; or

(4) The modification or reversal of the Court-Approved Final Order and Judgment in any material respect by any appellate court of competent jurisdiction (other than any adjustment to Plaintiff's Counsel Fees and Expenses that might be ordered by an appellate court).

(b) No later than ten (10) business days after Defendants' receipt from the Settlement Administrator pursuant to Paragraph 8 above of the list of Opt-Outs, Defendants may terminate the Settlement by directing a Termination Notice to Class Counsel if the aggregate Panel Cost Difference for Opt-Outs equals or exceeds the greater of 10% of the aggregate Panel Cost Difference for all Refund Eligible Class Members or \$100,000.

22. **Effect of termination.** In the event the Settlement is terminated pursuant to Paragraph 21, the Parties will revert to their respective status in the Action immediately prior to the execution of the Settlement Agreement and the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered.

Release and Compromise of Disputed Claims

23. **Release of Settled Class Claims.** Upon the Effective Date, all Class Members shall be deemed to have given the following release of all claims relating to or arising out of the Action:

(a) The parties released shall consist of Defendants and their past and present shareholders, principals, parent corporations, affiliates, subsidiaries, predecessors and successors, and each of their past and present officers, directors, owners, shareholders, principals, members, partners, employees, contractors, agents, attorneys, insurers, assigns of any of the foregoing, and all persons acting for, by or through any of the foregoing, past or present (collectively, the "**Defendants' Released Parties**").

(b) The Class Members, together with any of their heirs, agents, attorneys, or assigns, will forever release and discharge the Defendants' Released Parties of and from any and all claims in law or in equity, of whatever kind or nature including, without limitation, claims for monetary damages, equitable, declaratory, and injunctive relief, restitution and disgorgement, and attorneys' fees, including those claims asserted or which could have been asserted in the Action including, without limitation, claims arising from, concerning, or in any way relating to the (i) billing of the Current Panels during the Class Period that is the basis of the litigation; and (ii) pricing transparency and disclosure or non-disclosure concerning billing for the Current Panels (all such claims that are released by the Class Members as to Defendants' Released Parties to be the "**Settled Class Claims**"). For avoidance of doubt, Settled Class Claims include any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, restitution, fines, costs, penalties or expenses including attorneys' fees of any kind or nature whatsoever, past or present, ascertained or unascertained, whether or not known, suspected or claimed from the beginning of the Class Period through and including the Effective Date arising from or in

any way related to the billing of the Current Panels and the sufficiency of disclosures concerning such costs or charges.

(c) The Class Members shall forever be enjoined from prosecuting any Settled Class Claims against any of the Defendants' Released Parties, provided however that nothing herein shall in any way restrict or impair any Parties' right to enforce the terms of the Settlement Agreement and the Settlement. The Class Members and Defendants consent to jurisdiction and venue in the Texas District Court in Bexar County for purposes of enforcing such injunction. As used in this Paragraph, the terms Class Members and Defendants shall include the past or present respective executors, administrators, personal representatives, agents, heirs, beneficiaries, legatees, attorneys and all persons acting for Class Members and Defendants.

24. **Acknowledgement of effect of release of Settled Class Claims.** With respect to the claims released in this Settlement Agreement, Defendants, Plaintiff, and all Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law:

(a) The provisions rights and benefits conferred by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

and

(b) Any law of any state of the United States, federal law or principle of common law which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

25. **Release of claims against Plaintiff's Released Parties.** Upon the Effective Date, each of Defendants' Released Parties shall be deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiff, Plaintiff's Counsel and Class Members ("**Plaintiff's Released Parties**") from all claims (including, without limitation, unknown claims), which arise out of or relate to the initiation, litigation, prosecution, or settlement of this Action including (but not limited to) any claims of bad faith or abuse of process against Plaintiff's Released Parties relating to their initiation, litigation, prosecution, or settlement of the Action and they shall forever be barred and enjoined from commencing, instituting, or prosecuting any of the claims against Plaintiff's Released Parties (all such claims that are released by the Defendants' Released Parties as to Plaintiff's Released Parties to be the "**Settled Defendant Claims**").

26. **Scope of Settlement.** The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of the Action and any and all Settled Class Claims as against all Parties to this Settlement Agreement and all Class Members.

27. **Effect of Settlement as to Class Members' claims and liabilities.**

(a) Upon becoming Final, this Settlement shall be deemed final and conclusive against all Class Members. Whether or not a Class Member receives a Refund under this Settlement, each Class Member shall be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of any order and final judgment to be entered in the Action and the releases provided for therein.

(b) The failure of any Class Member to claim or obtain any monetary relief made available under this Settlement Agreement shall not affect the validity, scope, or enforcement of the releases herein, and all Class Members shall remain bound by said releases whether or not they submit a Claim Form pursuant to Paragraph 7(c) of this Settlement Agreement. As to any Class Member who otherwise would be entitled to submit a Claim Form under this Settlement Agreement and who for any reason fails to submit a timely Claim Form, all rights of such Class Member to receive a cash distribution in this Action or under this Settlement Agreement shall lapse and shall be deemed voluntarily, irrevocably, and permanently waived and forfeited. Defendants shall not be required to remit any additional consideration to any Class Members following or on account of such forfeiture by any Class Member.

(c) Plaintiff and Class Members will be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit in any state, territorial or federal court, or any arbitration or administrative or regulatory or other proceeding in any jurisdiction, which asserts claims based on or in any way related to the Settled Class Claims, and the Court shall retain exclusive continuing jurisdiction to enforce said injunction.

(d) Plaintiff and Defendants hereby expressly agree that all provisions of this Paragraph, together and separately, constitute essential terms of this Settlement Agreement.

Miscellaneous Provisions

28. **No admission of wrongdoing.** This Settlement, whether or not consummated, and any proceedings taken pursuant to it:

(a) Shall not be offered or received against Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Defendants with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants;

(b) Shall not be offered or received against Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Defendants;

(c) Shall not be offered or received against Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement; provided, however, that if this Settlement is approved by the Court, Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) Shall not be offered or received against Defendants as evidence of a presumption, concession or admission that the Class is appropriately certified for trial;

(e) Shall not be construed against Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(f) Shall not be construed as or received in evidence as an admission, concession or presumption against Plaintiff or any of the Class Members that any of their claims are without merit, or that any defense asserted by Defendants has any merit, or that damages recoverable under the Petition would not have exceeded the Settlement Consideration.

This Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Defendants with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants has asserted. The Parties to this Settlement Agreement recognize that the Action has been filed by Plaintiff and defended by Defendants in good faith and with adequate basis in fact under Tex. R. Civ. P. 13, that the Action is being voluntarily settled after advice of counsel, and that the terms of the Settlement are fair, adequate and reasonable. This Settlement Agreement shall not be construed or deemed to be a concession by Plaintiff of any infirmity in the claims asserted in the Action.

29. **Non-disparagement.** The Parties and, insofar as is consistent with Tex. R. Prof Conduct 1.01 and 1.02, Plaintiff's Counsel and Defendants' Counsel, agree that they will not publish or utter in any print, audio, video, online, or any other media (including social media) any statements that accuse any Party of wrongdoing or disparage the competency, qualifications, character, honesty, business reputation, trustworthiness, or integrity of any Party.

30. **Exhibits incorporated by reference.** All of the exhibits listed in Appendix 2 and attached to this Settlement Agreement as Exhibits A-F are hereby incorporated by reference as though fully set forth herein.

31. **Authorization.** Each Party represents and warrants that execution and delivery of this Settlement Agreement has been duly authorized by all necessary actions and that the execution and delivery of this Settlement Agreement constitutes a legal, valid and binding obligation of that Party. The persons signing this Settlement Agreement represent and warrant by their signatures that they have authority to sign the Settlement Agreement on behalf of the Party for whom they are signing.

32. **Parties Bound.** This Settlement Agreement shall be binding upon and inure to the benefit of Defendants and the Class Members and their respective present and former officers, directors and employees, shareholders, any parent or subsidiary corporations of Defendants and the Class Members, and their respective heirs, successors, assigns and transferees.

33. **Representation by counsel.** Each Party has been represented in the negotiation of this Settlement Agreement by independent counsel and has had the Settlement Agreement fully explained by its own counsel and are aware that the Settlement set forth in the Settlement Agreement (a) provides for payment of Settlement Consideration to and on behalf of the Class only as set forth in this Settlement Agreement; (b) will terminate any and all rights of Plaintiff and the Class Members to pursue the Settled Class Claims and (c) will terminate any and all rights of Defendants to pursue Settled Defendant Claims.

34. **No reliance; independent investigation.** Each Party in entering into this Settlement Agreement relies upon its own investigation and judgment in regard to all matters herein contained and has not relied on any representations made by other Parties. This Settlement Agreement is made and entered into by each of the Parties of its own volition and each of the Parties warrants that this Settlement Agreement was made and entered into free of any duress, coercion, or undue influence from any source whatsoever.

35. **Jointly drafted.** Each Party has participated in the drafting and negotiation of this Settlement Agreement. For all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by the Parties. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Settlement Agreement against the party that drafted it has no application and is expressly waived. The provisions of this Settlement Agreement shall be interpreted in a reasonable manner so as to effectuate the intent of the Parties, and no rule of strict construction shall be applied against any Party to this Settlement Agreement.

36. **Entire agreement; amendments; construction with other agreements.** This Settlement Agreement constitutes the only existing and binding agreement between the Parties concerning the Settlement and supersedes any prior oral or written agreements concerning the Settlement including, without limitation, the Final Settlement Term Sheet dated September 27, 2022. The Parties acknowledge that there are no other warranties, promises, assurances or representations of any kind, express or implied, upon which the Parties have relied in entering into this Settlement Agreement, unless expressly set forth herein. This Settlement Agreement, including the provisions of this Paragraph, may not be modified, amended or altered in any way except by written agreement signed by each of the Parties.

37. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any of the Parties may execute this Settlement Agreement by signing any such counterpart.

38. **Notices.** Any notices required under this Settlement Agreement may be transmitted by email to the following designated individuals:

To Plaintiff:

Chet Waldman
David Nicholas
Radha Raghavan
Wolf Popper LLP
cwaldman@wolffpopper.com
dnicholas@wolffpopper.com
rraghavan@wolffpopper.com
Counsel for Plaintiff

To Defendants:

Kevin McGinty
Evelyn Limon
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
kmcginty@mintz.com
elimon@mintz.com
Counsel for Defendants

Unless the sender receives email notification that the sent message is undeliverable, notice shall be deemed to have been delivered as of the date and time when the email is sent. In the event of an undeliverable email notice, counsel for the Parties agree to cooperate to facilitate delivery of any required notice.

39. **Effect of headings.** The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

40. **Settlement subject to judicial supervision and approval.** The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of enforcing the terms of this Settlement Agreement.

41. **Non-waiver.** The waiver by any Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

42. **Governing law.** The construction, interpretation, operation, effect and validity of this Settlement Agreement, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Texas without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

43. **Cooperation.** Plaintiff's Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of (a) the Preliminary Approval Order; and (b) the

Settlement Agreement and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain Final approval of the Settlement.

