

IN THE SECOND DISTRICT COURT OF THE
STATE OF NEW MEXICO

)	Case Nos. D-202-CV-2021-06816; D-101-
)	CV-2022-00129; D-202-CV-2022-00449
BRENT MCCULLOUGH, et al.)	
)	
Plaintiffs,)	
)	
v.)	
)	
TRUE HEALTH NEW MEXICO, INC.,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

This Settlement Agreement, dated October 14, 2022, is made and entered into by and among: (1) Plaintiffs Brent McCullough, Jason Clement, Stephanie Wade, Karen Siegman, and Miriam Shanks (“Plaintiffs” or “Class Representatives”), on behalf of themselves and the proposed Settlement Class; and (2) True Health New Mexico, Inc. (“True Health”) (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 True Health’s patients.

2. Plaintiffs allege that a ransomware attack occurred on October 5, 2021, and that this attack may have resulted in cyber-criminals accessing and obtaining the PII/PHI of True Health’s patients (the “Incident”). Plaintiffs allege that the PII/PHI of approximately 62,982 True Health patients were impacted in the Incident.

3. After True Health provided notice of the Incident on November 17, 2021, Plaintiffs filed several lawsuits against True Health:

- a. Plaintiff McCullough filed a complaint on December 3, 2021. *McCullough v. True Health*, Case No. D-202-CV-2021-06816.
 - b. Plaintiffs Jason Clement, Stephanie Wade, and Karen Siegman (collectively “Clement Plaintiffs”) filed their complaint on January 25, 2022. *Clement et al v. True Health*, Case No. D-101-CV-2022-00129.
 - c. Plaintiff Miriam Shanks filed her complaint on January 26, 2022. *Shanks v. True Health*, Case No. D-202-CV-2022-00449
4. Plaintiff McCullough asserted the following causes of action against True Health: (1) negligence; (2) negligence per se; (3) breach of fiduciary duty; (4) breach of implied contract; (5) unjust enrichment; (6) and a violation of the New Mexico Unfair Practices Act (“UPA”).
5. The Clement Plaintiffs asserted the following causes of action against True Health: (1) negligence; (2) negligence per se; (3) invasion of privacy by intrusion; (4) breach of express contract; (5) breach of implied contract; (6) breach of fiduciary duty; (7) violation of the UPA; and (8) unjust enrichment.
6. Plaintiff Shanks asserted the following causes of action against True Health: (1) negligence; (2) negligence per se; (3) implied breach of contract; and (4) a violation of the UPA.
7. On March 21, 2022, Plaintiff McCullough, the Clement Plaintiffs, and True Health agreed to consolidate the McCullough and Clement Actions (defined below).
8. On May 10, 2022, Plaintiff Shanks agreed to stay the case for thirty (30) days after the date of the mediation.
9. On July 12, 2022, Class Counsel (defined below) and True Health’s Counsel (defined below) participated in a full-day mediation with Mediator Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP.

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, and True Health, 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. “McCullough Action” means *McCullough v. True Health*, Case No. D-202-CV-2021-06816.
- b. “Clement Action” means *Clement et al. v. True Health*, Case No. D-101-CV-2022-00129.
- c. “Shanks Action” means *Miriam Shanks v. True Health*, Case No. D-202-CV-2022-00449.
- d. “Action” means the McCullough Action, Clement Action, and Shanks Action, together.

- e. “Agreement” or “Settlement Agreement” or “Settlement” means this Settlement Agreement, Exhibits, and the settlement embodied herein.
- f. “Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.
- g. “Claimant” means a Settlement Class member who makes a Claim for benefits under this Settlement Agreement.
- h. “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.
- i. “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.
- j. “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 Claims Administrator as needed. The Claim Form template is attached as **Exhibit A** to this Settlement Agreement.
- k. “Class Counsel” means Ben Barnow and Anthony Parkhill of Barnow and Associates, P.C. and Andrew W. Ferich of Ahdoot & Wolfson, PC.
- l. “Class Representatives” means the Plaintiffs (as defined below).

- m. “Court” means the Hon. Erin O’Connell for the Second District Court of New Mexico, or such other Court sitting in its stead.
- n. “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-p, 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.
- o. “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.
- p. “Final Judgment” means a judgment entered by the Court, as discussed in Section XIII, below.
- q. “Incident” means the data incident described in the petitions filed in the McCullough Action, Clement Action, and Shanks Action.
- r. “Litigation” means all claims and causes of action asserted, including those asserted in the Action, or that could have been asserted, against True Health 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 True Health relating to the Incident. The Parties represent that they are unaware of any such actions pending other than the Action.

- s. “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, the settlement website, and the Long Form notice, substantially in the form of **Exhibit C**, attached hereto, each subject to approval by the Court.
- t. “Notice Date” means the first date upon which the Notice is disseminated.
- u. “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.
- v. “Parties” means (i) Class Representatives, on behalf of themselves and the Settlement Class; and (ii) True Health.
- w. “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.
- x. “Plaintiffs” mean Brent McCullough, Jason Clement, Stephanie Wade, Karen Siegman, and Miriam Shanks.

