

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between KATHERINE PETILLO (“Plaintiff”), individually and on behalf of Participating Settlement Class Members (as defined in Paragraph 40) (together “Plaintiffs”), and DILIGENT CORPORATION (“Diligent”), and UNIVERSITY OF COLORADO HEALTH dba UCHEALTH (“UCHealth,” and together with Diligent, “Defendants”) (collectively the “Parties”), in the action *Petillo v. Diligent Corp. & University of Colorado Health dba UC Health*, Case No. 1:23-cv-02439-LLS, pending in the U.S. District Court for the Southern District of New York (the “Action”).

RECITALS

WHEREAS, on March 22, 2023, Katherine Petillo filed a Complaint against Defendants in the United States District Court for the Southern District of New York relating to a data security incident that Diligent discovered on or around November 9, 2022;

WHEREAS, Defendants deny the allegations and all liability with respect to any and all facts and claims alleged in the Action, that the putative class representative and the proposed class which they purport to represent have suffered any damage(s), and/or that the Action satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23;

WHEREAS, following prolonged and extensive arm’s length negotiations and a mediation session before a third-party mediator, the Parties reached an agreement on the essential terms of a settlement; and

WHEREAS, this Agreement is for settlement purposes only, and nothing in this Agreement shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or fact alleged by Plaintiff in this Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Released Parties or admission of the validity or lack thereof of any claim, allegation, or defense asserted in this Action or any other action.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a full, complete, and final settlement and resolution of the Action and any and all Released Claims (including Unknown Claims), subject to Court approval, on the following terms and conditions:

I. DEFINITIONS

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. “Action” means the case captioned *Petillo v. Diligent Corp. et al.*, Case No. 1:23-cv-02439-LLS, pending in the U.S. District Court for the Southern District of New York before the Honorable Louis L. Stanton.

2. “Approved Claim” means the timely submission of a Claim Form by a Participating Settlement Member that has been approved by the Settlement Administrator or otherwise through the Claims Review Process.

3. “CAFA Notice” means a notice of the proposed Settlement sent pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* (“CAFA”). Costs for preparation and issuance of the CAFA Notice will be paid by Defendants and such notice shall be issued within ten (10) days of entry of the Preliminary Approval Order.

4. “Claim Form” or “Claim” means the form(s) Settlement Class Members must submit to be eligible for reimbursement of Extraordinary Losses, Out-of-Pocket Losses, Lost Time, Credit Monitoring Services, or Cash Compensation under the terms of the Settlement, which is attached hereto as **Exhibit 3**, or form(s) approved by the Court substantially similar to **Exhibit 3**.

5. “Claims Deadline” means the deadline by which Settlement Class Members must submit valid Claim Form(s), which will occur ninety (90) days after the Notice Deadline.

6. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms, which will end ninety (90) days after the Notice Deadline.

7. “Claims Review Process” mean the process for reviewing and determining whether Claims are valid as set forth in Paragraph 57.

8. “Court” means the United States District Court for the Southern District of New York.

9. “Credit Monitoring Services” means the Credit Monitoring Services described in Paragraph 52(d), which include two (2) years of one-bureau credit monitoring and \$1 million in identity theft insurance, among other features.

10. “Defendants’ Counsel” means Diligent’s Counsel and UCHealth’s Counsel.

11. “Diligent’s Counsel” means Allison Holt Ryan, Adam Cooke, and Peter Bautz of Hogan Lovells US LLP.

12. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any reconsideration or appeal of the Final Approval Order and Judgment, or entry of the Final Approval Order and Judgment if no person or entity has standing to appeal or seek reconsideration; (ii) if there is an appeal or appeals or reconsideration sought, other than an appeal or appeals or reconsideration solely with respect to attorneys’ fees, costs, and expenses, the date on which the Final Approval Order and Judgment is affirmed without any material modification and is no longer subject to judicial review; or (iii) the date of final dismissal of any appeal or reconsideration or the final dismissal of any proceeding on certiorari

with respect to the Final Approval Order and Judgment, and the Final Approval Order and Judgment is no longer subject to judicial review.

13. “Extraordinary Out-of-Pocket Losses” means documented out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that is/are, as set forth in Paragraph 52(a): (i) an actual, documented and unreimbursed monetary loss; (ii) more likely than not caused by the Security Incident; (iii) occurred between September 30, 2022 and the Claims Deadline; (iv) is not already covered by the Out-of-Pocket Loss reimbursement category; and (v) 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.

14. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Settlement Class Counsel in satisfaction of any request or claim for payment of attorneys’ fees, costs, and litigation expenses in connection with this Action.

15. “Final Approval Order and Judgment” means an order and judgment substantially in the form annexed hereto as **Exhibit 5** that the Court enters, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, and otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Agreement.

16. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

17. “Litigation Costs and Expenses” means costs and expenses incurred by Settlement Class Counsel in connection with commencing, prosecuting, and settling the Action.

18. “Lost Time” means time Settlement Class Members spent monitoring accounts or otherwise dealing with issues related to the Security Incident, up to a maximum of four (4) hours, supported by an attestation that the activities were related to the Security Incident, as set forth in Paragraph 52(c).

19. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members, substantially in the forms attached hereto as **Exhibit 1** (“Short Form Notices”) and **Exhibit 2** (“Long Form Notice”).

20. “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members, and will occur thirty (30) days after entry of the Preliminary Approval Order.

21. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, performing National Change of Address search(es) and/or skip tracing, processing claims, determining the eligibility of a person to be a Settlement Class Member, and administering, calculating and

distributing payments to Settlement Class Members who submit valid Claim Forms. Notice and Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

22. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement, which will be sixty (60) days after the Notice Deadline.

23. “Opt-Out” means a Settlement Class Member (i) who timely submits a properly completed and executed Request for Exclusion, (ii) who does not rescind that Request for Exclusion prior to the Opt-Out Deadline, and (iii) as to which there is not a successful challenge to the Request for Exclusion.