44. **Computation of deadlines.** For purposes of determining deadlines under this Settlement Agreement, any interval measured in “business days” shall exclude (a) weekend days; and (b) federal or Texas state holidays. All other intervals shall be measured in calendar days. In the event that an interval specified for performance of any action or obligation required under this Settlement Agreement results in a deadline that falls on a weekend or a federal, or Texas state holiday, that deadline will be deemed to fall on the next business day.

[Signatures appear on next page]

Stipulated and agreed to this 27th day of January, 2023

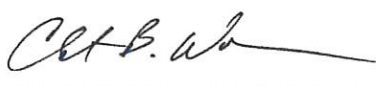
PLAINTIFF KENNETH KESLAR II,

By: _____


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philip@hilderlaw.com
Q. Tate Williams
tate@hilderlaw.com
HILDER & ASSOCIATES
819 Lovett Blvd.
Houston, Texas 77006
Telephone: (713) 655-9111
Facsimile: (713) 655-9112

and

By: _____


Chet B. Waldman
David A. Nicholas
Radha Raghavan
WOLF POPPER LLP
845 Third Avenue, 12th Floor
New York, NY 10022

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EMERGENCY HOSPITAL - SHAVANO
PARK, EMERUS HOSPITAL PARTNERS,
LLC, and EMERUS HOLDINGS, INC.,

dc&m | **Davis, Cedillo & Mendoza, INC.**
ATTORNEYS AT LAW

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San Antonio, Texas 78212
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Facsimile No.: (210) 822-1151

By: _____

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Texas Bar No. 04043600
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and

By: _____

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EMERUS / BHS SA THOUSAND
OAKS, LLC d/b/a BAPTIST-
EMERGENCY HOSPITAL -
SHAVANO PARK, EMERUS
HOSPITAL PARTNERS, LLC, and
EMERUS HOLDINGS, INC.**

Stipulated and agreed to this 27th day of January, 2023

PLAINTIFF KENNETH KESLAR II,

DEFENDANTS, EMERUS / BHS SA
THOUSAND OAKS, LLC d/b/a BAPTIST-
EMERGENCY HOSPITAL - SHAVANO
PARK, EMERUS HOSPITAL PARTNERS,
LLC, and EMERUS HOLDINGS, INC.,

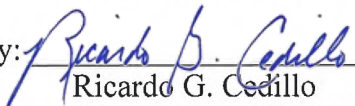
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and

By: 
Ricardo G. Cedillo
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By: _____

Chet B. Waldman
David A. Nicholas
Radha Raghavan
WOLF POPPER LLP
845 Third Avenue, 12th Floor
New York, NY 10022

and

By: 
Kevin M. McGinty
**MINTZ, LEVIN, COHN, FERRIS,
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ATTORNEYS FOR PLAINTIFF

**ATTORNEYS FOR DEFENDANTS,
EMERUS / BHS SA THOUSAND
OAKS, LLC d/b/a BAPTIST-
EMERGENCY HOSPITAL -
SHAVANO PARK, EMERUS
HOSPITAL PARTNERS, LLC, and
EMERUS HOLDINGS, INC.**

APPENDIX 1
DEFINITIONS

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

“**Action**” has the meaning set forth in the introductory Paragraph of this Settlement Agreement.

“**Actual Panel Billed Amount**” has the meaning set forth in Paragraph 2(b)(3)(A) of this Settlement Agreement.

“**Approved Panel Reimbursement**” has the meaning set forth in Paragraph 2(b)(2)(A) of this Settlement Agreement.

“**Baptist Neighborhood Hospital**” or “**BNH**” means Emerus/BHS SA – Thousand Oaks, LLC, formerly doing business as “Baptist Emergency Hospital,” and the following facilities operated under its license:

- (1) Baptist Neighborhood Hospital Hausman, 8230 N 1604 W., San Antonio, TX 78249;
- (2) Baptist Neighborhood Hospital Kelly, 806 Cupples Rd, San Antonio, TX 78237;
- (3) Baptist Neighborhood Hospital Overlook, 25615 US-281, San Antonio, TX 78258;
- (4) Baptist Neighborhood Hospital Schertz, 16977 I-35 N., Schertz, TX 78154;
- (5) Baptist Neighborhood Hospital Shavano Park, 4103 North Loop 1604 W., San Antonio, TX 78249;
- (6) Baptist Neighborhood Hospital Thousand Oaks, 16088 San Pedro Ave., San Antonio, TX 78232;
- (7) Baptist Neighborhood Hospital Westover Hills, 10811 Town Center Dr., San Antonio, TX 78251; and
- (8) Baptist Neighborhood Hospital Zarzamora, 7719 IH 35 S., San Antonio, TX 78224.

“**BMP (includes CK)**” means a diagnostic laboratory test panel consisting of the following eight assays: carbon dioxide (bicarbonate) (CPT no. 82374); chloride (CPT no. 82435); potassium (CPT no. 84132); sodium (CPT no. 84295); creatine kinase (cpk) (CPT no. 82550); creatinine (CPT no. 82565); glucose (CPT no. 82947); and urea nitrogen (CPT no. 84250).

“**But-For Panel Billed Amount**” has the meaning set forth in Paragraph 2(b)(3)(A) of this Settlement Agreement.

“**But-For Panel Cost**” has the meaning set forth in Paragraph 2(b)(1) of this Settlement Agreement.

“**But-For Panel Reimbursement**” has the meaning set forth in Paragraph 2(b)(2)(A) of this Settlement Agreement.

“**Chargemaster**” means a list of the amounts that BNH charges for items and services provided to patients, as that list may be revised from time-to-time.

“**Claim Form**” means a Court-approved form to make a claim to obtain a Refund in substantially the form attached hereto as Exhibit D.

“**Claim Submission Deadline**” has the meaning set forth in Paragraph 5(f) of this Settlement Agreement.

“**Class**” has the meaning set forth in the seventh Paragraph of the Recitals.

“**Class Counsel**” has the meaning set forth in Paragraph 10(a) of this Settlement Agreement.

“**Class Member**” has the meaning set forth in the seventh Paragraph of the Recitals.

“**Class Period**” has the meaning set forth in the seventh Paragraph of the Recitals.

“**Class Representative Service Award**” has the meaning set forth in Paragraph 10(e) of this Settlement Agreement.

“**CPT Code Panels**” has the meaning set forth in Paragraph 2(b)(1) of this Settlement Agreement.

“**CPT no. 80048**” means a diagnostic laboratory test panel consisting of the following eight assays: carbon dioxide (bicarbonate) (CPT no. 82374); chloride (CPT no. 82435); potassium (CPT no. 84132); sodium (CPT no. 84295); calcium (total) (CPT no. 82310); creatinine (CPT no. 82565); glucose (CPT no. 82947); and urea nitrogen (CPT no. 84250).

“**CPT no. 80076**” means a diagnostic laboratory test panel consisting of the following seven assays: serum albumin (CPT no. 82040); bilirubin (total) (CPT no. 82247); bilirubin (direct) (CPT no. 82248); alkaline phosphatase (CPT no. 84075); protein (serum) (CPT no. 84155); transferase (AST) (SGOT) (CPT no. 84450); and alanine amino (ALT) (SGPT) (CPT no. 84460).

“**Current Panels**” has the meaning set forth in the second paragraph of the Recitals to this Settlement Agreement.

“**Court**” means the Texas District Court, 73rd Judicial District, Bexar County.

“**Current Panel Cost**” has the meaning set forth in Paragraph 2(b)(1) of this Settlement Agreement.

“**Court-Approved Final Order and Judgment**” has the meaning set forth in Paragraph 14 of this Settlement Agreement.

“**Date of Service**” means the date on which a Class Member was treated at a BNH facility.

“**Defendants**” has the meaning set forth in the introductory Paragraph to this Settlement Agreement.

“**Defendants’ Released Parties**” has the meaning set forth in Paragraph 23(a) of this Settlement Agreement.

“**DTPA**” means the Texas Deceptive Trade Practices Act, Tex. Bus. & Comm. Code, § 17.01, *et seq.*

“**Effective Date**” has the meaning set forth in Paragraph 14 of this Settlement Agreement.

“**Emerus HP**” means Emerus Hospital Partners.

“**Emerus Holdings**” means Emerus Holdings, Inc.

“**Final**” has the meaning set forth in Paragraph 20 of this Settlement Agreement.

“**Final Approval Hearing**” has the meaning set forth in Paragraph 5(e) of this Settlement Agreement.

“**Final Approval Hearing Date**” has the meaning set forth in Paragraph 5(e) of this Settlement Agreement.

“**Forgiveness Eligible Class Members**” has the meaning set forth in Paragraph 3(a) of this Settlement Agreement.

“**Forgiveness Eligible Class Member List**” has the meaning set forth in Paragraph 3(e) of this Settlement Agreement.

“**Liaison Counsel**” has the meaning set forth in Paragraph 10(a) of the Settlement Agreement.

“**LFT (includes Amylase)**” means a diagnostic laboratory test panel consisting of the following eight assays: serum albumin (CPT no. 82040); bilirubin (total) (CPT no. 82247); alkaline phosphatase (CPT no. 84075); protein (serum)(CPT no. 84155); transferase (AST) (SGOT) (CPT no. 84450); alanine amino (ALT) (SGPT) (CPT no. 84460); amylase (CPT no. 82150); and GGT (CPT no. 82977).

“**Notice**” means a Court-approved long-form notice to the Class pursuant to Tex. R. Civ. P. 42(c)(2)(A) and (c)(3), in substantially the form attached hereto as Exhibit B.

“**Opt Out**” means a Class Member’s exercise, as provided in Paragraph 8 of this Settlement Agreement, of her or his right under Tex. R. Civ. P. 42(c)(2)(A)(v) to be excluded from the Class.

“**Panel Billed Amount Difference**” has the meaning set forth in Paragraph 2(b)(3)(B) of this Settlement Agreement.

“**Panel Cost Difference**” has the meaning set forth in Paragraph 2(b)(1) of this Settlement Agreement.

“**Panel Reimbursement Difference**” has the meaning set forth in Paragraph 2(b)(2)(B) of this Settlement Agreement.

“**Parties**” has the meaning set forth in the introductory Paragraph of this Settlement Agreement.

“**Party**” has the meaning set forth in the introductory Paragraph of this Settlement Agreement.

“**Patient Responsibility**” means the total amount that BNH bills or billed to a patient for the cost of that patient’s treatment at BNH, net of any payments by a Third-Party Payor or any other adjustments that BNH makes or made to the amount due.

“**Patient Responsibility Percentage**” has the meaning set forth in Paragraph 2(b)(2)(C) of this Settlement Agreement.

“**Plaintiff**” has the meaning set forth in the introductory Paragraph to this Settlement Agreement.

“**Plaintiff’s Counsel**” has the meaning as defined in Paragraph 10(a) of this Settlement Agreement.

“**Plaintiff’s Counsel Fees and Expenses**” has the meaning set forth in Paragraph 10(d) of this Settlement Agreement.

“**Plaintiff’s Released Parties**” has the meaning as defined in Paragraph 25 of this Settlement Agreement.

