

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

)	Cause No. 2022-CC09492
)	
IN RE BJC HEALTHCARE)	Division 1
DATA BREACH LITIGATION)	
)	
)	
)	
)	

SETTLEMENT AGREEMENT

This Settlement Agreement, dated April 21, 2022, is made and entered into by and among: (1) Plaintiffs Brian Lee Bauer, Tiffany Jew, Jessica Simpson, Leah Sweet, Bradley Dean Taylor (“Plaintiffs” or “Class Representatives”), on behalf of themselves and the proposed Settlement Class; and (2) BJC Health System, d/b/a BJC Healthcare (“BJC”); and (3) BJC Collaborative, LLC (the “Collaborative”) (collectively, the “Parties”).

I. BACKGROUND

1. This litigation arises from a security incident involving the personally identifiable information (“PII”) and protected health information (“PHI”) of BJC’s patients and employees.

2. Plaintiffs allege that a phishing attack occurred on March 6, 2020, and that this attack may have resulted in cyber-criminals accessing and obtaining the PII/PHI of BJC’s patients and employees through one or more BJC employee email accounts (the “Incident”). Plaintiffs allege that the PII/PHI of approximately 287,874 BJC patients and employees was impacted in the Incident.

3. After BJC provided notice of the Incident on May 5, 2020, Plaintiffs filed several lawsuits against BJC:

- a. Plaintiffs Tiffany Jew and Jessica Simpson filed their petition on July 13, 2020. *Tiffany Jew and Jessica Simpson v. BJC*, Case No. 2022-CC09315 (Circuit Court of the City of St. Louis, Missouri).

- b. Plaintiff Brian Lee Bauer filed his petition on August 10, 2020, which became the operative action once consolidated. *Brian Lee Bauer v. BJC*, Case No. 2022-CC09492, (Circuit Court of the City of St. Louis, Missouri).
- c. On January 28, 2021, Plaintiffs Jew, Simpson, and Bauer consolidated their actions into the instant action, styled *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC09492.
- d. The Plaintiffs described in paragraph 3(a)-(c) are the “Missouri Plaintiffs.”
- e. Plaintiff Leaha Sweet filed her complaint on September 16, 2020. *Leaha Sweet v. BJC*, Case No. 20-CV-0947, (S.D. Ill.).
- f. On February 24, 2021, Plaintiff Sweet amended her complaint to add plaintiff Bradley Dean Taylor.
- g. The Plaintiffs described in paragraph 3(e)-(f) are the “Illinois Plaintiffs.”

4. The Missouri Plaintiffs asserted the following causes of action against BJC: (1) negligence; (2) negligence per se; (3) breach of implied contract; (4) violation of the Missouri Merchandising Practices Act; (5) unjust enrichment; (6) invasion of privacy; and (7) breach of contract.

5. The Illinois Plaintiffs asserted the following causes of action against BJC and the Collaborative: (1) unjust enrichment; (2) breach of contract (BJC only); (3) negligence; (4) Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”); (5) negligence per se; (6) breach of covenant of good faith and fair dealing; (7) vicarious liability; and (8) violation of the Missouri Merchandising Practices Act. The Illinois Plaintiffs also asserted claims of bailment and invasion of privacy, but those were dismissed with prejudice by the United States District Court for the Southern District of Illinois.

6. BJC and the Collaborative moved to dismiss Plaintiffs' Petitions and Complaints, and apart from the dismissals identified in paragraph 5, those motions were denied.

7. BJC filed its answer to the Missouri Plaintiffs' Consolidated Petition on May 13, 2021, denying that the Missouri Plaintiffs were entitled to any relief, and it filed its answer to the Illinois Plaintiffs' Complaint on July 29, 2021, denying that the Illinois Plaintiffs were entitled to any relief.

8. The Parties engaged in discovery.

9. On September 1, 2021, the Parties participated in a full-day mediation with JAMS Mediator Bruce A. Friedman, Esq.

10. The Parties were unable to reach a resolution at the mediation, but continued to engage in settlement negotiations

11. After coming to an agreement in principle, the Parties finalized the terms of this Settlement Agreement and the attached exhibits.

12. The Class Representatives and Class Counsel believe the Settlement confers substantial benefits on the Settlement Class and is in the best interest of the putative class.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is hereby agreed by and among the Class Representatives, individually and on behalf of the Settlement Class, BJC, and the Collaborative that, subject to the approval of the Court, the Litigation be forever resolved, settled, compromised, and dismissed with prejudice on the following terms and conditions:

II. DEFINITIONS

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

- a. "Missouri Action" means *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC09492.