24. “Opt-Out Deadline” is the last day on which a Settlement Class Member may submit a Request for Exclusion, which will be sixty (60) days after the Notice Deadline.

25. “Out-of-Pocket Losses” means documented out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Security Incident, and that have not already been reimbursed by a third party, as set forth in Paragraph 52(b). Out-of-Pocket Losses may include, without limitation, bank fees, postage, copying, mileage, telephone charges, and notary charges, and costs incurred as a result of purchasing credit monitoring or other identity theft insurance services, between September 30, 2022, and the Claims Deadline.

26. “Participating Settlement Class Member” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline, as set forth in Paragraph 69.

27. “Personal Information” means information that identifies an individual or in combination with other information can be used to identify, locate, or contact an individual. The term “Personal Information” is not intended here, nor should it be viewed as, having any bearing on the meaning of this term or similar term in any statute or other source of law beyond this Agreement.

28. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes resolving this Action. Such order will include the forms and procedure for providing notice to the Settlement Class, including notice of the procedure for Settlement Class Members to object to or opt-out of the Settlement, and set a date for the Final Approval Hearing, substantially in the form annexed hereto as **Exhibit 4**.

29. “Released Claims” means any and all claims, liabilities, rights, demands, suits, actions, causes of action, obligations, damages, penalties, costs, attorneys’ fees, losses, and remedies of every kind or description—whether known or unknown (including Unknown Claims), existing or potential, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that relate to or arise from the Security Incident, the facts alleged in the Class Action Complaint or subsequent operative complaint, Defendants’ information security

policies and practices, or Defendants' maintenance or storage of Personal Information, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law.

30. "Released Parties" means Diligent and UCHealth and each and every of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, owners, members, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as any and all of Diligent's, UCHealth's, and these entities' respective predecessors, successors, officers, directors, employees, advisors, vendors, customers, stockholders, partners, servants, agents, attorneys, representatives, insurers, reinsurers, subrogees and assigns. Each of the Released Parties may be referred to individually as a "Released Party."

31. "Releasing Parties" means the Settlement Class Representative and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, predecessors, successors, attorneys, assigns, and any other person purporting to assert a claim on their respective behalves.

32. "Request for Exclusion" is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice and as described below in Paragraph 69.

33. "Security Incident" means the cybersecurity incident that Diligent initially discovered involving the Incident Manager application on or around November 9, 2022.

34. "Service Award Payment" means compensation awarded by the Court and paid to the Class Representative in recognition of her role in this Action as set forth in Paragraph 82.

35. "Settlement" means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

36. "Settlement Administrator" means Angeion Group, subject to Court approval.

37. "Settlement Class" means all individuals, or their respective successors or assigns, who reside in the United States and whose Personal Information was impacted by the Security Incident.

38. "Settlement Class Counsel" means Raina C. Borrelli of Turke & Strauss LLP.

39. "Settlement Class List" means the list of the names and current or last known address information for Settlement Class Members based on Defendants' records, to the extent reasonably available, which Defendants shall provide to the Settlement Administrator within seven (7) days of entry of the Preliminary Approval Order subject to Settlement Administrator signing any Business Associate Agreement requested by Defendants.

40. "Settlement Class Member" means an individual who falls within the definition of the Settlement Class.

41. “Settlement Class Representative” means Katherine Petillo.

42. “Settlement Fund” means Four Hundred and Ninety Thousand Dollars (\$490,000.00), which is the limit and extent of Defendants’ monetary obligations with respect to the settlement and shall be the sole and exclusive source of all costs of the settlement, including payment to Settlement Class Members, Notice and Administrative Expenses (not including the cost of serving notices under the CAFA, 28 U.S.C. § 1715), payments made to resolve any disputed claims, Taxes and Tax-Related Expenses, any Fee Award and Costs, and any Service Award Payment.

43. “Settlement Payment” or “Settlement Check” mean the payment to be made via mailed check or via electronic means (agreed to by the Parties) to a Participating Settlement Class Member pursuant to the claims process set forth in Paragraphs 56 and 57.

44. “Settlement Website” means the website that the Settlement Administrator will create to provide Settlement Class Members with notice of and information about the Settlement and relevant case documents and deadlines, as set forth in Paragraph 65.

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

46. “UCHealth’s Counsel” means Casie D. Collignon and Sarah A. Ballard of Baker & Hostetler LLP.

II. SETTLEMENT FUND

47. **Establishment of Settlement Fund.** Within ten (10) business days of the entry of the Preliminary Approval Order, Diligent shall cause to be deposited \$100,000, into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, Defendants, and Class Counsel, to cover the Settlement Administrator’s reasonable set-up costs, notice, and early administration costs. Diligent shall deposit the balance of the Settlement Fund (\$390,0000) into the same account within ten (10) business days following the Effective Date. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9, along with any other necessary forms, to Diligent within five (5) days of the entry of the Preliminary Approval Order.

48. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses

owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Settlement Agreement, upon request of any of the Parties.

49. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraphs 77-78.

50. **Use of the Settlement Fund.** As further described in this Settlement Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (1) reimbursement for Out-of-Pocket Losses, Extraordinary Losses, Lost Time, Credit Monitoring Services, and Cash Compensation; (2) Notice and Administrative Expenses; (3) Fee Award and Costs as awarded by the Court; (4) Service Award Payment; and (5) Taxes and Tax-Related Expenses. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Settlement Agreement or approved by the Court. Responsibility for effectuating payments described in this Paragraph shall rest solely with the Settlement Administrator and neither Defendants nor Defendants' agents shall have any responsibility whatsoever with respect to effectuating such payments.

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

III. SETTLEMENT BENEFITS AND REIMBURSEMENT

52. The Settlement Administrator will make the following benefits available to Settlement Class Members who submit valid and timely Claim Forms, as described below.