“**Petition**” has the meaning set forth in the fourth Paragraph of the Recitals to this Settlement Agreement.

“**Pricing Transparency**” means the pricing transparency disclosure by BNH that may be found at <https://www.baptistneighborhoodhospital.com/pricing-transparency/>.

“**Preliminary Approval Order**” means an order to be entered by the Court in substantially the form attached hereto as Exhibit A for purposes of addressing the items set forth in Paragraph 5 of the Settlement Agreement.

“**Proposed Final Order and Judgment**” means the proposed order in the form attached hereto as Exhibit F.

“**Qualified Protective Order**” means the proposed order in the form attached hereto as Exhibit E.

“**Refund**” has the meaning set forth in Paragraph 2 of this Settlement Agreement.

“**Refund Eligible Class Members.**” has the meaning set forth in Paragraph 2 of this Settlement Agreement.

“**Refund Eligible Class Member List.**” has the meaning set forth in Paragraph 2(d) of this Settlement Agreement.

“**Refund Issue Date**” has the meaning set forth in Paragraph 16 of this Settlement Agreement.

“**Refund Payment Class Members**” has the meaning set forth in Paragraph 7(d) of this Settlement Agreement.

“**Released Parties**” means each and any of Plaintiff’s Released Parties and Defendants’ Released Parties.

“**Response Deadline**” has the meaning set forth in Paragraph 5(e) of this Settlement Agreement.

“**Settled Class Claims**” has the meaning set forth in Paragraph 23(b) of this Settlement Agreement.

“**Settled Defendant Claims**” has the meaning set forth in Paragraph 25 of this Settlement Agreement.

“**Settlement**” means the mutually agreed upon undertakings, terms, and conditions contemplated by this Settlement Agreement.

“**Settlement Administrator**” means RG/2 Claims Administration LLC, P.O. Box 59479 Philadelphia, PA 19102-9479.

“**Settlement Administration Costs**” means all costs, fees, and expenses, other than fees or expenses of counsel for any Party to this Action or their insurers, associated with or arising out of the administration of the Settlement including, without limitation: (1) the delivery of the Notice to the Class; (2) the processing of Claim Forms submitted by Class Members; (3) the calculation and payment of Settlement Distributions to Class Members; (4) establishment, maintenance, and administration of any accounts established for purposes of receiving and making payments specified in this Settlement Agreement; (5) reasonable costs, fees, and expenses of the Settlement Administrator; (6) sending out deficiency letters to Class Members who have timely submitted a Claim Submission Form improperly; (7) establishing and maintaining a settlement website; and (8) any other duties described under the Settlement Agreement or required by the Court. These notice and administration costs include the reasonable costs and expenses associated with identifying Class Members and effecting delivery of notice to the Class, and the administration of the Settlement, including, without limitation, the actual costs of delivering the notice,

communication with Class Members, administrative expenses incurred, and fees charged by the Settlement Administrator in connection with delivering the Notice and Claims Forms, processing the Class Members' allocations and distributing the Settlement proceeds to Class Members that have filed timely Claim Forms.

"Settlement Agreement" has the meaning set forth in the introductory Paragraph above, and includes this document and all attached Exhibits.

"Settlement Consideration" means Defendants' cash and non-cash obligations and performances pursuant to Paragraphs 2-4 of this Settlement Agreement.

"Summary Notice" means a Court-approved short-form postcard notice to the Class, in substantially the form attached hereto as Exhibit C, which will notify Class Members about the Settlement and provide instructions on how to access or obtain the Notice.

"Termination Notice" has the meaning set forth in Paragraph 21(a) of this Settlement Agreement.

"Third Party Payor" means any health insurer, managed care organization, third party administrator, governmental program, or any other entity that contracts with BNH to establish the requirements applicable to reimbursement and payment to BNH for treatment of patients who are covered by or members of any health insurance policy, plan, or coverage arrangement provided by such entity.

"Total Refund Payment Amount" has the meaning set forth in Paragraph 7(d) of this Settlement Agreement.

"Unpaid Panel Balance" as defined in Paragraph 3(a) of this Settlement Agreement, means the unpaid amount of Panel Cost Difference that is forgiven from a Class Member's Patient Responsibility.

Appendix 2
Schedule of Exhibits to Settlement Agreement

Exhibit A: Form of Preliminary Approval Order

Exhibit B: Form of Notice

Exhibit C: Form of Summary Notice

Exhibit D: Form of Claim Form

Exhibit E: Form of Qualified Protective Order

Exhibit F: Form of Proposed Final Order and Judgment

Exhibit A
Form of Preliminary Approval Order

CASE NO. 2020-CI-18623

KENNETH KESLAR, II, individually	§	IN THE DISTRICT COURT
and on behalf of all others similarly	§	
situated,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	BEXAR COUNTY, TEXAS
EMERUS / BHS SA THOUSAND	§	
OAKS, LLC d/b/a BAPTIST	§	
EMERGENCY HOSPITAL -	§	
SHAVANO PARK, EMERUS	§	
HOSPITAL PARTNERS, LLC, and	§	
EMERUS HOLDINGS, INC.,	§	
	§	
	§	
Defendants.	§	73RD JUDICIAL DISTRICT

**ORDER PRELIMINARILY CERTIFYING CLASS FOR SETTLEMENT PURPOSES,
GRANTING PRELIMINARY APPROVAL OF SETTLEMENT,
AND APPROVING CLASS NOTICE**

WHEREAS, a class action is pending before the Court captioned *Keslar v. Emerus/BHS Thousand Oaks, LLC d/b/a Baptist Emergency Hospital – Shavano Park, et al.* (the “Action”);

WHEREAS, the Parties have applied for an order preliminarily approving the proposed Settlement in accordance with the Stipulation of Settlement dated January 27, 2023 (“Settlement Agreement”), which together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action (the “Settlement”), and for dismissal of the case with prejudice upon the terms and conditions set forth therein;

WHEREAS, the Court having: (1) read and considered the Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement together with the accompanying Memorandum of Law

Exhibit A
Form of Preliminary Approval Order

and all exhibits; (2) read and considered the Settlement Agreement, as well as all of the exhibits attached thereto; and (3) heard and considered arguments by counsel for the Parties in favor of preliminary approval of the Settlement and preliminary certification of the Class (defined below) for purposes of the Settlement;

WHEREAS, the Court finds, upon a preliminary evaluation, that the proposed Settlement falls within the range of possible approval criteria, as it provides a beneficial result for the Class and appears to be the product of good-faith, informed, and non-collusive negotiations between experienced and able counsel for the Parties; and

WHEREAS, the Court also finds, upon a preliminary evaluation, that the Class should be apprised of the Settlement through the proposed form of Notice and Summary Notice, allowed to (i) file objections, if any, thereto, (ii) opt-out of the Class if any member so desires, and (iii) appear at the Final Approval Hearing (defined below).

NOW, THEREFORE, UPON GOOD CAUSE SHOWN, IT IS HEREBY ORDERED as follows:

All capitalized terms used in this Order that are not otherwise defined herein have the meanings defined in the Settlement Agreement.

1. Pursuant to Rule 42(b)(1) of the Texas Rules of Civil Procedure, the Court certifies, for the purposes of this Settlement only, the following class comprising of:

All patients treated at a facility operated by Baptist Neighborhood Hospital (formerly Baptist Emergency Hospital) between September 25, 2016 and January 27, 2023 for whom one or more of the Current Panels was ordered and performed, and the patient was billed some Patient Responsibility for, at least one of the Current Panels (the “**Class**”).

The following are excluded from the Class:

- (i) Defendants and their respective parents, subsidiaries, representatives, officers, directors, partners, and co-ventures;

Exhibit A
Form of Preliminary Approval Order

(ii) Persons who have validly exercised their right to Opt Out pursuant to Paragraph 8 of the Settlement Agreement.

2. The Court preliminarily approves Plaintiff Kenneth Keslar II as the representative for the Class (“Class Representative”).

3. Having considered the factors described in Rule 42(g)(1) of the Texas Rules of Civil Procedure, the Court hereby preliminarily appoints Wolf Popper LLP as “Class Counsel” and Hilder & Associates P.C. as “Liaison Counsel” for the Class (together referred to as “Plaintiff’s Counsel”).

4. With respect to the Class, this Court finds and concludes that: (i) the members of the Class contemplated in the Action are so numerous that joinder of all members is impracticable; (ii) questions of law and fact are common to the Class; (iii) the claims and defenses of the proposed Class Representative, Mr. Keslar, are typical of the claims and defenses of the Class; and (iv) the Class Representative will fairly and adequately represent the interests of the Class.

5. The Court finds that that the prerequisites for maintaining a class action under Rule 42(b)(3) of the Texas Rules of Civil Procedure have been preliminarily satisfied for the Class.

6. The Court finds that the Settlement appears to be within a range of fairness, reasonableness, and adequacy that is sufficient to warrant (i) sending out notice thereof to the Class Members as set forth below; and (ii) a full hearing on the Settlement. Accordingly, the Court hereby preliminarily approves the Settlement subject to further consideration at the Final Approval Hearing described below.

7. This Court will hold a settlement hearing (“Final Approval Hearing”) at _____:_____.m., on _____, 2023, at the District Court, Bexar Country, 73rd Judicial District, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205, to determine whether (i) the proposed Settlement is fair, reasonable and adequate to the Class and should be approved by the Court; (ii) Plaintiff’s Counsel Fees and Expenses and the payment of a Class Representative Award, as contemplated in the Settlement Agreement, should be approved; and (iii) a Final Order

Exhibit A
Form of Preliminary Approval Order

and Judgment should be entered into. The Final Approval Hearing may be adjourned, from time to time, by order of this Court without further notice to the Class.

8. The Court approves, as to form and content, the Notice of Proposed Class Action Settlement (“Notice”), annexed as Exhibit B to the Settlement Agreement, and finds that the mailing and distribution of the Summary Notice, substantially in the form attached as Exhibit C to the Settlement Agreement, which will direct Class Members to a settlement website which will have the Notice and other important documents available for view by Class Members, meets the requirements of Rule 42 of the Texas Rules of Civil Procedure and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

9. Defendants are authorized to retain RG/2 Claims Administration LLC (“Settlement Administrator”), to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Class Member claims for payment as more fully set forth below:

- a. Within ten (10) business days after the Court enters the Preliminary Approval Order, Defendants will provide a notice database in an electronically searchable and readable format to the Settlement Administrator, which includes the names and last known mailing addresses, and, if known or reasonably practicable to obtain, telephone numbers and email addresses, for all Class Members;
- b. Within ten (10) business days after the Settlement Administrator’s receipt of the Notice database from Defendants, the Settlement Administrator will, by first class mail, send the Summary Notice to each Class Member;
- c. Before Summary Notice is mailed to the Class Members, the Settlement Administrator shall create and maintain a settlement website which will contain, at a minimum, the Petition, the Settlement Agreement, a complete copy of the Notice, this Preliminary Approval Order, and the Claim Form. The

Exhibit A
Form of Preliminary Approval Order

settlement website shall remain active until ninety (90) days after the Claim Submission Deadline;

d. No later than ten (10) days prior to the Final Approval Hearing, Plaintiff's Counsel shall file with the Court declarations prepared by the Settlement Administrator confirming that Notice has been provided to the Class Members in accordance with the Settlement Agreement and that the Settlement Administrator has complied with the provisions of this Preliminary Approval Order.