- b. “Illinois Action” means *Leaha Sweet & Bradley Dean Taylor v. BJC*, Case No. 20-CV-0947, (S.D. Ill.).
- c. “Action” means the Missouri Action and the Illinois Action, together.
- d. “Agreement” or “Settlement Agreement” or “Settlement” means this Settlement Agreement, Exhibits, and the settlement embodied herein.
- e. “Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.
- f. “Claimant” means a Settlement Class member who makes a Claim for benefits under this Settlement Agreement.
- g. “Claims Administrator” means the third-party settlement administrator chosen by the Parties to provide Notice of the Settlement to the Settlement Class and administer the Settlement, subject to approval of the Court.
- h. “Claims Deadline” means the final time and date by which a Claim must be postmarked or submitted to the Settlement Website in order for a Class Member to be entitled to any of the settlement consideration contemplated by this Agreement. The Claims Deadline shall be one hundred and eighty (180) days after the Notice Date.
- i. “Claim Form” means the form that the Settlement Class member must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall be reformatted by the Settlement Administrator as needed. The Claim Form template is attached as **Exhibit A** to this Settlement Agreement.
- j. “Class Counsel” means Illinois Class Counsel and Missouri Class Counsel.

- k. “Missouri Class Counsel” means Ben Barnow, J. Gerard Stranch, IV, and John F. Garvey.
- l. “Illinois Class Counsel” means Troy Walton, Kenneth J. Brennan, Tyler Schneider, and Aaron Zigler.
- m. “Lead Class Counsel” means Missouri Class Counsel.
- n. “Class Representatives” means the Plaintiffs (as defined later in this section).
- o. “Missouri Petition” means the Consolidated Class Action Petition filed on January 28, 2021, before the Court.
- p. “Illinois Complaint” means the Second Amended Class Action Complaint filed in the Southern District of Illinois on February 24, 2021.
- q. “Court” means the Hon. Judge Christopher E. McGraugh for the Circuit Court of the City of St. Louis, Missouri, or such other Court sitting in its stead.
- r. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement in the Action shall become effective and final, and occurs when the Final Judgment, as defined in Paragraph 13-t, below, has been entered and all times to appeal therefrom have expired with (1) no appeal or other review proceeding having been commenced; or (2) an appeal or other review proceeding having been commenced, and such appeal or other review having been concluded such that it is no longer subject to review by any court, whether by appeal, petitions for rehearing or reargument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been resolved in a manner that affirms the Final Judgment in all material respects.

- s. “Fees, Costs, and Expenses” means the reasonable attorneys’ fees, costs, and expenses incurred by counsel for Plaintiffs and awarded by the Court, not to exceed the amount agreed to by the Parties.
- t. “Final Judgment” means a judgment entered by the Court, as discussed in Section XIII, below.
- u. “Litigation” means all claims and causes of action asserted, including those asserted in the Missouri Action and the Illinois Action, or that could have been asserted, against BJC, the Collaborative, and the Released Parties, including any and all appellate rights, as well as any other such actions by and on behalf of any other individuals or putative classes of individuals originating, or that may originate, in the jurisdictions of the United States against BJC and the Collaborative relating to the Incident. The Parties represent that they are unaware of any such actions pending other than the Missouri Action and the Illinois Action.
- v. “Notice” means the postcard “Notice of Pendency and Proposed Settlement of Class Action,” substantially in the form, included within **Exhibit B**, attached hereto, which is to be mailed to Settlement Class members via U.S.P.S. first class mail, subject to approval by the Court.
- w. “Notice Date” means the first date upon which the Notice is disseminated.
- x. “Opt-Out Date” means the date by which Settlement Class members must submit their request to be excluded from the Settlement Class in order for that request to be effective.
- y. “Parties” means (i) Class Representatives, on behalf of themselves and the Settlement Class; (ii) BJC; and (iii) the Collaborative.

- z. “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, agents and/or assignees.
- aa. “Plaintiffs” mean Brian Lee Bauer, Tiffany Jew, Jessica Simpson, Leah Sweet, and Bradley Dean Taylor.
- bb. “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing mailed notice to the Settlement Class of the pendency of the Action and of the Settlement, to be entered by the Court.
- cc. “Released Claims” means any and all claims and causes of action of every nature and description (including Unknown Claims), whether arising under federal, state, statutory, regulatory, common, foreign, or other law, that arise in any way from or relate to the Litigation against BJC and/or the Collaborative and the Incident (other than claims to enforce the Settlement).
- dd. “Released Parties” means BJC and the Collaborative and all of their respective past, present, and future parent companies, partnerships, subsidiaries, affiliates, divisions, employees, servants, members, providers, partners, principals, directors, shareholders, and owners, and all of their respective attorneys, heirs, executors, administrators, insurers, reinsurers, joint ventures, personal representatives, predecessors, successors, transferees, trustees, and assigns, and includes, without limitation, any Person related to any such entities who is, was, or could have been named as a defendant in the Litigation.