- a. **Claims for Compensation for Extraordinary Losses** up to a total of \$3,000.00 per claimant, upon submission of a valid Claim with supporting documentation, if:
 - i. The loss is an actual, documented, and unreimbursed monetary loss;
 - ii. The loss was more likely than not caused by the Security Incident;
 - iii. The loss occurred between September 30, 2022 and the end of the Claims Period; *and*
 - iv. The loss is not already covered by the Out-of-Pocket Loss or Lost Time reimbursement categories, 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

- b. **Claims for Compensation for Out-of-Pocket Losses** up to a total of \$500 per claimant, for documented out-of-pocket costs and expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Security Incident, and that have not already been reimbursed by a third party, if:
 - i. The Claim is supported by an attestation that the Settlement Class Member believes the unreimbursed losses were incurred as a result of the Security Incident; *and*
 - ii. The Claim is supported by reasonable documentation, which may include credit card statements, invoices, telephone records, and receipts. Personal certifications, declarations, or affidavits standing alone do not constitute reasonable documentation, but may provide clarification or context for other documentation that is submitted.
 - iii. The Settlement Administrator shall have discretion to determine whether any claimed loss is fairly traceable to the Security Incident.
 - iv. Out-of-Pocket Losses may include the following unreimbursed losses, which are non-exhaustive:
 1. Miscellaneous costs such as bank fees, postage, copying, mileage, telephone charges, and notary charges; *and*
 2. Costs incurred as a result of purchasing credit monitoring or other identity theft insurance services between September 30, 2022, and the end of the Claims Period.

- c. **Claims for Compensation for Lost Time.** Settlement Class Members who spent time monitoring accounts or otherwise dealing with issues related to the Security Incident

can submit a Claim for reimbursement of \$25 per hour up to 4 hours (for a total of \$100), subject to the \$500 cap on Out-of-Pocket Losses, provided they provide an attestation on the Claim Form that the activities they performed were related to the Security Incident.

- d. **Claims for Credit Monitoring.** Settlement Class Members can submit a claim to enroll in two (2) years of Credit Monitoring Services, which shall include credit monitoring through one of the national credit monitoring bureaus and insurance of at least \$1 million.
- e. **Cash Compensation.** In lieu of making a claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, or Credit Monitoring Services, Settlement Class Members can instead submit a claim for Cash Compensation initially set at \$50.00, which is subject to pro rata increase or decrease.

53. If the total amount of valid Claims for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, and Cash Compensation submitted during the Claims Period exceeds the amount of money available in the Settlement Fund, the amount of each valid Claim will be reduced proportionally and paid after the Effective Date.

54. If the total amount of valid Claims for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, and Cash Compensation submitted during the Claims Periods is less than the amount of money remaining in the Settlement Fund, after payments for all other settlement costs have been accounted for—including costs associated with (i) Credit Monitoring Services; (ii) Notice and Administrative Expenses; (iii) taxes; (iv) any attorneys' fees and costs; and (v) any Service Award Payment to Plaintiff—then after the Effective Date the Settlement Administrator will make pro rata settlement payments of the remaining money in the Settlement Fund to each Settlement Class Member that submitted a valid Claim.

55. If there is any balance remaining in the Settlement Fund 90 days after the Settlement Administrator completes the process for stopping payment on any checks that remain uncashed, the Parties will return to the Court seeking direction as to the disposition of these funds, including the selection of a *cy pres* recipient, which shall be a 501(c)(3) selected by the Parties (subject to Court approval). The funds distributed pursuant to the *cy pres* provision set forth in this Paragraph shall not be considered unclaimed property under any law.

IV. CLAIMS PROCESS AND PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS

56. **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via the Settlement Website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement Administrator will maintain records of all Claim Forms submitted until the later of (a) one hundred and eighty (180) Days after the Effective Date or (b) the date all Claim Forms have been fully processed in accordance with the terms of this Agreement. Information submitted by

Settlement Class Members in connection with Claim Forms shall be deemed confidential and protected as such by the Settlement Administrator, Settlement Class Counsel, and Diligent's and UCHealth's Counsel.

57. **Claims Review Process.** The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent a Claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, Credit Monitoring Services, or Cash Compensation is valid.

- a. The Settlement Administrator will verify that each person who submits a Claim Form is a member of the Settlement Class.
- b. The Settlement Administrator will determine that each Claim Form submitted by a Settlement Class Member was submitted during the Claims Period and is timely.
- c. In determining whether claimed Extraordinary Losses or Out-of-Pocket Losses are more likely than not caused by or fairly traceable to the Security Incident, respectively, the Settlement Administrator will consider (i) the timing of the alleged loss and whether it occurred on or after September 30, 2022; (ii) whether the alleged loss involved the types of information that may have been affected in the Security Incident, including name, mailing address, Social Security number, and health insurance information; (iii) the explanation of the Settlement Class Member as to why the alleged loss is more likely than not caused by or fairly traceable to the Security Incident; and (iv) other factors the Settlement Administrator reasonably finds to be relevant.
- d. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted Claim prior to making a determination as to its validity.
- e. No decision of the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendants as to any matter of fact, law, or evidence having any collateral effect on any proceedings in any forum or before any authority.
- f. To the extent the Settlement Administrator determines that a timely Claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, Credit Monitoring Services, or Cash Compensation is deficient in whole or in part, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and provide the Settlement Class member twenty-one (21) days to cure the deficiencies. If the Settlement Administrator subsequently determines that the Settlement Class Member has not cured the deficiencies, the Settlement Administrator will notify the Settlement Class Member within the (10) days of that determination. The Settlement Administrator may consult with the Parties in making these determinations.
- g. If a Settlement Class Member receives notice that the Settlement Administrator has determined that the deficiencies it identified have not been cured, the Settlement Class Member may request an appeal in writing. The appeal must be submitted within

twenty-one (21) days of the Settlement Administrator sending the notice. In the event of an appeal, the Settlement Administrator shall provide the Parties with all relevant documentation regarding the appeal. The Parties will confer regarding the appeal. If they agree on a disposition of the appeal, that disposition will be final and non-appealable. If they cannot agree on disposition of the appeal, the dispute will be submitted to a mutually agreed-upon third party neutral who will serve as the claims referee. If the Parties cannot agree on a claims referee, the Parties will submit proposals to the Court, and the Court shall have final, non-appealable authority to designate the claims referee. The decisions of the claims referee regarding the validity of claims will be final and non-appealable.