10. Defendants shall pay all reasonable costs and expenses in providing notice to the Class.

11. All Class Members shall be bound by all determinations and judgments in this Action concerning the Settlement, whether favorable or not to the Class.

12. Any Class Member can, but does not have to, enter an appearance in this Action, at their own expense, individually, or through counsel of their choice. If they do not enter an appearance, they will be represented by Plaintiff's Counsel.

13. All proceedings in this Action, other than those necessary to effectuate the Settlement, shall hereby be stayed until the Effective Date of the Settlement.

14. The Court will consider any objections to the Settlement including the Plaintiff's Counsel Fees and Expenses and the Class Representative Service Award only if such objections are in writing and delivered to the Court, on or before , 2023. The objections must contain the following information: the name and case number of this lawsuit (*Kenneth Keslar II v. Emerus / BHS Thousand Oaks LLC et. al.*, Case No. 2020-CI-18623); full name of the Class Member objecting, and that Class Member's mailing address, and email address or telephone number; what specifically the Class Member does not like about the Settlement or any part of it and reasons why; and a copy of the Class Member's bill that demonstrates that he/she is a member

Exhibit A
Form of Preliminary Approval Order

of the Class. Copies of any such objections and accompanying documentation must also be mailed by first-class mail, no later than , 2023, to:

Class Counsel: Chet Waldman, Esq., Wolf Popper LLP, 845 Third Avenue, New York, NY 10022

Defendants' Counsel: Kevin McGinty, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111

15. Any Class Member who does not make his/her objection in the manner provided shall be deemed to have waived such objection and shall forever be barred from making any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement unless otherwise ordered by the Court.

16. No later than ten (10) business days before the Final Approval Hearing, Plaintiff will file with the Court an assented-to Final Approval Motion in Support of the Settlement, Plaintiff's Counsel Fees and Expenses, and Class Representative Award; and a reply brief responding to any objections or Opt Outs, if any.

17. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Action, or of any liability, fault or wrongdoing of any kind, in this case or in any litigation in any jurisdiction, or against Plaintiff or any Class Member that their claims are without merit.

18. The Court retains exclusive jurisdiction over this Action, the Plaintiff, and Defendants to consider all further matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with modifications, as may be agreed to by the Parties, if appropriate, without further notice to the Class.

19. The Court reserves the authority to enter its Final Order and Judgment approving the Settlement and dismiss the Action with prejudice regardless of whether it has awarded attorneys' fees and expenses.

Exhibit A
Form of Preliminary Approval Order

20. If the Settlement provided for in the Settlement Agreement is not approved by the Court for any reason or if the Final Order and Judgment is not entered for any reason, the Settlement Agreement shall be null and void and of no force and effect. In such an event, the Settlement Agreement shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the Action, and neither the existence of the Settlement Agreement nor its contents shall be admissible in evidence or shall be referred to for any purpose in the Action or in any other litigation proceeding.

IT IS SO ORDERED

Signed this _____ day of _____, 2023.

**Exhibit B
Form of Notice**

CASE NO. 2020-CI-18623

KENNETH KESLAR II, individually and on behalf of all others similarly situated,
Plaintiff,

v.

EMERUS / BHS SA THOUSAND OAKS,
LLC d/b/a BAPTIST EMERGENCY
HOSPITAL - SHAVANO PARK, EMERUS
HOSPITAL PARTNERS, LLC, and
EMERUS HOLDINGS INC.,
Defendants.

IN THE DISTRICT COURT

73rd JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT¹

(This is a court-ordered notice. You are not being sued. This is not a solicitation from a lawyer.)

YOU MAY BE ELIGIBLE TO HAVE YOUR LABORATORY PANEL BILL REDUCED, REFUNDED, OR BALANCE FORGIVEN IN A CLASS ACTION SETTLEMENT.

This Notice tells you about a proposed “Settlement” in a case against Baptist Neighborhood Hospital (“BNH”) (previously known as Baptist Emergency Hospital) and the related Emerus entities listed below.

The Settlement has not yet been approved by the Court. If it is approved, you may qualify:

- to have money refunded to you, or
- the amount you owe BNH forgiven or written off, in whole or in part.

To get a refund, you must send in a Claim Form by **[claim submission deadline]**. You do not have to submit a claim form or do anything else to get a debt relating to the laboratory panels forgiven.

Please read further for more information on the Settlement and how to get benefits under the Settlement:

Your legal rights will be affected by the Settlement whether you file a claim or do nothing. Please read this Notice carefully for more information about your options and rights.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

YOU MAY		DUE DATE
----------------	--	-----------------

¹ This Notice incorporates, by reference, the definitions in the Stipulation of Settlement dated January 27, 2023 (the “Settlement Agreement”), **available on this Website: www. .com**. All capitalized terms used, but not defined herein, shall have the same meaning as in the Settlement Agreement.

**Exhibit B
Form of Notice**

SUBMIT A CLAIM FORM	You must submit a Claim Form, either by mail or online, pursuant to the instructions below, to be considered for a refund under the Settlement. If you submit a Claim Form, the Settlement Administrator – RG/2 Claims Administration LLC - will determine if you are entitled to a Refund under the Settlement.	BY: [redacted], 2023
OBJECT TO THE SETTLEMENT	If you do not like the proposed Settlement or anything related to it discussed below, you may write to the Court and explain why. Even if you object to the Settlement, you can still submit a Claim Form as long as you do not opt out.	BY: [redacted], 2023
OPT OUT OF THE SETTLEMENT	If you exclude yourself (<i>i.e.</i> “opt out”) from this Settlement, you will not get any of the benefits of the Settlement (<i>i.e.</i> , no refund or forgiveness of your balance). But you will retain the right to sue Defendants on your own, at your own expense, relating to their billing practices during the Class Period.	BY: [redacted], 2023
DO NOTHING	If you do nothing, you will not get any refund from the Settlement, BUT you will be considered for forgiveness of your balance, if eligible. Should you do nothing, you will also give up all your rights to sue Defendants on your own about the legal issues in this case.	N/A

If you have any questions about this Notice or the Settlement, you may:

- Call RG/2 Claims Administration at 1-866-742-4955 or call the lawyers who brought this lawsuit on behalf of you and others like you (called "Class Counsel") at [number]; or
- Email the RG/2 Claims Administration at info@rg2claims.com or the Class Counsel at [email].

1. What are laboratory panels?

A laboratory panel is a group of blood tests that are requested with a single testing order and completed with a single patient specimen, for example, a basic metabolic panel or a liver function panel. In other words, it is a test wherein a medical professional takes blood from you and that blood is analyzed using different tests for different things like blood sugar, potassium, sodium and chloride levels, among others. Often, laboratory panels can be billed using a single code, known as the Current Procedure Terminology (“CPT”) code. When billed using a single CPT code, a laboratory panel may be less expensive than if each test in the panel were billed separately.

2. What are the BMP (includes CK) and LFT (includes Amylase) laboratory panels?

The BMP (includes CK) panel is a basic metabolic panel that comprises 8 separate tests on a single blood specimen offered at the BNH facilities that does not have a single billing code, meaning that each of the 8 tests are billed separately. It is slightly different from, and can be more expensive than, a basic metabolic panel that has a single

Exhibit B Form of Notice

billing code for the entire group of tests.²

The LFT (includes Amylase) panel is a liver function panel offered at the BNH facilities that is comprised of 8 separate tests on a single blood specimen, each of which is billed separately. It is slightly different from, and can be more expensive than, a liver function panel that has a single billing code for the entire group of tests.³

3. What is this lawsuit about?

This class action lawsuit alleges that Defendants deceptively unbundled laboratory panels by charging for them as separate tests rather than as a single panel of tests.

This lawsuit was brought by Kenneth Keslar II (the “**Plaintiff**”) against Emerus / BHS SA Thousand Oaks LLC d/b/a Baptist Emergency Hospital – Shavano Park, Emerus Hospital Partners LLC, and Emerus Holdings, Inc. (the “**Defendants**”) for alleged violations of the Texas Deceptive Trade Practices Act (“DTPA”) (§§17.46(b)(24) and 17.50(a)(3)), and the common law. Plaintiff alleges that Defendants provided insufficient disclosures regarding the cost of two in-house laboratory panels, namely, the BMP (includes CK) and LFT (includes Amylase) (“**Current Panels**”) and the manner in which they billed for these panels, which led to Plaintiff and other patients paying more for laboratory panels than was standard.

Plaintiff alleges that Defendants failed to disclose to patients that they were using a type of metabolic or liver function panel that could not be billed as a ‘panel’ using a single billing code, making it more expensive than a similar panel that could be billed using a single CPT code.

Plaintiff filed his class action petition (“**Petition**”) on September 25, 2020 and subsequently filed an amended petition (“**Amended Petition**”) on December 30, 2020.

The name of the case is *Keslar v. Emerus/BHS SA Thousand Oaks, LLC*, Cause No. 2020-CI-18623 (the “**Action**”) and the court in charge of the case is the Texas State Court, Bexar County, 73rd Judicial District. The Action is overseen by Honorable Judge David A. Canales.

Defendants have expressly denied and continue to deny all allegations of wrongdoing, negligence, fault, or liability, and assert that their actions have been lawful and proper in all respects and in compliance with all applicable legal duties.

4. Why is there a Settlement?

The Court has not decided in favor of either Plaintiff or Defendants. Both sides believe they would win if there were a trial in this case, but it might take a long time to resolve the case. In order to avoid the risks and cost of lengthy and uncertain litigation, trial, and appeals, the parties for both sides have negotiated a Settlement that they believe is in their best interests. Accordingly, on January 27, 2023, the Plaintiff and Defendants entered into a Stipulation of Settlement (“**Settlement Agreement**”), which sets forth the terms and conditions of the Settlement. The Settlement Agreement can be viewed, and a copy may be downloaded, on the Settlement Website: [[website address](#)].

5. How do I know if I am a Class Member and part of the Settlement?

You are a Class Member and part of the Settlement if:

² The BMP (includes CK) panel comprises the following group of tests: (1) carbon dioxide (bicarbonate); (2) chloride; (3) creatinine; (4) glucose; (5) potassium; (6) sodium; (7) urea nitrogen (BUN); and (8) creatine kinase (ck). The standard basic metabolic panel that is billed at a single CPT code has 7 out of 8 of the same tests as the BMP (includes CK) panel, but as for the 8th test it does not contain the creatine kinase test, but rather includes a calcium test.

³ The LFT (includes Amylase) panel comprises the following group of tests: (1) albumin; (2) bilirubin, total; (3) phosphatase, alkaline; (4) protein, total; (5) transferase, alanine amino (ALT) (SGPT); (6) transferase, aspartate amino (AST) (SGOT); (7) glutamyltransferase, gamma (GGT); and (8) amylase. The standard liver function panel with a single CPT code contains the same group of tests, with the exception that it does not include the GGT and Amylase tests, but includes a bilirubin (direct) test.