- ee. “Incident” means the data incident described in the petitions filed by the Missouri Plaintiffs and in the Second Amended Complaint filed by the Illinois Plaintiffs.
- ff. “Settlement Class” means all Persons to whom BJC sent notification that their personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Incident.
- gg. “BJC” means BJC Health System, d/b/a BJC Healthcare (“BJC”).
- hh. “BJC’s Counsel” means Baker & Hostetler LLP.
- ii. “The Collaborative” means BJC Collaborative, LLC.
- jj. “The Collaborative’s Counsel” means Husch Blackwell.
- kk. “Unknown Claims” means any of the Released Claims that any Settlement Class members, including any of the Class Representatives, does not know or suspect to exist in his/her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, the Class Representatives expressly shall have, and each of the other Settlement Class members shall be deemed to have, and by operation of the Final Judgment shall have, waived the provisions, right, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by the law of any state, province, or territory of the United States, which is similar, comparable, or equivalent to California Civil Code § 1542, 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.

Settlement Class members, including the Class Representatives, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives expressly shall have, and each other Settlement Class member shall be deemed to have, and by operation of the Final Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all of the Released Claims. The Parties acknowledge, and Settlement Class members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

III. SETTLEMENT BENEFITS TO CLASS

18. **Ordinary Expense Reimbursement:** All Settlement Class members who submit a valid Claim are eligible to recover compensation for up to \$250 of their ordinary out-of-pocket expenses, that were incurred between March 6, 2020 and the Claims Deadline, as a result of the Incident, including: (i) cost to obtain credit reports; (ii) fees related to credit freezes; (iii) card replacement fees; (iv) late fees; (v) overlimit fees; (vi) interest on payday loans taken as a result of the Incident; (vii) other bank or credit card fees; (viii) postage, mileage, and other incidental expenses resulting from lack of access to an existing account; and (ix) costs associated with credit monitoring or identity theft insurance if purchased as a result of the Incident; (x) compensation for attested-to lost time spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the

aftermath/clean-up of the Incident, at the rate of \$20 per hour for up to three (3) hours of lost time (attestation requires at least a narrative description of the activities performed during the time claimed and their connection to the Incident). No attestation or verification required or permitted by this Agreement shall require notarization.

- a. For a Claimant to recover documented costs of credit monitoring services activated between March 6, 2020 and the Claims Deadline incurred as a result of the Incident, discussed in subpart (ix), above, the Claimant must submit either (1) a receipt showing a one year subscription to a credit monitoring service between March 6, 2020 and the Claims Deadline incurred as a result of the Incident; or (2) at least three receipts showing consecutive monthly payments to a credit monitoring service during the same period of time and an attestation that the Claimant intends to continue subscribing to such service through at least one year after the Claims Deadline. These instructions shall be expressly listed in the Long Form notice posted on the settlement website, and listed in the FAQs posted on the settlement website. These instructions shall be referenced in the online or mailed claim form. If these instructions are not followed in a material manner as determined by the Settlement Administrator in its professional judgment, the Settlement Administrator shall deem Claims invalid, subject to the Dispute Resolution Process.
- b. Settlement Class members seeking reimbursement under this Paragraph 18 must complete and submit either a written or online claim form to the Claims Administrator, postmarked or electronically submitted on or before the Claims Deadline. The claim form must be verified by the Settlement Class member with an attestation that he or she believes that the losses or expenses claimed were incurred as a result of the Incident. The claim form will require reasonable documentation of the ordinary out-

of-pocket cost(s). The reasonableness of such documentation will be determined by the Settlement Administrator in its professional judgment.

19. **Extraordinary Expense Reimbursement:** All Settlement Class members who submit a valid Claim are also eligible to recover compensation for up to \$5,000 of their documented extraordinary monetary out-of-pocket losses incurred on or after March 6, 2020, as a result of the Incident. This category of compensation requires documentation plausibly supporting that the loss was not reimbursed by any other source, the loss was in material part caused by the Incident, and the Settlement Class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. The determination of whether a loss was “in material part” caused by the Incident shall be determined by the Settlement Administrator. Any Settlement Class member who suffered documented fraud, attempted fraud, or publication or actual misuse associated with PHI compromised as a result of the Incident shall have the right to claim up to an additional three hours of lost time, at \$20 per hour, for time spent remedying the fraud or attempted misuse, subject to the \$5,000 extraordinary expense cap.

- a. Settlement Class members seeking extraordinary expense reimbursement under this Paragraph 19 must complete and submit either a written or online claim form to the Claims Administrator, postmarked or electronically submitted on or before the Claims Deadline.
- b. To claim extraordinary out-of-pocket expense reimbursements, a Settlement Class member must: (i) provide identification of the identity theft event(s); (ii) attest that he or she believes that the losses or expenses were incurred as a result of the Incident, and (iii) provide reasonable documentation of the out-of-pocket losses claimed.

- c. Claims for extraordinary compensable additional lost time will be provided to Settlement Class members subject to the following: reimbursement for up to three (3) hours of extraordinary compensable additional lost time will require an attestation that the time was spent as a result of the documented identity theft or fraud.

20. **Credit Monitoring Protections:** BJC agrees to offer two (2) years of 1B credit monitoring and identity theft insurance through IDX. Settlement class members must affirmatively request credit monitoring by indicating such request on the Claim Form, and codes will be sent either to an email address provided by the Settlement class member or, if they do not have an email address, mailed to the address provided on the claim form.