- y. “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.
- z. “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 True Health and the Incident (other than claims to enforce the Settlement). Nothing in this Settlement shall be construed to release any claims for damages arising from or related to physical injuries, other than any claimed physical injuries relating to any claim for emotional distress suffered due to the Incident.
- aa. “Released Parties” means True Health 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, coinsurers, 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.
- bb. “Settlement Class” means all Persons to whom True Health 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.
- cc. “True Health” means True Health New Mexico, Inc.

dd. “True Health’s Counsel” means Baker & Hostetler LLP.

ee. “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 October 5, 2021, 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 five (5) 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 October 5, 2021, 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 October 5, 2021, 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 Claims Administrator in its professional judgment, the Claims 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 Claims Administrator in its professional judgment.
- c. Nothing in this Settlement Agreement shall be construed to provide for any double payment for the same loss or injury that was reimbursed or compensated by any other source. To be valid, claims for reimbursement must be complete and submitted to the Claims Administrator on or before the Claims Deadline. No

payment shall be made for emotional distress, personal/bodily injury, or punitive damages.

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 October 5, 2021, 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 Claims 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.
- d. Nothing in this Settlement Agreement shall be construed to provide for any double payment for the same loss or injury that was reimbursed or compensated by any other source. To be valid, claims for reimbursement must be complete and submitted to the Claims Administrator on or before the Claims Deadline. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages.

20. **Credit Monitoring Protections:** True Health agrees to offer two (2) years of three bureau (3B) credit monitoring and identity theft insurance through Epiq. 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:** True Health agrees to implement and maintain the following for at least one year from the Effective Date:

- a. Security Policy: True Health agrees to maintain a written information security policy and further agrees to require True Health employees to electronically

acknowledge receipt and review of True Health's written information security policy.

- b. Training: True Health 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: True Health will maintain a written password policy that requires appropriate password complexity commensurate to sensitivity level to the system.
- d. True Health will require Multi-Factor Authentication (MFA) for remote access to e-mail.
- e. True Health will implement endpoint security measures, which include endpoint detection and a response solution.
- f. In the event True Health discontinues operations, True Health will have no obligation to continue these equitable measures described in Paragraph 21.

IV. STIPULATED CLASS ACTION SETTLEMENT CERTIFICATION

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

23. Class Representatives, Class Counsel, and True Health 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 True Health 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, and True Health 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, True Health 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. True Health 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 True Health. 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 True Health'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 True Health'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 True Health 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, True Health and/or True Health'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 Action, 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 True Health'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 True Health'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, True Health may void this Settlement Agreement by notifying Class Counsel in writing. If True Health 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, *McCullough v. True Health*, Case No. D-202-CV-2021-06816, before the Hon. Judge Erin O'Connell for the Second District Court of New Mexico. 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 Second District Court of the State of New Mexico 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	TRUE HEALTH COUNSEL
Clerk of Court, 400 Lomas Blvd NW, Albuquerque, NM 87102	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 Class Counsel will take the lead in drafting responses to any objections to the Settlement, including any appeals filed by the objectors. However, both Parties retain their rights to make any argument(s) in response to any objector.

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, including via email, 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. 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.

48. Following receipt of additional information requested as Claim Supplementation, 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 Facially Valid, either in whole or in part, then the claim shall be paid in accordance with Paragraphs 32 and 33. If the claim is not Facially Valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Claims Administrator may reject the claim without any further action, subject to the provisions of Paragraph 18(c).

49. 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.

X. NOTICE AND ADMINISTRATION EXPENSES

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

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

51. True Health will pay Class Counsel's Fees, Costs, and Expenses, as approved by the Court, up to the following amounts:

a. Class Counsel: \$315,000;

52. 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.

53. True Health also agrees not to contest a request for Class Representative service awards of up to \$1,500 per named plaintiff (up to \$7,500 in the aggregate). True Health shall pay any service 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 service awards until after they agreed on all materials terms of relief to the Settlement Class.

54. Any attorneys' Fees, Costs, and Expenses awarded by the Court as well as any service awards awarded by the Court shall be paid within twenty-one (21) days after the Effective Date of Settlement.

55. True Health shall pay any attorneys' Fees, Costs, and Expenses and any service award to the Class Representatives, as set forth above in Paragraphs 51-54, to accounts established

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

56. The amount(s) of the attorneys' Fees, Costs, and Expenses and the service 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. Class Counsel will file a fee petition within forty-five (45) days after the Notice Date. 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 service award ordered by the Court to the 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 51, 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

57. Within ten (10) days after the execution of the Settlement Agreement, Class Counsel and True Health'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

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

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

XIV. TERMINATION

60. 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

61. 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

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

63. 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.

64. 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.

65. 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.

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

67. 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.

68. 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.

69. 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 New Mexico. 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 New Mexico.

70. 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.

71. 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.


72. Class Counsel and True Health'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.

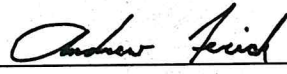
IN WITNESS WHEREOF, the Parties have, through their respective counsel, executed this Settlement as of the date first above written.

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

Dated: November 2, 2022

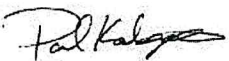
By: 
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Dated: October 14, 2022

By: 
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Approved as to form and content by True Health New Mexico, Inc.'s Counsel:

Dated: October 14, 2022

By: 
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pkarlsgodt@bakerlaw.com

Approved as to form and content by True Health New Mexico, Inc.:



Dated: October 14, 2022

By: _____

Paul G. Karlsgodt
BAKER & HOSTETLER LLP
On Behalf of True Health New Mexico, Inc.