Exhibit B
Form of Notice

- (i) you were treated at any Baptist Neighborhood Hospital (formerly Baptist Emergency Hospital) facility between September 25, 2016 and January 27, 2023 (see Q. 6 for the entire list of BNH facilities), **and**
- (ii) one or more of the Current Panels was ordered and performed for you, **and**
- (iii) you were subsequently billed for, at least, one of the Current Panels **and**
- (iv) you do not fall within the categories listed at Q. 8.

You would have received a Summary Notice in the mail if Defendants’ records indicate that you are a member of the Class.

If you are still not sure whether you are a part of the Settlement, you can ask for free help. You may contact the Settlement Administrator or Class Counsel at the information provided on p. 2.

6. Which are the BNH facilities covered under this lawsuit?

All BNH facilities in Texas are covered under this lawsuit. For the sake of clarity, they are listed below:

- (1) Baptist Neighborhood Hospital Hausman, 8230 N 1604 W., San Antonio, TX 78249;
- (2) Baptist Neighborhood Hospital Kelly, 806 Cupples Rd, San Antonio, TX 78237;
- (3) Baptist Neighborhood Hospital Overlook, 25615 US-281, San Antonio, TX 78258;
- (4) Baptist Neighborhood Hospital Schertz, 16977 I-35 N., Schertz, TX 78154;
- (5) Baptist Neighborhood Hospital Shavano Park, 4103 North Loop 1604 W., San Antonio, TX 78249;
- (6) Baptist Neighborhood Hospital Thousand Oaks, 16088 San Pedro Ave., San Antonio, TX 78232;
- (7) Baptist Neighborhood Hospital Westover Hills, 10811 Town Center Dr., San Antonio, TX 78251; and
- (8) Baptist Neighborhood Hospital Zarzamora, 7719 IH 35 S., San Antonio, TX 78224.

Note: Baptist Neighborhood Hospital was previously known as Baptist Emergency Hospital. So, if you went to a Baptist Emergency Hospital in any of the above locations, and you satisfy the other conditions at Q.5, you are a Class Member.

7. I believe I am part of the Class, but have not received a Summary Notice. What should I do?

The Summary Notice is only mailed to those who are members of the Class, per Defendants’ records. If you have not received a Summary Notice, that means either it has been lost in the mail (you can contact your Post Office) or that you are not part of the Class per Defendants’ records and are therefore, not part of this Settlement. However, if you believe you are a Class Member based on Q. 3 of this Notice, you may contact the Settlement Administrator or Class Counsel at the information provided on page 2 of this Notice to inquire further.

8. Are there any exceptions to being included as a Class Member?

Yes. Defendants’ parents, subsidiaries, representatives, officers, directors, partners, and co-ventures are **not** Class Members and hence **not part** of the Settlement. Also, anyone who requests to be excluded (*i.e.*, “opts out”) from the Class in accordance with the instructions provided in this Notice and set forth by the Court (*see* Q. 16 below), will **not** be a Class Member and hence **not part** of the Settlement.

9. What does the Settlement provide?

Refunds: For any Current Panel ordered and performed at a BNH Facility, if you paid more than the reimbursement amount that your insurance payor would have approved (or, for cash-paying patients, the amount BNH would have billed) for the associated CPT Code Panel, Defendants will refund that portion of the payment that exceeded the

**Exhibit B
Form of Notice**

approved reimbursement (or billed amount), including any payments you made to a third party, such as a collection agency.

Write-Offs or Forgiveness: For any Current Panel ordered and performed at a BNH Facility, if you were billed more than the reimbursement amount that your insurance payor would have approved (or, for cash-paying patients, the amount BNH would have billed) for the associated CPT Code Panel and you have not paid any portion of that, Defendants will forgive the portion of payment you owed that exceeded the approved reimbursement (or billed amount).

Changing the practice going forward:

- (i) **Including CPT Code Panels as a laboratory test option:** Defendants have agreed to start offering the associated CPT Code Panels, *i.e.*, CPT 80047, CPT 80048 and CPT 80076 Panels, as laboratory testing options in-house at all their facilities' onsite point-of-care laboratories. The CPT Code Panels will be included as an option in all of BNH Facilities' in-house laboratory test menus so that they are available to the clinicians to order.
- (ii) **Disclosures in intake forms:** Defendants have agreed to include a disclosure in their admission consent forms, which will inform patients that they have three in-house options for metabolic or liver/pancreatic panels – (1) the Current Panel that may potentially be more expensive; (2) the associated CPT Code Panel, which, though slightly different, may be less expensive or (3) a combined metabolic and liver panel.
The disclosure encourages patients to discuss these options with their clinicians to determine which option is best for them and check with their insurance provider to discuss patient payment obligations for each of these laboratory panels.
- (iii) **Disclosures in pricing transparency file on website:** Defendants have agreed to disclose the chargemaster price of the Current Panels, in each of the BNH Facilities, down to the exact dollar figure, in the “Standard Charge Description File” available for download in the Pricing Transparency section of BNH’s website at <https://www.baptistneighborhoodhospital.com/pricing-transparency/>.

10. I am an insured patient. How will my refund, if any, be calculated?

Refunds for insured patients are calculated based on “**Panel Cost Difference**,” which is the difference between (i) the portion of the Patient Responsibility amount that is attributable to the cost of the respective Current Panels (the “**Current Panel Cost**”); and (ii) the portion of the Patient Responsibility amount that would have been attributable to the cost of the associated CPT Code Panel (CPT No. 80048 or CPT No. 80076) (the “**But-For Panel Cost**”).⁴

⁴ More specifically, refunds for insured patients are calculated by following the four steps below:

- (A) The applicable Third Party Payor’s contract rates and fee schedules in effect as on the Class Member’s Date of Service is used to determine (x) the total reimbursement amount payable to BNH that the payor approved for the Current Panels (the “**Approved Panel Reimbursement**”) ordered and performed for the Class Member; and (y) the total reimbursement amount payable to BNH that the payor would have approved for the associated CPT Code Panel (the “**But-For Panel Reimbursement**”);
- (B) The But-For Panel Reimbursement is subtracted from the Approved Panel Reimbursement to derive the “Panel Reimbursement Difference”;
- (C) The Patient Responsibility amount that BNH billed to the Class Member is divided by the total reimbursement amount payable to BNH for the Class Member’s visit that was approved by the Third Party Payor to derive the “Patient Responsibility Percentage”;
- (D) The Panel Reimbursement Difference is multiplied by the Patient Responsibility Percentage to determine the Panel Cost Difference.

The table below illustrates how refunds are calculated using the above four steps for a BMP (includes CK) panel performed and billed to an insured patient :

**Exhibit B
Form of Notice**

If the Panel Cost Difference for a Class Member is less than or equal to the amount owed, the Class Member will not be eligible for a Refund, but will be eligible to get the portion of the Panel Cost Difference forgiven by BNH.

Note: any Class Member (i) whose insurance plan reimburses BNH at a case rate or per diem rate, without any separate additional reimbursement for clinical laboratory testing, or (ii) who has a fee-for-service Medicare or Medicaid insurance plan with fixed copay plans will be ineligible for Refunds, but will still remain a Class Member for all other purposes.

The Summary Notice that you received by mail will tell you whether you are eligible for any refund and if so, how much. You may also contact the Settlement Administrator or Class Counsel at the information provided on page 2 of this Notice to inquire further.

11. I am a cash-paying patient. How will my refund, if any, be calculated?

Refunds for cash paying patients are calculated based on “**Panel Cost Difference**,” which is the difference between (i) the portion of the Patient Responsibility amount that is attributable to the cost of the respective Current Panels (the “**Current Panel Cost**”); and (ii) the portion of the Patient Responsibility amount that would have been attributable to the cost of the associated CPT Code Panel (CPT No. 80048 or CPT No. 80076) (the “**But-For Panel Cost**”).⁵

Panel Reimbursement Difference Calculation	Amount	Notes
(1) Approved Panel Reimbursement for BMP (includes CK)	\$50	Hypothetical Figure
(2) But-For Panel Reimbursement for CPT no. 80048 Panel	\$10	Hypothetical Figure
(3) Panel Reimbursement Difference	\$40	Equals (1) minus (2)
Patient Responsibility Percentage Calculation		
(4) Total Payor Approved Charges	\$100	Hypothetical Figure
(5) Total Charges Billed to Patient	\$70	Hypothetical Figure
(6) Patient Responsibility Percentage	70%	Equals (5) divided by (4)
Panel Cost Difference	\$28	Equals (3) times (6)

⁵ More specifically, Refunds for eligible cash-paying patients are calculated by following the four steps below:

- (A) The Class Member’s billing record and the prices in effect on the Class Member’s Date of Service in the BNH Chargemaster is used to determine (x) the amount that BNH billed for the Current Panels (the “**Actual Panel Billed Amount**”) ordered and performed for the Class Member (before any adjustments); and (y) the amount that BNH would have billed for the associated CPT Code Panel (the “**But-For Panel Billed Amount**”);
- (B) The But-For Panel Billed Amount is subtracted from the Actual Panel Billed Amount to derive the panel billed amount difference (the “**Panel Billed Amount Difference**”);
- (C) The amount that BNH billed to the Class Member is divided by the total amount billed for the Class Member’s visit to derive the Patient Responsibility Percentage;
- (D) The Panel Billed Amount Difference is multiplied by the Patient Responsibility Percentage to determine the Panel Cost Difference.

The table below illustrates how Refunds are calculated using the above four steps for a BMP (includes CK) panel performed and billed to a cash-paying patient:

**Exhibit B
Form of Notice**

If the Panel Cost Difference for a Class Member is less than or equal to the amount owed to BNH, the Class Member will not be eligible for a refund, but may be eligible to get the portion of the Panel Cost Difference forgiven by BNH.

Note: Any Class Member who opted to pay for their BNH visit in cash under Defendants’ “prompt-pay” option, which specifies a case rate for treatment that does not vary based on the number or types of clinical laboratory tests that are performed, will be ineligible for refunds, but will still remain a Class Member for all other purposes.

The Summary Notice that you received by mail will tell you whether you are eligible for any refund and if so, how much. You may also contact the Settlement Administrator or Class Counsel at the information provided on page 2 of this Notice to inquire further.

12. What do I need to do to receive a refund?

In order to receive a refund, you must be eligible under the terms of the Settlement, and you must submit a valid and timely **Claim Form** to the Settlement Administrator, RG/2 Claims Administration LLC. You may download the Claim Form from the Settlement Website, [website address], or by contacting the Settlement Administrator at the contact information on page 2 of this Notice. Read the instructions carefully, fill out the Claim Form, sign it, and mail it so it is postmarked no later than [redacted], 2023 or submit it online no later than [same date]. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any refund from Defendants (unless by order of the Court the deadline is extended or such Class Member’s Claim Form is accepted), but otherwise may be eligible for forgiveness of any amount per Q. 13 below and shall be bound by all the terms of the Settlement and the Final Judgment, including the Releases therein, and will be permanently barred and enjoined from asserting any of the Settled Class Claims against any of the Released Defendants’ Parties.