21. **Equitable Relief: BJC agrees to implement and maintain the following for at least one year from the Effective Date:**

- a. Security Policy: BJC agrees to maintain a written information security policy and further agrees to require BJC employees to electronically acknowledge receipt and review of BJC's written information security policy.
- b. Training: BJC will conduct cybersecurity training that contains annual mandatory classes, new hire orientation, and periodic training updates to necessary staff as new information security issues and trends arise.
- c. Password policy: BJC will maintain a written password policy that requires appropriate password complexity commensurate to sensitivity level to the system.
- d. BJC will require Multi-Factor Authentication (MFA) for remote access to e-mail.
- e. BJC has estimated the costs incurred in providing the equitable relief as approximately \$2,688,000, including \$1,223,000 in initial implementation costs and \$1,465,000 in annual maintenance costs. These estimates include both licensing and other outside vendor costs as well as internal costs attributable to personnel dedicated to ensuring

compliance with the equitable terms. These figures are reasonable estimates only and nothing in this Agreement shall be interpreted as requiring BJC to spend a particular dollar amount to comply with the Equitable Relief described in this paragraph 21, but BJC must comply with the Equitable Relief described in paragraph 21.

IV. STIPULATED CLASS ACTION SETTLEMENT CERTIFICATION

22. Only for purposes of effectuating the Settlement, Class Representatives, Class Counsel, BJC, and the Collaborative agree and stipulate to certification of the Settlement Class as defined in this Agreement. Class Representatives, Class Counsel, BJC, and the Collaborative further agree and stipulate that, subject to Court approval, Class Counsel shall act as counsel for the Settlement Class.

23. Class Representatives, Class Counsel, BJC, and the Collaborative agree and stipulate that the Settlement should be approved by the Court, and that the Court should make a determination that the Settlement is fair, reasonable, and adequate, and made in good faith. Class Counsel and BJC shall bear the expenses and responsibility for taking all necessary measures to obtain Court approval, including, without limitation, preparing and filing all papers with the Court necessary for obtaining such approval, and following the required procedures for a good faith determination.

24. Class Representatives, Class Counsel, BJC, and the Collaborative agree and stipulate that the Parties shall timely submit the motions for Preliminary and Final Approval of the Parties' Settlement to the Court.

V. RELEASE

25. Settlement Class members who do not opt-out of the Settlement in accordance with Court approved opt-out procedures and deadlines release any and all claims arising from or related to claims asserted in the Litigation, as more specifically set forth in Paragraphs 26 and 27, below.

26. The obligations incurred under this Settlement shall be in full and final disposition of the Litigation and of any and all Released Claims as against all Released Parties.

27. Upon the Effective Date, and without any further action, the Settlement Class members, including the Class Representatives, for good and valuable consideration the adequacy of which is hereby acknowledged, shall fully, finally, and forever release, relinquish, and discharge any and all Released Claims against each and every one of the Released Parties, and shall forever be barred and enjoined, without the necessity of any of the Released Parties posting a bond, from commencing, instituting, prosecuting, or maintaining any of the Released Claims. Upon the Effective Date, and without any further action, Class Representatives further agree not to knowingly and voluntarily assist in any way any third party in commencing of prosecuting any suit against the Released Parties relating to any Released Claim.

VI. ADMINISTRATION OF THE SETTLEMENT AND CLASS NOTICE

28. The Claims Administrator shall provide notice to the Settlement Class members and administer the Settlement under the Parties' supervision and subject to the exclusive jurisdiction of this Court.

29. Dissemination of the Notice shall be accomplished by the Claims Administrator and shall comply with the following:

- a. *Class Member Information*: No later than ten (10) days after entry of the Preliminary Approval Order, BJC shall provide the Claims Administrator with the name and physical address of each Settlement Class member (collectively, "Class Member Information") initially notified of the Incident. BJC agrees that it will provide the most current Class Member Information for all Settlement Class members from the updated mailing list in connection with the incident responses related to the Incident.

- b. The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the Settlement as provided for in this Agreement, or to provide all data and information in its possession to the Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- c. *Settlement Website*: Prior to the dissemination of the Notice, the Parties agree to direct the Claims Administrator to create a website dedicated to providing information related to the Action and this Settlement, including the Long Form notice contained within **Exhibit C**. The website will include the information in the Notice, access to relevant publicly available court documents relating to the Action and provide Settlement Class members with the ability to enroll in the Credit Monitoring Protections, make Claims for other Class benefits, and allow Settlement Class members to submit documents to supplement or cure deficient Claims.
- d. *Settlement Toll Free Number*: The Claims Administrator shall establish and maintain a toll free telephone number with information relevant to this Settlement.
- e. Within twenty-one (21) days of receiving the Class Member Information, the Claims Administrator shall crosscheck the Class Member Information against the National Change of Address directory to ensure the most recent and accurate addresses are used to disseminate the Notice. Upon receipt of any notice of address or forwarding address, the Claims Administrator shall re-mail any Notice so returned with a forwarding address.