58. Payment.

- a. After the Effective Date, and after final determinations have been made with respect to all claims submitted during the Claims Period pursuant to the Claims Review Process, the Settlement Administrator shall provide the Parties an accounting of all Approved Claims for Extraordinary Loss, Out-of-Pocket Loss, Lost Time, Credit Monitoring Services, and Cash Compensation.
- b. Payments for Approved Claims for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, and/or Cash Compensation shall be issued in the form of a check, or via electronic means (agreed to by the Parties), and sent as soon as practicable after the Settlement Administrator receives the funds described in Paragraph 47. No payments will be issued without authorization from the Parties.
- c. All Settlement Class Members who fail to submit a valid Claim Form for any benefits under this Agreement within the time frames set forth herein, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments or benefits pursuant to the Settlement, but will in all other respects be subject to and bound by the provisions of this Agreement, including but not limited to the releases contained herein, and the Final Approval Order and Judgment.

59. Timing. Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue.

60. Returned Checks. For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

61. **Voided Checks.** In the event a Settlement Check becomes void, the Settlement Class Member to whom that Settlement Check was made payable will forfeit the right to payment and will not be entitled to payment under the Settlement, and the Agreement will in all other respects be fully enforceable against the Settlement Class Member. No later than one hundred and twenty (120) days after the issuance of the last Settlement Check, the Settlement Administrator shall take all steps necessary to stop payment on any Settlement Checks that remain uncashed.

62. **Deceased Settlement Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Participating Settlement Class Member's estate upon receiving proof the Participating Settlement Class Member is deceased and after consultation with Settlement Class Counsel and Defendants' Counsel.

V. SETTLEMENT CLASS NOTICE

63. **Timing of Notice.** Within seven (7) days after entry of the Preliminary Approval Order, Defendants shall provide the Settlement Class List to the Settlement Administrator subject to Settlement Administrator signing any Business Associate Agreement requested by Defendants. Within thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice to Settlement Class Members for whom it has a valid email address or mailing address. The Settlement Administrator shall make the Long Form Notice and Claim Form available to Settlement Class Members on the Settlement Website.

64. **Form of Notice.** Notice shall be disseminated via email or postcard through First Class U.S. mail to Settlement Class Members on the Settlement Class List for whom a valid email address or mailing address exists. Notice shall also be provided on the Settlement Website. The Notice mailed to Settlement Class Members will consist of a Short Form Notice in a form substantially similar to that attached hereto as **Exhibit 1**. The Settlement Administrator shall have discretion to format the Short Form Notice in a reasonable manner to minimize mailing and administrative costs. Before Notices are mailed or emailed, Settlement Class Counsel and Defendants' Counsel shall first be provided with a proof copy (reflecting what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and any orders of the Court. For Notices sent via email that bounce back as undelivered, the Settlement Administrator shall send a postcard notice through First Class U.S. Mail to the Settlement Class Member, to the extent a valid mailing address exists. For Notices sent via postcard that are returned as undeliverable, the Settlement Administrator shall use reasonable efforts to identify an updated mailing address and resend the postcard notice if an updated mailing address is identified. In addition, the Long Form Notice and Claim Form approved by the Court may be adjusted by the Settlement Administrator in consultation and agreement with the Parties, as may be reasonable and necessary and not inconsistent with such approval.

65. **Settlement Website.** The Settlement Administrator will establish the Settlement Website as soon as practicable following entry of the Preliminary Approval Order, but prior to dissemination of the Notice. The Settlement Website shall contain relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, Plaintiff's motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiff's motion for an

award of attorneys' fees, costs and expenses, and/or service awards, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

66. **Cost of Notice and Administration.** The Settlement Fund amount provided by Defendants, or on behalf of Defendants, will pay the entirety of the Notice and Administrative Expenses, including the cost of Notice. Notice and Administrative Expenses shall be paid through the Settlement Fund and are limited to the Settlement Fund amount.

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

68. Within ten (10) business days following the filing of the motion for preliminary approval of class action settlement, Defendants shall cause a CAFA Notice to be served upon the appropriate State and Federal officials. All expenses incurred in connection with the preparation and service of the CAFA Notice shall be borne by Diligent and under no circumstances will be borne by Plaintiff, or Settlement Class Counsel, and will not be payable from the Settlement Fund.

VI. OPT-OUTS AND OBJECTIONS

69. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or "opt out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. The Notice also must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

- a. The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication.
- b. No person shall purport to exercise any exclusion rights of any other person, or purport (a) to opt out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt out more than one Settlement Class Member on a single paper, or as an agent or representative. Any such purported Requests for Exclusion shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Requests for Exclusion shall be treated as

a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and judgment entered thereon, unless he or she submits a valid and timely Request for Exclusion.

- c. Within seven (7) days after the Opt-Out Deadline, the Settlement Administrator shall provide the Parties with a complete and final list of all Opt-Outs who have submitted a Request for Exclusion and have timely and validity excluded themselves from the Settlement Class and, upon request, copies of all Requests for Exclusion received. In the event that there are more than thirty (30) Opt-Outs, Defendants may, by notifying Settlement Class Counsel in writing, void this Agreement as set forth in Paragraph 77 below.
- d. All persons who opt out shall not receive any benefits or be bound by the terms of this Agreement. All persons falling within the definition of the Settlement Class who do not opt out shall be bound by the terms of this Agreement and the Final Approval Order and Judgment.

70. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement by filing written objections with the Court no later than the Objection Deadline. The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. Any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement and shall be bound by the terms of the Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to the Agreement shall be through the provisions of this Paragraph. Within seven (7) days after the Objection Deadline, the Settlement Administrator shall provide the Parties with all objections submitted.

VII. DUTIES OF THE SETTLEMENT ADMINISTRATOR

71. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;

- b. Causing the Notice program to be effectuated in accordance with the terms of this Settlement Agreement and any orders of the Court;
- c. Performing National Change of Address searches and/or skip tracing on the Settlement Class List;
- d. Providing Notice to Settlement Class Members via U.S. mail and/or e-mail;
- e. Establishing and maintaining the Settlement Website;
- f. Establishing and maintaining a toll-free telephone line with interactive voice response for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries in a timely fashion;
- g. Responding to any mailed or emailed Settlement Class Member inquiries in a timely fashion;
- h. Reviewing, determining the validity of, and processing all Claims submitted consistent with the terms of this Agreement;
- i. Receiving and reviewing Requests for Exclusion and objections from Settlement Class Members. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Settlement Class Counsel and Defendants' Counsel;
- j. Working with the provider of Credit Monitoring Services to receive and send activation codes to Settlement Class Members who submitted valid Claims for Credit Monitoring Services after the Effective Date;
- k. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- l. Providing weekly or other periodic reports to Settlement Class Counsel and Defendants' Counsel that include information regarding the number of Settlement Checks mailed and delivered or checks sent via electronic means, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments or Notice;
- m. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and

- n. Performing any function related to settlement administration as provided for in this Agreement or at the agreed-upon instruction of Settlement Class Counsel or Defendants' Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

VIII. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

72. **Certification of the Settlement Class.** For purposes of this Settlement only, and in the context of this Agreement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Excluded from the Settlement Class are (i) Defendants, their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge. Should: (1) the Settlement not receive final approval from the Court, (2) the Effective Date not occur, or (3) the Agreement is otherwise terminated, the certification of the Settlement Class shall be void, and neither the Agreement nor any order or other action relating to the agreement shall be offered by any person as evidence or cited in support of a motion to certify a class for any purpose other than this Settlement. Defendants reserve the right to contest class certification for all other purposes. The Parties further stipulate to designate the Class Representative as the representatives for the Settlement Class.

73. **Preliminary Approval.** Following execution of this Agreement, Settlement Class Counsel shall file a motion for preliminary approval of this Settlement with the Court on or before December 8, 2023. Settlement Class Counsel shall provide Defendants' counsel with a draft of the motion for preliminary approval within a reasonable time frame prior to filing same to ensure that any requested revisions from Defendants are addressed. The proposed Preliminary Approval Order shall be in the form attached as **Exhibit 4**.

74. **Final Approval.** Settlement Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing, substantially in the form set forth in **Exhibit 5**. Counsel for the Parties shall request that the Court set a date for the Final Approval Hearing that is no earlier than 120 days after entry of the Preliminary Approval Order and at least 90 days after Defendants notify government officials of this Settlement Agreement pursuant to CAFA, 28 U.S.C. § 1715. Settlement Class Counsel shall provide Defendants' Counsel with a draft of the motion for final approval within a reasonable time frame prior to filing same to ensure that any requested revisions from Defendants are addressed.

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

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

IX. MODIFICATION AND TERMINATION

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

77. **Termination.** Settlement Class Counsel (on behalf of the Settlement Class Members) and Defendants shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice"): (1) within seven (7) days of either of the following: (a) the Court's refusal to grant preliminary approval of the Settlement in any material respect; or (b) Defendants' receipt of the opt-out list from the Settlement Administrator that includes more than thirty (30) Opt-Outs, which right may be exercised solely by Defendants; or (2) within fourteen (14) days of either of the following: (a) the Court's refusal to enter the Final Approval Order and Judgment in any material respect, or (b) the date upon which the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court. This Agreement shall terminate five (5) days after such written notice is provided.

78. **Effect of Termination.** In the event of a termination as provided in Paragraph 77, this Agreement shall be considered null and void, all of the Parties' obligations under the Agreement shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved. Any Court orders preliminarily or finally approving certification of the Settlement Class and any other orders entered pursuant to the Agreement shall be deemed null and void and vacated. If Defendants void the Settlement Agreement, Defendants will be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Settlement Class Counsel and the Service Award to the Settlement Class Representative and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

X. RELEASES

79. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have completely and unconditionally released, acquitted, and forever discharged Defendants and each of the Released Parties from any and all Released Claims, including Unknown Claims.

80. **Unknown Claims.** The Released Claims include the release of Unknown Claims. “Unknown Claims” means claims that could have been raised in the Action and that Plaintiffs, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiffs, the Settlement Class, and any Releasing Party shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights, and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Settlement Class Representatives, the Settlement Class, and the Releasing Parties acknowledge that they may 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 Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Agreement to have acknowledged, that the foregoing waiver is a material term of the Agreement.

81. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Class Representatives and other Settlement Class Members shall be enjoined from initiating, asserting, or prosecuting any and all Released Claims, including Unknown Claims, in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order and Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this Section.

XI. SERVICE AWARD PAYMENTS

82. **Service Award Payment.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Settlement Class Counsel will file a motion seeking a service award payment for the Class Representative in recognition for her contributions to this Action. Defendants agree not to oppose Settlement Class Counsel’s request for a service award not to exceed Four Thousand Dollars and Zero Cents (\$4,000.00). To the extent more than \$4,000.00 is sought, Defendants reserve all rights to object and oppose such a request. Within ten (10) business days after the Effective Date the Settlement Administrator shall pay the service awards from the Settlement Fund

to an account established by Settlement Class Counsel. Defendants' obligations with respect to the Court-approved service awards shall be fully satisfied upon receipt of the funds into the account established by Settlement Class Counsel. Defendants shall have no responsibility for, interest in, or liability whatsoever with respect to any distribution or allocation of service awards. Nor shall Defendants be responsible for any tax obligations or payments associated with the amount paid into the account established by Settlement Class Counsel. To the extent the Effective Date does not occur, Defendants shall have no obligation to pay any service awards. This amount was negotiated after the primary terms of the settlement were negotiated.