You cannot submit your Claim Form by telephone, fax, or email. You do not need to submit any medical records or medical information beyond billing-related information related to your blood tests, which is specified in the Claim Form.

13. How will the forgiveness/write-off amounts be calculated?

The forgiveness/write-off amount, if any, is calculated based on the Panel Cost Difference calculated using the formula described at Q. 10 or Q. 11, as the case may be. If the Panel Cost Difference owed to you is less than or equal to the amount you owe BNH, you will be eligible to get that portion of the Panel Cost Difference forgiven by BNH and your outstanding amount will be reduced dollar for dollar by the amount of the Panel Cost Difference.

The Summary Notice that you received by mail will tell you whether you are eligible for any forgiveness/write-off amount and if so, how much. You may also contact the Settlement Administrator or Class Counsel at the information provided on page 2 of this Notice to inquire further.

Panel Reimbursement Difference Calculation	Amount	Notes
(1) Actual Panel Billed Amount for BMP (includes CK)	\$50	-Hypothetical Figure
(2) But-For Panel Billed Amount for CPT 80048 Panel	\$10	-Hypothetical Figure
(3) Panel Billed Amount Difference	\$40	Equals (1) minus (2)
Patient Responsibility Percentage Calculation		
(4) Total Billed Amount by BNH	\$100	-Hypothetical Figure
(5) Total Patient Responsibility after adjustments, if any, by BNH	\$35	-Hypothetical Figure
(6) Patient Responsibility Percentage	35%	Equals (5) divided by (4)
Panel Cost Difference	\$14	Equals (3) times (6)

**Exhibit B
Form of Notice**

14. When would I get my payment?

The Court will hold a hearing on [REDACTED], 2023, to decide whether to approve the Settlement. The Court may change the date and time of the Settlement Hearing without notice or hold the Settlement Hearing by telephonic or video conference. Any change to the Settlement Hearing will be posted on the Settlement Website. If the Settlement is approved, the Settlement Administrator will complete the claims review process and then make the refunds. Defendants will also simultaneously adjust patient balances to reflect the forgiveness/write-off amounts. This is necessarily a long process.

15. What am I giving up as a Class Member?

You will be giving up your right to bring your own, individual lawsuit against Defendants challenging (i) the billing of the Current Panels during the period between September 25, 2016 and January 27, 2023 that is the basis of the litigation; and (ii) pricing transparency and disclosure or non-disclosure concerning billing for the Current Panels. These are called the “Settled Class Claims.” **Any claims you may have related to your actual medical treatment will not be released.**

If you want to preserve your right to bring an individual lawsuit against Defendants relating to the Settled Class Claims, you must “opt out” of the Settlement.

16. What if I do not want to be part of the Settlement?

If you do not want to be part of the Settlement, you can “opt out.” If you opt out, you will not get a write-off or refund, but you will preserve your right to sue Defendants on your own. If a substantial number of Class Members opt out, the Defendants have the right to terminate the Settlement.

To opt out, you must mail your request for exclusion to the Settlement Administrator so that it is received no later than [REDACTED], 2023 at the following address:

RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479.

You bear the risk of delivery of the request. Your request must clearly state the full name, address, and telephone number of the Class Member seeking exclusion, that the Class Member requests to be excluded from the Class, and must be signed by the Class Member. All persons requesting exclusion must also state: the name of the BNH Facility they visited, the date of service(s), the date of the bill(s), the bill amount(s), and which Current Panel(s) was/were performed. Requests for exclusion must comply with these requirements in order to be valid and effective. If you opt out, you **cannot** object to the proposed Settlement, because it does not affect you.

Copies of any such requests for exclusions must also be mailed by first-class mail, no later than [REDACTED], 2023, to:

Chet Waldman, Esq., Wolf Popper LLP, 845 Third Avenue, New York, NY 10022 (Class Counsel)

Kevin McGinty, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Financial Center, Boston, MA 02111 (Defendants’ Counsel)

17. Do I have other options if I do not like the Settlement?

If you do not like the Settlement or some part of it like the fee application by Plaintiff’s attorneys or the Class Representative Service Award, and you do not opt out, you can tell the Court by submitting a written objection. If you want to object to the Settlement, you must mail a letter containing the following information: the name and case number of this lawsuit (*Kenneth Keslar II v. Emerus / BHS Thousand Oaks LLC et. al.*, Case No. 2020-CI-18623); your full name, mailing address, and email address or telephone number; what specifically you do not like about the

**Exhibit B
Form of Notice**

Settlement or any part of it and your reasons why. You must also provide a copy of your BNH bill for any Current Panel performed on you during the Class Period or any other document(s) that demonstrates you are a member of the Class. Your objection, including the document(s) showing you are a member of the Class, must be mailed, postmarked no later than [REDACTED], 2023, to the Clerk of the Court, 73rd Civil District Court, Bexar County Courthouse, 100 Dolorosa, 4th Floor, San Antonio, TX 78205.

Copies of any such objections and accompanying documentation must also be mailed by first-class mail, no later than [REDACTED], 2023, to:

Chet Waldman, Esq., Wolf Popper LLP, 845 Third Avenue, New York, NY 10022 (Class Counsel)

Kevin McGinty, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Defendants' Counsel)

18. What is the difference between opting out of the Settlement and objecting?

Opting out means getting out of the Settlement altogether: you do not receive any benefits, but you are not bound by the terms of the Settlement. Objecting means remaining part of the Settlement, but complaining about some aspect of the Settlement you do not like. You can still receive benefits under the Settlement if you object, but if you want a refund, you must submit a Claim Form. You will also be bound by the Settlement if it is approved by the Court and you will not be able to sue the Defendants relating to any of the Settled Class Claims.

19. Do I have a lawyer in this case?

Yes, Plaintiff's attorneys (*i.e.*, Plaintiff's Counsel) represent the Plaintiff and the entire Class. You do not have to pay for these lawyers. The Court will decide how much Plaintiff's Counsel should be paid by Defendants. Defendants have agreed not to oppose Plaintiff's Counsel's application for attorneys' fees and expenses not to exceed \$800,000 to cover their work and expenses incurred in this case, but the Court will determine the amount of reasonable fees and expenses to be awarded. Any award of attorneys' fees and expenses will **not** reduce the amount of refunds or forgiveness amounts available to eligible Class Members. If you would like to be represented by your own lawyer, you may hire one at your own expense.

20. What does the Plaintiff get from the Settlement?

Defendants have agreed not to oppose Plaintiff's request to the Court for a \$5,000 Class Representative Service Award to the Plaintiff for his work in prosecuting this lawsuit. Any award to the Plaintiff will **not** reduce the amount of write-offs or refunds available to the Class. Like other members of the Class, the named Plaintiff may receive write-offs and/or refunds if eligible.

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

The Court will hold a "Final Approval Hearing" before deciding whether to approve the Settlement. The Final Approval Hearing is scheduled for [REDACTED], 2023, in Courtroom [xx] of the 73rd Civil District Court, Bexar County Courthouse, 100 Dolorosa, 4th Floor, San Antonio, TX 78205. You do not need to attend the Final Approval hearing, but you are welcome to do so. At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also consider Plaintiff's Counsel's application for attorneys' fees, reimbursement of expenses and class representative service award at the Final Approval Hearing.

22. Where can I get more information?

This Notice contains only a summary of the lawsuit and Settlement. More information is available at [website address]. If you have any questions about this Notice or the Settlement, you may also contact the Settlement

**Exhibit B
Form of Notice**

Administrator or Class Counsel using the contact information identified on p.2. The pleadings and some of the other important court filings in the Action are available on the settlement website as well.

DO NOT TELEPHONE THE COURT, DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.

Dated: [REDACTED], 2023

BY ORDER OF THE COURT
73RD JUDICIAL DISTRICT
DISTRICT COURT, BEXAR COUNTY, TEXAS

Exhibit C -- Form of Summary Notice

Baptist Emergency Hospital Settlement
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

PRESORTED
FIRST-CLASS
MAIL
U.S. POSTAGE
PAID
[City, ST]

Court-Ordered Legal Notice of Proposed Class Action Settlement
(This is not a solicitation from a lawyer)

Este mensaje no es una solicitud de abogado. Usted puede ser elegible para un reembolso o una condonación de su deuda médica como resultado de un acuerdo de demanda colectiva. Para obtener más información, visite [SETTLEMENT WEBSITE] o llame a 1-866-742-4955.

Electronic Service Requested

-----Barcode-----
(Postal Service: Please Do Not Mark or Cover Barcode)

[NAME1]
[ADDR1]
[CITY] [ST] [ZIP]
[COUNTRY]

**Court-Ordered Legal Notice of
Proposed Class Action Settlement**
(This is not a solicitation from a lawyer)
In the District Court, 73rd Judicial District
Bexar County, Texas

KENNETH KESLAR II, v. EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST EMERGENCY HOSPITAL - SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, and EMERUS HOLDINGS INC.
Case No. 2020-CI-18623

To: All persons who went to a Baptist Emergency Hospital (now called Baptist Neighborhood Hospital (“BNH”)) facility, got certain blood tests performed (namely, the BMP (includes CK) or LFT (includes Amylase) laboratory panels) and were billed for those panels.

IMPORTANT NOTICE ABOUT A CLASS ACTION SETTLEMENT

YOU MAY BE ENTITLED TO A REFUND OR FORGIVENESS ON YOUR MEDICAL BILL

PLEASE READ THIS NOTICE CAREFULLY

Capitalized terms used in this notice that are not otherwise defined are defined in the Stipulation of Settlement, available at the Settlement Website.

A settlement has been reached in a class action lawsuit against Emerus / BHS SA Thousand Oaks LLC d/b/a Baptist Emergency Hospital – Shavano Park (now called “Baptist Neighborhood Hospital” or “BNH”), Emerus Hospital Partners LLC, and Emerus Holdings, Inc. (collectively the “Defendants”) relating to the billing of certain metabolic and hepatic function laboratory panels (i.e., the BMP (includes CK) and LFT (includes Amylase)). Defendants deny all allegations of wrongdoing, negligence, fault, or liability and assert that their actions have been lawful and proper in all respects and in compliance with all applicable legal duties.

This Postcard Settlement Notice (“Summary Notice”) provides only limited information about the Settlement. For more information, i) go to the Settlement Website [Settlement website URL] which contains the Long-form Notice of Settlement of Class Action (“Notice”), ii) contact the Settlement Administrator, RG/2 Claims Administration LLC, whose information is also on the front of this Postcard, or contact Class Counsel as detailed in the Notice. **Please do not contact the Court, Defendants, or their counsel.**

Who is Included? Any person who was treated at any BNH facility between September 25, 2016 and January 27, 2023, and one or more of the relevant laboratory panels was ordered and performed for that individual, and that person was subsequently billed for, at least, one of these panels, is included. *Note:* Please refer to Question 8 in the long-form Notice, for any exceptions. **If you are receiving this Summary Notice, that means BNH’s records indicated that you are included in this Settlement.** If you think there has been a mistake, please contact the Settlement Administrator or Class Counsel as described in the Notice.