- f. Within forty-five (45) days of receiving the Class Member Information, the Claims Administrator shall commence the dissemination of the Notice. Within fifteen (15) days thereafter, dissemination of the Notice shall be completed.
- g. Notice shall be given by U.S.P.S. first class mail to all Settlement Class members and postage will be prepaid by BJC. U.S. mail Notice shall consist of a postcard that
 - (1) notifies Settlement Class members of the Settlement and relevant terms;
 - (2) provides them with the URL to the Settlement Website and a telephone number they can call to obtain additional information about the Settlement; and
 - (3) instructs them on how to make a Claim.
- h. Notice is subject to review and approval by the Parties as well as an expert specializing in providing notice and administration to class members. Notice via U.S. mail shall be supplemented with the publication on BJC's website to the extent practicable.
- i. All Settlement Class members shall have one hundred and eighty days (180) after the Notice Date to make Claims for Class benefits.

30. The administration of the Settlement is defined as the approval of the form of notice program and all related forms; initial mailing of the Notice; creation and maintenance of Settlement Website; administration and coordination of the mailing and distribution of credit monitoring codes to be activated after final approval of Settlement; day-to-day administration of the Settlement, including responding to Settlement Class member inquiries; delivery to the Parties of any requests for opt-outs or objections; communication to the Parties about any issues that may arise; and the preparation of an Affidavit of Fairness of the Notice Program to be submitted to the Court with the Motion for Final Approval.

31. The notice program shall be designed to provide for maximum clarity and ease of Claim submission. Claims may be made by submitting a paper claim for by mail or by filling out an online claim form to be developed by the Claims Administrator.

32. The Claims Administrator shall inform Class Counsel and BJC's Counsel regarding all material aspects of the claims process including Claims made, Claims accepted, Claims rejected, and all substantive communications with Settlement Class members. Class Counsel may assist Settlement Class members with the claims process and intercede with the Claims Administrator on their behalf.

33. Checks and credit monitoring codes for approved claims shall be mailed or emailed after the Effective Date and within thirty (30) days of the Effective Date and/or thirty (30) days of the date that the claim is approved, whichever is latest.

34. Cashing a settlement check is a condition precedent to any Settlement Class member's right to receive Settlement benefits under Paragraphs 18 and 19. All settlement checks shall be void one hundred and twenty (120) days after issuance and shall bear the language: "This check must be cashed within 120 days of its date, after which time it is void." If a check becomes void, the Settlement Class member shall have an additional one hundred and twenty (120) days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class member will have failed to meet a condition precedent to recovery of Settlement benefits under Paragraphs 18 and 19, the Settlement Class member's right to receive monetary relief shall be extinguished, and BJC shall have no obligation to make payments to the Settlement Class member for expense reimbursement under Paragraphs 18 and 19 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than two hundred and forty (240) days from the Effective Date, requests for re-issuance need not be honored after such checks become void, except for good cause as determined by the Claims Administrator in its professional judgment.

35. All Settlement Class members who fail to timely submit a claim for any benefits hereunder within the time frames set forth within, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the Settlement set forth within, but will in all other respects be subject to, bound by, the provisions of the Settlement Agreement, the releases contained herein, and the Final Judgment.

36. No Person shall have any claims against the Claims Administrator, Class Representatives, Class Counsel, BJC, the Collaborative, and/or BJC's/the Collaborative's Counsel based on distribution of benefits to Settlement Class members. Nothing contained herein shall be deemed a release of any claim against the Claims Administrator for its breach of fulfilling its duties due under its administration obligations.

VII. OPT-OUT PROCEDURES

37. Under the procedure set forth in the Notice, Settlement Class members have the right and ability to exclude themselves from the Settlement Class as set forth in the proposed preliminary approval order. In order to validly be excluded from the Settlement, the Settlement Class member must send a letter to the Claims Administrator no later than sixty (60) days after the Notice Date, stating he or she wants to be excluded from the Settlement in either the Missouri Action, the Illinois Action, or both, and include his or her name, address, and signature. If the opt-out is untimely or otherwise fails to comply with any of the provisions for a valid opt-out, it shall not be considered a valid opt-out.

38. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in Paragraph 37, above, shall be bound by the terms of this Settlement Agreement and Final Judgment entered thereon.

39. The Claims Administrator shall cause copies of requests for exclusion from Settlement Class members to be provided to Class Counsel and BJC's Counsel as they are received. No later than ten (10) days after the Opt-Out Date, the Claims Administrator shall provide Class Counsel and BJC's Counsel a complete and final list of all known Settlement Class members who have excluded themselves from the Settlement. Class Counsel shall provide this information to the Court before the Final Fairness Hearing.