83. **No Effect on Agreement.** The finality or effectiveness of the Settlement shall not depend on the amount or timing of service awards approved and awarded by the Court or any appeal thereof. The amount and timing of service awards is intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

XII. ATTORNEYS' FEES, COSTS, EXPENSES

84. **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Settlement Class Counsel will file a motion for an award of attorneys' fees and Litigation Costs and Expenses in an amount not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of costs and expenses in an amount not to exceed \$10,000. Defendants' agree not to oppose Settlement Class Counsel's request for an award of attorneys' fees not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of costs and expenses in an amount not to exceed \$10,000. If Settlement Class Counsel seek more than one-third (33.33%) of the Settlement Fund and reimbursement of costs and expenses in an amount not to exceed \$10,000, Defendants reserve all rights to object and oppose such requests. Within ten (10) business days after the Effective Date the Settlement Administrator shall pay the attorneys' fees and expenses from the Settlement Fund to an account established by Settlement Class Counsel. The attorneys' fees and expenses will be allocated by Settlement Class Counsel. Defendants' obligations with respect to the Court-approved attorneys' fees and expenses shall be fully satisfied upon receipt of the funds into the account established by Settlement Class Counsel. Defendants shall have no responsibility for, interest in, or liability whatsoever with respect to any distribution or allocation of attorneys' fees or expenses. Nor shall Defendants be responsible for any tax obligations or payments associated with the amount paid into the account established by Settlement Class Counsel. To the extent the Effective Date does not occur, Defendants shall have no obligation to pay any attorneys' fees or expenses. The amount of attorneys' fees and expenses was negotiated after the primary terms of the Settlement were negotiated.

85. **No Effect on Agreement.** The finality or effectiveness of the Parties' Settlement shall not depend on the amount or timing of attorneys' fees and expenses approved and awarded by the Court or any appeal thereof. The amount and timing of attorneys' fees and expenses are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No decision by the Court, or modification or

reversal or appeal of any decision by the Court, concerning the amount or timing of attorneys' fees or expenses shall constitute grounds for termination of this Agreement.

XIII. NO ADMISSION OF LIABILITY

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

87. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiff; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by the Released Parties in the Action or in any proceeding in any court, administrative agency or other tribunal.

XIV. MISCELLANEOUS

88. **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

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

90. **Resolution.** The Parties intend this Agreement to be a final and complete resolution of all disputes between them respect to the Action. The Parties each agree that the Settlement and this Agreement were negotiated in good faith and at arm's-length and reflects a Settlement that was reached voluntarily after consultation with legal counsel of their choice.

91. **Other Litigation.** Plaintiff and Settlement Class Counsel will not cooperate with or encourage any action or filing of claims against Defendants or any Released Parties related to any of the allegations or claims alleged in the Action.

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

93. **Singular and Plurals.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

94. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

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

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

97. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

98. **No Conflict Intended.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

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

100. **Jurisdiction.** The Parties and each Settlement Class Member submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of the Agreement and its exhibits, but for no other purpose whatsoever.

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

102. **Notices.** All notices to Settlement Class Counsel provided for herein, shall be sent by email to:

Samuel J. Strauss
Raina C. Borrelli
TURKE & STRAUSS LLP
613 Williamson Street, Suite 201
Madison, Wisconsin 53703

sam@turkestrauss.com
raina@turkestrauss.com

All notices to Diligent provided for herein, shall be sent by email to:

Allison Holt Ryan
Adam A. Cooke
HOGAN LOVELLS US LLP
555 13th Street, NW
Washington, DC 20004
allison.holt-ryan@hoganlovells.com
adam.a.cooke@hoganlovells.com

All notices to UCHHealth provided for herein, shall be sent by email to:

Casie D. Collignon
Sarah A. Ballard
BAKER & HOSTETLER LLP
1801 California Street, Suite 4400
Denver, CO 80202
ccollignon@bakerlaw.com
sballard@bakerlaw.com

The notice recipients and addresses designated above may be changed by written notice.

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

SIGNATURES

Katherine Petillo

By: 

Date: 11 / 27 / 2023

Diligent Corp.

By: _____

Date: _____

University of Colorado Health d/b/a UCHealth

By: _____

Date: _____

TURKE & STRAUSS LLP

Counsel for Plaintiff and the Class

By: 

Date: 11/30/2023

Samuel J. Strauss
Raina C. Borrelli

HOGAN LOVELLS US LLP

Counsel for Defendant Diligent Corp.

By: _____

Date: _____

Allison Holt Ryan
Adam A. Cooke

BAKER & HOSTETLER LLP

Counsel for Defendant University of Colorado Health d/b/a UCHealth

By: _____

Date: _____

Casie D. Collignon
Sarah A. Ballard

SIGNATURES

Katherine Petillo

By: _____

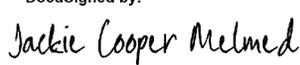
Date: _____

Diligent Corp.

By:  _____
DocuSigned by:
2DC657616BD64E7...

Date: 12/1/2023

University of Colorado Health d/b/a UCHealth

By:  _____
DocuSigned by:
AFF3926318B2440...
Jacki Cooper Melmed, CLO

Date: 12/5/2023 | 11:30 AM PST

TURKE & STRAUSS LLP

Counsel for Plaintiff and the Class

By: _____

Date: _____

Samuel J. Strauss
Raina C. Borrelli

HOGAN LOVELLS US LLP

Counsel for Defendant Diligent Corp.