Settlement Benefits. Settlement Class Members may be eligible to have their laboratory panel bill refunded, and those who are not entitled to a refund are entitled to have any remaining laboratory panel balance that they owe forgiven. You may find out the amount of any refund or forgiveness you are eligible for, if any, on the Settlement Website by logging in with your unique Login ID and password:

Login: [...]
Password: [...]

For the other benefits and details of the Settlement, please read the Long-form Notice on the Settlement Website.

Exhibit C – Form of Summary Notice

To be eligible for a refund (if you are entitled to receive one), you are required to complete and submit a Claim Form postmarked or submitted online no later than [date]. When you log onto the settlement website with your unique login and password you will learn whether you are entitled to claim a refund. The Claim Form is available at [website address] and may be mailed or submitted online. You may also request a form be mailed to you by contacting the Settlement Administrator at info@rg2claims.com or 1-866-742-4955. If you are not eligible for a refund you do not have to fill out a Claim Form to be eligible for any potential forgiveness of an outstanding amount, but may contact the Settlement Administrator at info@rg2claims.com or 1-866-742-4955 to determine the amount of your forgiven laboratory panel balance.

Other Options. If you do nothing, you will not get any refund from the Settlement, but you will still be considered for forgiveness of your balance, if eligible. Should you do nothing, you will also give up all your rights to sue Defendants on your own about the legal issues in this case. If you do not want to be bound by the Settlement, you must exclude yourself from the Class by [date]. Note, however, you will not get any refund that you may be entitled to receive, or forgiveness of your laboratory panel balance, if you choose to exclude yourself. If you choose to stay in the Class, but you do not like some aspect of the Settlement, you may object by [date]. Please refer to the Notice for a detailed explanation on how you may exclude yourself or object. On [date], the Court will hold a Final Approval Hearing to decide whether to approve the Settlement, Plaintiff's Counsel's request for attorneys' fees, reimbursement of expenses and a class representative incentive award. You may appear at that Hearing at your own cost but you do not have to.

If you would like to correct our address information for you, please complete and return the enclosed Address Change Form (postage required) or contact the Settlement Administrator at the email address or phone number shown above.

THIS IS NOT A CLAIM FORM

Carefully separate this Address Change Form at the perforation

Name: _____

Current Address: _____

Place
Stamp
Here

Address Change Form

To make sure your information remains up to date in our records, if your current address is different from the address where your notice was mailed please confirm your current address by filling in the above information and depositing this postcard in the U.S. Mail

BAPTIST EMERGENCY HOSPITAL SETTLEMENT
C/O RG/2 CLAIMS ADMINISTRATION LLC
PO BOX 59479
PHILADELPHIA, PA 19102-9479

Exhibit D
Form of Claim Form

CLAIM FORM

Kenneth Keslar II v. Emerus / BHS Thousand Oaks LLC et. al., Case No. 2020-CI-18623
District Court of Texas, 73rd Judicial District, Bexar Country, Texas

IF YOU DO NOT FOLLOW THESE INSTRUCTIONS, YOUR CLAIM COULD BE DELAYED OR REJECTED.

I. INSTRUCTIONS FOR MAKING A CLAIM

TO MAKE A CLAIM FOR A REFUND:

- 1. Complete and sign this Claim Form.**
 - Make sure this form is filled out completely and accurately.
 - You must sign and date the RELEASE AND SWORN VERIFICATION STATEMENT (Part **IV**).

- 2. Mail the completed Claim Form and supporting documentation** to the Settlement Administrator at the address shown on the last page of this form, **postmarked no later than [INSERT CLAIM SUBMISSION DEADLINE]**.

You should include information for each visit for which you are seeking a refund in the Service Information Page included in this Claim Form. If you need additional copies of the Service Information Page or need a new Claim Form, you may contact the Settlement Administrator, RG/2 Claims Administration LLC by phone at 1-866-742-4955 or by email at info@rg2claims.com.

(NOTE: YOU DO NOT NEED TO COMPLETE THIS FORM TO GET A WRITE-OFF)

II. PATIENT INFORMATION

Patient Full Name

Street Address (P.O. BOX ADDRESSES AND POSTAL OFFICE ADDRESSES ARE NOT VALID)

City

State

Zip Code

-- --

Telephone Number

Date of Birth (MM/DD/YYYY)

E-mail Address

Guardian Full Name (If Patient Is under the Age of 18)

- Is the person completing and submitting this Claim Form the Patient or Guardian identified above?

Yes

No

**Exhibit D
Form of Claim Form**

If no, what is your name and relation to the Patient?

Submitter Full Name

Submitter Relation to the Patient (e.g., Sibling, Spouse, etc.):

(Note: Refund checks will be sent to the mailing address provided on this Claim Form. It is **your** responsibility to send the Settlement Administrator your new contact information if it changes to ensure receipt of Refund check and/or further notices.)

III. SERVICE INFORMATION

Please identify on the following Service Information Page details regarding the Baptist Emergency Hospital (now known as Baptist Neighborhood Hospital), date of service, and bill you received for a BMP (includes CK) and LFT (includes Amylase) laboratory panel tests performed between September 25, 2016 and January 27, 2023. **You must complete a section of the Service Information Page for each date of service for which you are seeking a refund. If you are submitting this Claim Form for more than three dates of service, you may print additional copies of the Service Information section of this Claim Form at [\[insert settlement website address\]](#).**

NOTE: If you do not know whether the Texas hospital you went to was a Baptist Emergency Hospital, you may call the Settlement Administrator at the following toll-free number: 1-866-742-4955.

Service Information Page

Date of Service (MM/DD/YYYY)

Hospital Name

Hospital Address

Hospital City

State

Zip Code

The laboratory test panels, performed at this visit, that you are seeking a Refund for (**Check all that apply**):

BMP (includes CK)

LFT (includes Amylase)

Insurance details

Name of Insurance Company

Exhibit D
Form of Claim Form

Type of Insurance Plan

Bill and payment details (if known)

Date of the Bill

Bill Amount

Amount paid (if any)

Additional Date of Service (MM/DD/YYYY)

Hospital Name

Hospital Address

Hospital City

State

Zip Code

The laboratory test panels, performed at this visit, that you are seeking a Refund for (**Check all that apply**):

BMP (includes CK)

LFT (includes Amylase)

Insurance details

Name of Insurance Company

Type of Insurance Plan

Bill and payment details (if known)

Date of the Bill

Bill Amount

Amount paid (if any)

Additional Date of Service (MM/DD/YYYY)

**Exhibit D
Form of Claim Form**

Hospital Name

Hospital Address

Hospital City State Zip Code

The laboratory test panels, performed at this visit, that you are seeking a Refund for (**Check all that apply**):

- BMP (includes CK)
- LFT (includes Amylase)

Insurance details

Name of Insurance Company

Type of Insurance Plan

Bill and payment details (if known)

--
Date of the Bill Bill Amount

Amount paid (if any)

IV. RELEASE AND SWORN VERIFICATION STATEMENT

PLEASE READ THE BELOW CAREFULLY AS IT WILL AFFECT YOUR LEGAL RIGHTS.

With full awareness and understanding of this release, I hereby acknowledge I have received the Notice of Settlement (“Notice”). I submit this Claim Form to participate in the settlement reached in this Lawsuit, and submit to the jurisdiction of the District Court of Texas, 76th District, Bexar County, with respect to my claim asserted herein, and for purposes of enforcing the release of claims stated in this Claim Form and in the Notice. I further agree and acknowledge that I am bound by the terms of the Order and Judgment that may be entered by the Court in this Lawsuit, and the terms of the Settlement Agreement, including the release of claims set forth therein.

I, _____, (**PRINT PATIENT NAME OR GUARDIAN NAME IF PATIENT IS UNDER THE AGE OF 18**), swear under penalty of perjury of the laws of Texas that the information I have supplied in this Claim Form is accurate, truthful, and complete in all respects. I understand that the above information will be reviewed and verified by a representative from the Settlement Administrator, and that I may be contacted for more information, if needed. I understand that my claim will be reviewed by the Settlement Administrator and may be approved or denied, and pursuant to the Texas Medical Records

Exhibit D
Form of Claim Form

Privacy Act and the Health Insurance Portability and Accountability Act ("HIPAA"), I consent to and authorize the Settlement Administrator, the Defendants, and the Parties' counsel to review my billing records and any related medical information on the billing records for the purpose of determining whether or not I am entitled to a Refund.

Patient Signature (Or Guardian If Patient Is Under the Age of 18)

Date

You do NOT need to submit any medical records with this Claim Form. If you do include medical information, you expressly acknowledge that it may be reviewed by the Parties' counsel and/or the Settlement Administrator and consent to such review.

V. MAILING INSTRUCTIONS

Please mail your completed claim form no later than **[INSERT CLAIM SUBMISSION DEADLINE]** to:

By U.S. Mail:

[insert address]

YOU ARE STRONGLY ENCOURAGED TO KEEP A COPY OF YOUR COMPLETED CLAIM FORM FOR YOUR RECORDS AND TO ENSURE CONFIRMATION OF DELIVERY USING A TRACKING ENABLED METHOD OF MAIL (E.G., USPS PROOF OF MAILING) OR BY CALLING THE SETTLEMENT ADMINISTRATOR AT 877-522-0019. NEITHER DEFENDANTS (NOR ANY OF THEIR SUBSIDIARIES OR AFFILIATES), PLAINTIFF, THEIR ATTORNEYS, NOR THE SETTLEMENT ADMINISTRATOR ARE RESPONSIBLE FOR LOST, MISDIRECTED, OR DELAYED MAIL SHIPMENTS.

VI. WHAT HAPPENS NEXT?

When your Claim Form is received, it will be reviewed and processed by the Settlement Administrator to determine if you are eligible and have satisfied the requirements for a Refund. If your Claim Form has a defect, and that is curable, the Settlement Administrator will contact you and give you a chance to fix the defect. If you are deemed eligible for a Refund, it will be processed in a reasonable amount of time, as approved by the Court.

Exhibit E
Form of Qualified Protective Order

CASE NO. 2020-CI-18623

KENNETH KESLAR II, individually and on behalf of all others similarly situated,
Plaintiff,

v.

EMERUS / BHS SA THOUSAND OAKS,
LLC d/b/a BAPTIST EMERGENCY
HOSPITAL - SHAVANO PARK, EMERUS
HOSPITAL PARTNERS, LLC, and
EMERUS HOLDINGS INC.,
Defendants.

IN THE DISTRICT COURT

73rd JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

QUALIFIED PROTECTIVE ORDER

Pursuant to the Settlement Agreement in the above-captioned action (the “Action”), the Parties have stipulated and agreed, through their respective counsel, to the entry of an Order pursuant to the Tex. Health & Safety Code § 241.153(19) to protect and preserve the confidentiality of protected health information that may be produced or otherwise disclosed during the course of this Settlement. All capitalized terms, unless otherwise defined herein, have the meanings set forth in the Settlement Agreement.