40. In the event that within ten (10) days after the Opt-Out Date, there have been requests for exclusion totaling more than two hundred and fifty (250) individuals, BJC may void this Settlement Agreement by notifying Class Counsel in writing. If BJC voids this Settlement Agreement under this paragraph, (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

VIII. OBJECTION PROCEDURES

41. The Notice will inform the Settlement Class members that they may submit a written objection in this case, *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC0949, before the Hon. Judge Christopher E. McGraugh for the Circuit Court of the City of St. Louis, Missouri. To be valid, an objection must state: (a) the objector's full name, address, telephone number (if any), and e-mail address (if any); (b) information identifying the objector as a Settlement Class member; (c) a written statement of all grounds for the objection, accompanied by any legal support the objector cares to submit; (d) the identity of all lawyers (if any) representing the objector; (e) the identity of all

of the objector’s lawyers (if any) who will appear at the Final Fairness Hearing; (f) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (g) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector’s signature or the signature of the objector’s duly authorized lawyer or other duly authorized representative.

42. In addition to the foregoing, objections should also provide the following information:

(a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years and (b) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

43. The Notice will further inform Settlement Class members that to be considered timely, any valid objection in the appropriate form must be **filed** with the Clerk for the Circuit Court of the City of St. Louis, Missouri no later than sixty (60) days after the Notice Date. The Notice will also inform Settlement Class members that they must **mail** a copy of their objection to the following three different places, postmarked no later than sixty (60) days after the Notice Date:

COURT	CLASS COUNSEL	BJC’S COUNSEL
Clerk of Court, Circuit Court of the City of St. Louis, Missouri. 10 N Tucker Blvd, St. Louis, MO 63101	Ben Barnow Barnow and Associates, P.C. 205 W. Randolph St. Ste. 1630 Chicago, IL 60606	Paul Karlsgodt BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, Colorado 80202

44. The Parties agree that Plaintiffs will take the lead in drafting responses to any objections to the Settlement, including any appeals filed by the objectors. However, both Parties retain their rights to make any argument(s) in response to any objector.

45. Any Settlement Class member who fails to comply with the requirements for objecting in this Section VIII shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of Section VIII. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Judgment to be entered upon final approval, shall be pursuant to appeal and not through a collateral attack.

IX. DISPUTE RESOLUTION FOR CLAIMS

46. The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the Claimant is a Settlement Class member; (2) the Claimant has provided all information needed to complete the claim form, including any documentation that may be necessary to reasonably support the claimed ordinary or extraordinary expenses, described in Paragraphs 18 and 19, above; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the Claimant has suffered the claimed losses as a result of the Incident (collectively, “Complete and Plausible”). The Claims Administrator may, at any time, request from the Claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the Claim (“Claim Supplementation”), e.g., documentation requested on the claim form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof.

47. The Claims Administrator’s initial review will be limited to a determination of whether the Claim is Complete and Plausible. For any such Claims that the Claims Administrator determines to be implausible, the Claims Administrator will submit those Claims to the Parties (Lead Class Counsel shall be designated to fill this role for all Plaintiffs). If the Parties agree that the Claimant’s

Claim is Complete and Plausible then the Claim shall be paid. If the Parties agree that the Claim is incomplete and/or implausible, it shall be denied. If the Parties do not agree, after meeting and conferring, then the Claim shall be referred to a mediator pursuant to agreement between the Parties (the “Claims Referee”), for resolution.

48. Upon receipt of an incomplete or unsigned claim form or a claim form that is not accompanied by sufficient documentation to determine whether the Claim is Complete and Plausible, the Claims Administrator shall request Claim Supplementation and give the Claimant thirty (30) days to cure the defect before rejecting the Claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such claim form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the 30-day period, the Claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the 30-day deadline in which to comply; however, in no event shall the deadline be extended to later than one year from the Effective Date. The COVID-19 pandemic, in and of itself, does not constitute good cause, but a Claimant may show good cause by providing information regarding why the COVID-19 pandemic caused the Claimant to fail to comply with the 30-day period. If the defect is not cured, then the Claim will be deemed invalid and there shall be no obligation to pay the Claim.

49. Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each Claim. If, after review of the Claim and all documentation submitted by the Claimant, the Claims Administrator determines that such a Claim is Complete and Plausible, then the Claim shall be paid. If the Claim is not Complete and Plausible because the Claimant has not provided all information needed to complete the claim form and evaluate the Claim, then the Settlement Administrator may

reject the Claim. If the Claim is rejected in whole or in part, for other reasons, then the Claim shall be referred to the Parties. If the Parties agree that the Claimant's Claim is incomplete and/or implausible then no further action shall be taken. If the Parties agree that the Claimant's Claim is Complete and Plausible then the Claim shall be paid. If the Parties do not agree, after meeting and conferring, then the Claim shall be referred to the Claims Referee for resolution. Once a final determination regarding a Claim has been made, notice will be sent to the Claimant by the Claims Administrator regarding whether the Claim has been accepted, in whole or lesser amount, or rejected.

50. Settlement Class members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination. If the Claimant approves the final determination, then the approved amount shall be the amount to be paid. If the Claimant does not approve the final determination within thirty (30) days, then the dispute will be submitted to the Parties within an additional ten (10) days.