By:  _____
Allison Holt Ryan
Adam A. Cooke

Date: 11/29/2023

BAKER & HOSTETLER LLP

Counsel for Defendant University of Colorado Health d/b/a UCHealth

By:  _____
Casie D. Collignon
Sarah A. Ballard

Date: 12/5/2023

— EXHIBIT 1 —

To: [Settlement Class Member Email Address]
From: [Settlement Administrator]
Subject: Notice of Proposed Class Action Settlement – *Petillo v. Diligent Corp., et al.*

Notice ID: <<Notice ID>>

Confirmation Code: <<Confirmation Code>>

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

To all persons whose Personal Information was impacted by a cybersecurity incident that Diligent Corporation discovered on or around November 9, 2022, a proposed class action settlement may affect your rights.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

Your legal rights are affected whether you act or do not act. Read this Notice carefully.

A Settlement has been reached to resolve a class action lawsuit against Diligent Corporation (“Diligent”) and University of Colorado Health, dba UCHealth (“UCHealth,” and with Diligent, “Defendants”) brought by individuals whose Personal Information was impacted as a result of a cybersecurity incident that Diligent initially discovered on or around November 9, 2022 (“Security Incident”). The case is called *Petillo v. Diligent Corp. & University of Colorado Health dba UC Health*, Case No. 1:23-cv-02439-LLS, in the United States District Court for the Southern District of New York.

Why am I receiving this Notice?

You are receiving this Notice because the records of Defendants show that your Personal Information may have been impacted as a result of the Security Incident. You are therefore likely a Settlement Class Member eligible to receive benefits under this Settlement.

Who’s Included in the Settlement Class?

The Settlement Class includes all individuals, or their respective successors or assigns, who reside in the United States and whose Personal Information was impacted by the Security Incident.

What are the Settlement Benefits?

Under the Settlement, Defendants will establish a \$490,000 Settlement Fund that will pay for valid and timely Claims for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, Credit Monitoring, and Cash Compensation, summarized below:

- Extraordinary Loss Claims – Up to a total of \$3,000 per claimant.
- Out of Pocket Loss Claims – Up to a total of \$500 per claimant.
- Lost Time Claims – \$25 per hour for up to 4 hours (for a total of \$100, subject to the \$500 cap for Out-of-Pocket Losses).
- Credit Monitoring – Two (2) years of Credit Monitoring Services, which shall include credit monitoring through one of the national credit monitoring bureau’s and insurance of at least \$1 million
- Cash Compensation – In lieu of making a Claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, or Credit Monitoring Services, Settlement Class Members can instead

submit a Claim for Cash Compensation initially set at \$50.00, which is subject to pro rata increase or decrease based on the number of Claims received.

Please visit _____ for a full description of the Settlement benefits and documentation requirements.

How do I Submit a Claim Form for Benefits?

You must submit a Claim Form, available at _____ to be eligible to receive a Settlement benefit. Your completed Claim Form must be submitted online, or mailed to the Settlement Administrator and postmarked, by _____.

What are my other options?

If you Do Nothing, you will be legally bound by the terms of the Settlement, and you will release your claims against Diligent and other Released Parties as defined in the Settlement Agreement. You may opt out and exclude yourself from or object to the Settlement by _____. Please visit _____ for more information on how to opt out of or object to the Settlement.

Do I have a Lawyer in this Case?

Yes, the Court appointed the law firm of Turke & Strauss LLP to represent you and other members of the Settlement Class. You will not be charged directly for these lawyers; instead, they will seek attorneys' fees of up to one-third of the Settlement Fund (or \$163,333.33) and expenses up to \$10,000 from the Settlement Fund (subject to Court approval). If you want to be represented by your own lawyer, you may hire one at your own expense.

The Court's Final Approval Hearing

The Court is scheduled to hold a Final Approval Hearing on _____, to consider whether to approve the Settlement, a Service Award Payment of \$4,000 for the named Plaintiff who is representing the Settlement Class, and a request for attorneys' fees and Litigation Costs and Expenses for Settlement Class Counsel. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to.

This Notice is only a summary.

For more information, visit _____ or call toll-free 1-XXX-XXX-XXXX.

[Unsubscribe](#)

**To all persons whose
Personal Information was
impacted by a
cybersecurity incident
that Diligent Corporation
discovered on or around
November 9, 2022, a
proposed class action
settlement may affect
your rights.**

For more information on the
proposed Settlement,
including how to submit a
Claim, exclude yourself, or
submit an objection, please
visit [Website URL](#).

*A federal court has
authorized this Notice.*

*This is not a solicitation from
a lawyer.*

Diligent-UCHealth Security Incident
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

«ScanString»

Postal Service: Please do not mark barcode.

Notice ID: «Notice ID»
Confirmation Code: «Confirmation Code»
«FirstName» «LastName»
«Address1»
«Address2»
«City», «StateCd» «Zip»
«CountryCd»

Petillo v. Diligent Corp., et al., Case No. 1:23-cv-02439

Why am I receiving this Notice? You are receiving this Notice because the records of Diligent Corporation ("Diligent") and University of Colorado Health, dba UCHealth ("UCHealth," and with Diligent, "Defendants") show that your Personal Information may have been impacted as a result of a cybersecurity incident that Diligent initially discovered on or around November 9, 2022 ("Security Incident"). You are therefore likely a Settlement Class Member eligible to receive benefits under this Settlement.

What are the Settlement Benefits? Under the Settlement, Defendants will establish a \$490,000 Settlement Fund that will pay for valid and timely Claims for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, Credit Monitoring, and Cash Compensation, summarized below:

- Extraordinary Loss Claims – Up to a total of \$3,000 per claimant.
- Out-of-Pocket Loss Claims – Up to a total of \$500 per claimant.
- Lost Time Claim – \$25 per hour for up to 4 hours (for a total of \$100, subject to the \$500 cap for Out-of-Pocket Losses).
- Credit Monitoring – Two (2) years of Credit Monitoring Services, which shall include credit monitoring through one of the national credit monitoring bureaus and insurance of at least \$1 million
- Cash Compensation – In lieu of making a Claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, or Credit Monitoring Services, Settlement Class Members can instead submit a Claim for Cash Compensation initially set at \$50.00, which is subject to pro rata increase or decrease based on the number of Claims received.