Pursuant to Tex. Health & Safety Code § 241.153(19), the Court finds good cause for the issuance of a qualified protective order and ORDERS as follows:

1. RG/2 Claims Administration LLC is serving as the Settlement Administrator under the Settlement Agreement. The Settlement Administrator’s duties and functions include delivery of Notice to Class Members, receipt of Claim Forms submitted by Refund Eligible Class Members, and payment of Refunds to Refund Payment Class Members. In order to perform its duties and functions, the Settlement Administrator will need to obtain from Defendants (a) Class Members’

Exhibit E
Form of Qualified Protective Order

names, addresses, telephone number and email addresses; (b) Refund amounts payable to Refund Eligible Class Members and (c) Panel Cost Balances that are eligible to be forgiven pursuant to the Settlement Agreement (all information described in Paragraph 1(a) and (b) to be referred to as the “Class Member Information”).

2. This Order shall govern the delivery, handling, access to, and the use of (a) Class Member Information provided to the Settlement Administrator; (b) all information utilizing or derived from the Class Member Information that the Settlement Administrator receives, creates, or uses; and (c) any information contained in or derived from the Class Member Information that may be protected under applicable federal or state law (including, without limitation, any Protected Health Information, as defined in 45 C.F.R. § 160.103, or any information protected from disclosure pursuant to Tex. Health & Safety Code § 181) (all information described in Paragraph 2(a)-(c) to be referred to as “Protected Information”).

3. The Settlement Administrator is specifically authorized to receive, obtain, create, and utilize Protected Information. Pursuant to Tex. Health & Safety Code § 241.153(19), and consistent with 45 C.F.R. § 164.512(e)(1)(i), individual Class Member authorizations are not required for any disclosure, receipt, or use of Protected Information by the Settlement Administrator pursuant to this Order. The Settlement Administrator shall keep the Protected Information secure and confidential, may only use Protected Information for the purposes specified in the Settlement Agreement, and may not use or disclose Protected Information in any manner or for any purpose not permitted under this Order.

4. Protected Information obtained or used by the Settlement Administrator under this Order may only be accessed by or disclosed to the following persons: (a) employees of the Settlement Administrator necessary to perform the obligations of the Settlement Administrator

Exhibit E
Form of Qualified Protective Order

under the Settlement Agreement; (b) court officials involved in this Action (including court reporters, persons operating video recording equipment at court hearings, and any special master appointed by the Court); (c) any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper; (d) a Party, or an officer, director, or employee of a Party deemed necessary by counsel to aid in the prosecution, defense, or settlement of this Action; (e) general counsel for a Party to this Action who are acting in a legal capacity and who are actively engaged in the conduct of this Action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary; or (f) outside counsel of record for the Parties in this Action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the Action.

5. At the conclusion of the Settlement Administrator's performance of its duties under the Settlement Agreement, the Settlement Administrator shall permanently and irretrievably destroy all data or documents in its possession, custody, or control (whether held or stored in paper or electronic form) containing any Protected Information.

6. This Order shall take effect when entered and shall be binding upon the Settlement Administrator and all of its employees; counsel of record and their law firms; the Parties; and persons and entities made subject to this Order by its terms.

IT IS SO ORDERED

Exhibit F
Form of Proposed Final Order and Judgment

CAUSE NO. 2020-CI-18623

KENNETH KESLAR, II, individually	§	IN THE DISTRICT COURT
and on behalf of all others similarly	§	
situated,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
EMERUS / BHS SA THOUSAND	§	BEXAR COUNTY, TEXAS
OAKS, LLC d/b/a BAPTIST	§	
EMERGENCY HOSPITAL -	§	
SHAVANO PARK, EMERUS	§	
HOSPITAL PARTNERS, LLC, and	§	
EMERUS HOLDINGS, INC.,	§	
	§	
Defendants.	§	73 rd JUDICIAL DISTRICT

**[PROPOSED] FINAL ORDER AND JUDGMENT GRANTING
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

This matter came before the Court for hearing on _____, 2023 in the Courtroom of the 73rd Judicial District of Bexar County, Texas on application of the Parties for approval of the proposed Settlement. The Court has considered the Parties’ Stipulation of Settlement dated January 27, 2023 (“Settlement Agreement”) and its exhibits; the Motion in Support of Final Approval of the Settlement, Attorneys’ Fee and Expenses, and Class Representative Award filed on _____, 2023 (“Final Approval Motion”); the Order Preliminary Certifying Class for Settlement Purposes, Granting Preliminary Approval of Settlement and Approving Class Notice dated _____, 2023 (“Preliminary Approval Order”); and other documents filed related to the Settlement, all matters raised and evidence presented at the time of the hearing, any objections or

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comments received regarding the Settlement, if any, the record in the Action, and all oral arguments presented to the Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Order incorporates and makes a part hereof: (i) the Settlement Agreement (attached as Exhibit [] to the Preliminary Approval Motion); (ii) the Notice (attached as Exhibit [] to the Preliminary Approval Motion) and (iii) the Summary Notice (attached as Exhibit [] to the Preliminary Approval Motion). All capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement, and over all Parties to the Action, including all Class Members.

3. The Court fully and final approves the Settlement as set forth in the Settlement Agreement and finds that the Settlement is fair, reasonable, and adequate in all respects; meets all of the requirements under Rule 42 of the Texas Rule of Civil Procedure; and was reached in good faith following arms-length negotiations between the Parties.

4. Neither the Settlement Agreement, this Order, nor any part of the Settlement are admissions of liability or fault by Defendants or the Released Parties, nor are they findings of the validity of any claims in the Action or any wrongdoing or violation of law by Defendants or the Released Parties. Neither this Order, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability of, or admission by, any of the Defendants or the Released Parties. Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this Order in a proceeding to consummate or enforce the Settlement Agreement or this Order, to defend against the assertion of Released Claims in any other proceeding, or as otherwise required by law.

5. No objections to the Settlement and Settlement Agreement have been made.

Exhibit F
Form of Proposed Final Order and Judgment

6. Pursuant to Rule 42(c) of the Texas Rule of Civil Procedure, the Court certifies the following Class:

All patients treated at a facility operated by Baptist Neighborhood Hospital (formerly Baptist Emergency Hospital) between September 25, 2016 and January 27, 2023 for whom one or more of the Current Panels was ordered and performed, and the patient was billed some Patient Responsibility for, at least one of the Current Panels (the "Class"). Excluded from the Class are Defendants and their respective parents, subsidiaries, representatives, officers, directors, partners, and co-ventures and on and after the exercise of opt out rights pursuant to Paragraph 8 of the Settlement Agreement, anyone who timely requested to be excluded from the Settlement.

7. Pursuant to Rule 42(c)(3) of the Texas Rules of Civil Procedure, the Class shall consist of all Class Members who did not timely and validly exclude themselves from the Settlement and are thereby bound by this Order. The evidence presented shows that there are Class Members who have excluded themselves from this Settlement. Those persons are listed on Ex. A to this Order.

8. The distribution of the Summary Notice and posting of Notice on the Settlement Website, constituted the best notice practicable under the circumstances and fully satisfied the requirements of Rule 42 of the Texas Rule of Civil Procedure, due process, and all other applicable laws.

9. In accordance with the terms of the Settlement Agreement, Defendants shall pay the Settlement Administrator the Total Refund Payment Amount, an amount sufficient to cover all Refunds to eligible Class Members within thirty (30) days upon receiving the list of Refund Payment Class Members from the Settlement Administrator. The Settlement Administrator shall then remit, electronically or through checks, refunds to all eligible Class Members in accordance with the Settlement Agreement.

10. In accordance with the terms of the Settlement Agreement, Defendants shall pay the Settlement Administration Costs.

11. The Court approves Plaintiff Kenneth Keslar II as the Class Representative.

Exhibit F
Form of Proposed Final Order and Judgment

12. In accordance with the terms of the Preliminary Approval Order and the Settlement Agreement, a Class Representative Award of \$5,000 will be paid to the Plaintiff in recognition of the time and effort spent as a class representative in this Action and for serving the interests of the Class Members.

13. Having considered the factors set forth in Rule 42(g) of the Texas Rules of Civil Procedure, the Court finds that Plaintiff's Counsel are properly appointed to represent the Class Members and have fairly and adequately represented the Class Members for purposes of entering into and implementing the Settlement.

14. In accordance with the Settlement Agreement, an attorneys' fee award of \$800,000 to be paid to Class Counsel by Defendants is reasonable, fair, and appropriate to compensate Plaintiff's Counsel for the time and effort spent to investigate, file, litigate, and settle the Action. Such an award meets the requirements of Rules 42(h) and (i) of the Texas Rules of Civil Procedure.

15. In accordance with the Settlement Agreement, the Plaintiff and all Class Members together with any of their heirs, agents, attorneys, or assigns, will forever release and discharge the Defendants' Released Parties of and from any and all claims in law or in equity, of whatever kind or nature including, without limitation, claims for monetary damages, equitable, declaratory, and injunctive relief, restitution and disgorgement, and attorneys' fees, including those claims asserted or which could have been asserted in the Action including, without limitation, claims arising from, concerning, or in any way relating to the (i) billing of the Current Panels during the Class Period that is the basis of the litigation; and (ii) pricing transparency and disclosure or non-disclosure concerning billing for the Current Panels (all such claims that are released by the Class Members as to Defendants' Released Parties to be the "Settled Class Claims"). Upon the Effective Date, Plaintiff and all Class Members are permanently barred and enjoined from initiating, asserting, or prosecuting any Settled Class Claims against Defendants' Released Parties in any court or any forum.

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Form of Proposed Final Order and Judgment

16. In accordance with the Settlement Agreement, Defendants' Released Parties shall be deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiff, Plaintiff's Counsel and Class Members ("Plaintiff's Released Parties") from all claims (including, without limitation, unknown claims), which arise out of or relate to the initiation, litigation, prosecution, or settlement of this Action including (but not limited to) any claims of bad faith or abuse of process against Plaintiff's Released Parties relating to their initiation, litigation, prosecution, or settlement of the Action and they shall forever be barred and enjoined from commencing, instituting, or prosecuting any of the claims against Plaintiff's Released Parties (all such claims that are released by the Defendants' Released Parties as to Plaintiff's Released Parties to be the "Settled Defendant Claims").

17. The Court hereby dismisses with prejudice the Action, and all released claims against any and all Released Parties and without costs to any of the Parties as against the others (other than set forth above in this Order).

18. Without affecting the finality of this Order, the Court reserves jurisdiction over the implementation, administration and enforcement of the Settlement Agreement, this Order, and all matters ancillary thereto.

19. The Court finds that no reason exists for delay in ordering final approval. And the clerk is hereby directed to enter this Order forthwith. This is a Final Order and Judgment and is final for purposes of appeal.

20. The Parties are hereby authorized, without further approval from the Court, to agree to and adopt such modifications and expansions of the Settlement Agreement, including without limitation, the forms to be used in the process of distributing settlement payments, which are consistent with this Order and do not limit the rights of the Class Members under the Settlement Agreement.

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Form of Proposed Final Order and Judgment

Signed on this ____ day of _____, 2023.

Judge _____
73rd JUDICIAL DISTRICT COURT