51. If any dispute cannot be resolved by the Parties and is submitted to the Claims Referee, the Claims Referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days. Alternatively, the Claims Referee may make any other final determination of the dispute or request further supplementation of a Claim within thirty (30) days. The Claims Referee's determination shall be based on whether the Claims Referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Incident. The Claims Referee shall have the power to approve a Claim in full or in part. The Claims Referee's decision will be final and non-appealable. Any Claimant referred to the Claims Referee shall reasonably cooperate with the Claims Referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the Claims Referee to verify the Claim through third

party sources, and failure to cooperate shall be grounds for denial of the Claim in full. The Claims Referee shall make a final decision within thirty (30) days of receipt of all supplemental information requested.

X. NOTICE AND ADMINISTRATION EXPENSES

52. All costs of notice and administration, including, without limitation, the fees and expenses of the Claims Administrator and Claims Referee, shall be paid separately by BJC directly to the Claims Administrator, Claims Referee, or other party.

XI. ATTORNEYS' FEES, COSTS, EXPENSES AND INCENTIVE AWARDS

53. BJC will pay the attorneys' Fees, Costs, and Expenses incurred by Class Counsel in the Action, as approved by the Court, up to the following amounts:

- a. Missouri Class Counsel: \$790,000;
- b. Illinois Class Counsel: \$415,000.

54. The Parties did not discuss or agree upon payment of attorneys' fees, costs, and expenses until after they agreed on all materials terms of relief to the Settlement Class.

55. BJC also agrees not to contest a request for incentive awards of up to \$2,000 per named plaintiff (up to \$10,000 in the aggregate). BJC shall pay any incentive awards in addition to any benefits provided to Class Members and the costs of notice and settlement administration and separate from any award of attorneys' fees, costs, and expenses. The Parties did not discuss or agree upon payment of incentive awards until after they agreed on all materials terms of relief to the Settlement Class.

56. Any attorneys' fees, costs, and expenses awarded by the Court as well as any incentive awards awarded by the Court shall be paid within twenty-one (21) days after the Effective Date of Settlement.

57. BJC shall pay any attorneys' fees, costs, and expenses and any incentive award to the Class Representatives, as set forth above in Paragraphs 53, 54, 55, and 56, to accounts established by

Missouri Class Counsel and Illinois Class Counsel, respectively. Said counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' counsel and the incentive awards to Class Representatives.

58. The amount(s) of each award of attorneys' fees, costs, and expenses (Missouri Class Counsel, Illinois Class Counsel), and the incentive awards to the Class Representatives, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Missouri Class Counsel and Illinois Class Counsel will each file separate fee petitions within forty-five (45) days after the Notice Date. The fee petitions are separate from one another. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, and expenses, and/or incentive award ordered by the Court to the Missouri Class Counsel, Illinois Class Counsel, or Class Representatives shall affect whether the Settlement becomes effective and final or constitute grounds for cancellation or termination of this Settlement Agreement, except that the payment of the attorneys' Fees, Costs, and Expenses, as agreed to in Paragraph 53, will not be paid until any appeal or other review proceeding regarding the attorneys' Fees, Costs, and Expenses has been resolved.

XII. PRELIMINARY APPROVAL OF SETTLEMENT

59. Within ten business days ten (10) days after the execution of the Settlement Agreement, Lead Class Counsel and BJC's Counsel shall jointly submit this Settlement Agreement to the Court and file a Motion for Preliminary Approval of the Settlement with the Court requesting entry of the Preliminary Approval Order attached to Plaintiffs' Motion for Preliminary Approval, or an order substantially similar to such form, requesting, *inter alia*:

- a. Certification of the Settlement Class for settlement purposes only;
- b. Preliminary approval of the Settlement Agreement as set forth herein;
- c. Appointment of Class Counsel as counsel for the Settlement Class;

- d. Appointment of Class Representatives as representatives for the Settlement Class;
- e. Approval of a form of notice, which includes a notice to be individually mailed to the Settlement Class members, as well as a detailed long form notice that will be posted on the Settlement Website;
- f. Appointment of a Claims Administrator as jointly agreed by the Parties.

XIII. FINAL JUDGMENT

60. If the Preliminary Approval Order is entered by the Court, Lead Class Counsel will move the Court, within the time frames contemplated by the Preliminary Approval Order, for entry of a Final Judgment.

61. Upon entry of a Final Judgment the Illinois Plaintiffs shall move to dismiss the Illinois Action, with prejudice.

XIV. TERMINATION

62. If the Effective Date of Settlement does not occur, or if the Settlement is terminated or fails to become effective for any reason, then (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

XV. NO ADMISSION OF WRONGDOING OR LACK OF MERIT

63. The terms of this Settlement (whether the Settlement becomes final or not), the negotiations leading up to this Settlement, the fact of the Settlement, and the proceedings taken

pursuant to the Settlement, shall not: (a) be construed as an admission of liability or an admission of any claim or defense on the part or any Party, in any respect; (b) form the basis for any claim of estoppel by any third-party against any of the Released Parties; or (c) be admissible in any action, suit, proceeding, or investigation as evidence, or as an admission of any wrongdoing or liability whatsoever by any Party, or as evidence of the truth of any of the claims or allegations contained in the Complaint.

XVI. MISCELLANEOUS PROVISIONS

64. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

65. The Parties to the Settlement intend and agree that the Settlement is a final and complete resolution of all disputes related to the Litigation by the Class Representatives and the Settlement Class members who have not timely excluded themselves from the Settlement.

66. The Parties agree that the benefits provided herein and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties to the Settlement with the assistance of an experienced and independent mediator, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

67. This Settlement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest.

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

69. The Parties hereby irrevocably submit to the continuing and exclusive jurisdiction of the Court for any suit, action, proceeding, or disputing arising out of or relating to this Settlement as embodied in the Settlement or its applicability, and agree that they will not oppose the designation of such suit, action, proceeding, or dispute as a related case to the Action.

70. The Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to the Settlement shall exchange among themselves original signed counterparts. Electronically transmitted signatures are valid signatures as of the date thereof.

71. The construction, interpretation, operation, effect, and validity of the Settlement, and all documents necessary to effectuate it, shall be governed by the laws of the State of Missouri. The Parties understand and agree that any disputes arising out of the Settlement shall be governed and construed by and in accordance with the laws of the State of Missouri.

72. The Settlement shall not be construed more strictly against one Party to the Settlement than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Settlement is the result of arm's-length negotiation between the Parties to the Settlement, and all Parties to the Settlement have contributed substantially and materially to the preparation of the Settlement.

73. Any and all counsel and Parties to the Settlement who execute the Settlement and any of the exhibits hereto, or any related Settlement documents, represent that they have reviewed and understand those documents and have the full authority to execute the Settlement, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement to effectuate its terms.

74. Class Counsel, BJC's counsel, and the Collaborative's Counsel agree to recommend approval of the Settlement by the Court and to undertake their best efforts and cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement and the entry of the Final Judgment.

75. BJC agrees to comply with the CAFA notice provisions set out in 28 U.S.C. § 1715.

IN WITNESS WHEREOF, the Parties have, through their respective counsel, executed this

Settlement as of the date first above written.

Approved as to form and content by counsel for Plaintiffs and the Settlement Class:

By: /s/ 
Ben Barnow

BARNOW AND ASSOCIATES, P.C.

205 West Randolph Street, Ste. 1630

Chicago, IL 60606

Tel: 312.621.2000

Fax: 312.641.5504

b.barnow@barnowlaw.com

By: /s/ 
J. Gerard Stranch, IV, *pro hac vice*

BRANSTETTER, STRANCH & JENNINGS, PLLC

223 Rosa L. Parks Avenue, Suite 200

Nashville, TN 37203

Tel: (615) 254-8801

gerards@bsjfirm.com

By: /s/ John Garvey
John F. Garvey #35879

CAREY DANIS & LOWE


8235 Forsyth Blvd., Ste. 1100

St. Louis, MO 63105

Tel: (314) 725-7700

Fax: (314) 678-3401

jgarvey@careydanis.com

By: /s/  go
Troy E. Walton

WALTON TELKEN, LLC

241 N. Main Street

Edwardsville, IL 62025

Tel: (618) 307-9880

twalton@waltontelken.com

By: /s/ 
Kenneth J. Brennan

TORHOERMAN LAW LLC

210 South Main Street

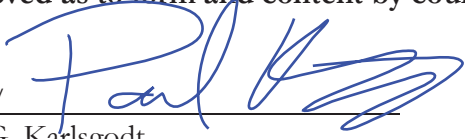
Edwardsville, IL 62025

Tel: (618) 656-4400

kbrennan@thlawyer.com

Approved as to form and content by counsel for BJC:

By: /s/


Paul G. Karlsgodt

BAKER & HOSTETLER LLP

1801 California Street, Suite 4400

Denver, CO 80202

Tel.: (303) 861-0600

Fax: (303) 861-7805

pkarlsgodt@bakerlaw.com

Approved as to Form and Content by counsel for the Collaborative:

By: /s/

Matthew D. Knepper

Husch Blackwell

190 Carondelet Plaza, Suite 600

St. Louis, MO 63105

314-480-1848

Matt.Knepper@huschblackwell.com

Approved as to form and content by counsel for BJC:

By: /s/ _____
Paul G. Karlsgodt
BAKER & HOSTETLER LLP
1801 California Street, Suite 4400
Denver, CO 80202
Tel.: (303) 861-0600
Fax: (303) 861-7805
pkarlsgodt@bakerlaw.com

Approved as to Form and Content by counsel for the Collaborative:

By: /s/  _____
Matthew D. Knepper
Husch Blackwell
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
314-480-1848
Matt.Knepper@huschblackwell.com