Please visit [REDACTED] for a full description of the Settlement benefits and documentation requirements.

How do I Submit a Claim Form for Benefits? You must submit a Claim Form, available at [REDACTED] to be eligible to receive a Settlement benefit. Your completed Claim Form must be **submitted online, or mailed to the Settlement Administrator and postmarked, by** [REDACTED].

What are my other options? If you **Do Nothing**, you will be legally bound by the terms of the Settlement, and you will release your claims against Diligent, UCHealth, and other Released Parties as defined in the Settlement Agreement. You may **opt out** of or **object** to the Settlement by [REDACTED]. Please visit [REDACTED] for more information on how to opt out and exclude yourself from or object to the Settlement.

Do I have a Lawyer in this Case? Yes, the Court appointed the law firm of Turke & Strauss LLP to represent you and other members of the Settlement Class. You will not be charged directly for these lawyers; instead, they will seek attorneys' fees of up to one-third of the

Petillo v. Diligent Corp., et al., Case No. 1:23-cv-02439

Settlement Fund (or \$163,333.33) and expenses up to \$10,000 from the Settlement Fund (subject to Court approval). If you want to be represented by your own lawyer, you may hire one at your own expense.

The Court's Final Approval Hearing. The Court is scheduled to hold a Final Approval Hearing on [REDACTED], to consider whether to approve the Settlement, a Service award Payment for the Class Representative of \$4,000, and a request for attorneys' fees and expenses for Settlement Class Counsel. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to.

This Notice is only a summary. For more information, visit [REDACTED] or call toll-free 1-XXX-XXX-XXXX.

— EXHIBIT 2 —

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

United States District Court for the Southern District of New York
Petillo v. Diligent Corp., et al.
Case No. 1:23-cv-02439-LLS

IF YOUR PERSONAL INFORMATION WAS IMPACTED BY A CYBERSECURITY INCIDENT THAT DILIGENT CORPORATION INITIALLY DISCOVERED ON OR AROUND NOVEMBER 9, 2022, A PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS

A federal court authorized this Notice. You are not being sued.

This is not a solicitation from a lawyer.

- A Settlement has been reached with Diligent Corporation (“Diligent”) and University of Colorado Health, dba UCHealth (“UCHealth,” and with Diligent, “Defendants”) in a class action lawsuit about a cybersecurity incident that Diligent initially discovered involving the Incident Manager application on or around November 9, 2022.
- The lawsuit is captioned *Petillo v. Diligent Corp. & University of Colorado Health dba UC Health*, Case No. 1:23-cv-02439-LLS (the “Action”), pending in the United States District Court for the Southern District of New York. Defendants deny the allegations and all liability or wrongdoing with respect to any and all facts and claims alleged in the lawsuit but has agreed to a settlement to avoid the costs and risks associated with continuing this case.
- You are included in this Settlement if you are a Settlement Class Member. A Settlement Class Member is an individual who resides in the United States whose Personal Information was impacted by the cybersecurity incident that Diligent initially discovered on or around November 9, 2022.
- Your rights are affected whether you act or don’t act. Please read this Notice carefully.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
SUBMIT A CLAIM	<p>The only way to receive cash and other benefits from this Settlement is by submitting a valid and timely Claim Form.</p> <p>You can submit your Claim Form online at _____ or download the Claim Form from the Settlement Website and mail it to the Settlement Administrator. You may also call or email the Settlement Administrator to receive a paper copy of the Claim Form.</p>	_____, 2024
OPT OUT OF THE SETTLEMENT	<p>You can choose to opt out of the Settlement and receive no payment. This option allows you to sue, continue to sue, or be part of another lawsuit against the Defendants related to the legal claims resolved by this Settlement. You can elect to retain your own legal counsel at your own expense.</p>	_____, 2024
OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING	<p>If you do not opt out of the Settlement, you may object to it by writing to the Court about why you don't like the Settlement. You may also ask the Court for permission to speak about your objection at the Final Approval Hearing. If you object, you may also file a Claim for benefits.</p>	_____, 2024
DO NOTHING	<p>Unless you opt out of the Settlement, you are part of the Settlement. If you do nothing, you will not get a payment from this Settlement and you will give up the right to sue, continue to sue, or be part of another lawsuit against the Defendants related to the legal claims resolved by this Settlement.</p>	No Deadline

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION	3
WHO IS IN THE SETTLEMENT	4
THE SETTLEMENT BENEFITS.....	5
HOW TO GET A PAYMENT—MAKING A CLAIM.....	6
THE LAWYERS REPRESENTING YOU	7
OPTING OUT OF THE SETTLEMENT.....	7
COMMENTING ON OR OBJECTING TO THE SETTLEMENT	8
THE COURT’S FINAL APPROVAL HEARING	9
IF I DO NOTHING	9
GETTING MORE INFORMATION	9

BASIC INFORMATION

1. Why was this Notice issued?

A federal court authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, your legal rights, what benefits are available, and who can receive them.

The Honorable Louis L. Stanton of the United States District Court for the Southern District of New York is overseeing this class action. The lawsuit is captioned *Petillo v. Diligent Corp. & University of Colorado Health dba UC Health*, Case No. 1:23-cv-02439-LLS (S.D.N.Y.). The people that filed this lawsuit are called the “Plaintiffs” and the companies they sued, Diligent Corporation and University of Colorado Health, dba UHealth, are called the “Defendants.”

2. What is this lawsuit about?

This lawsuit alleges that Personal Information was impacted by the ransomware cybersecurity incident that Diligent initially discovered involving the Incident Manager application on or around November 9, 2022 (“Security Incident”).

3. What is a class action?

In a class action, one or more individuals sue on behalf of other people with similar claims. This individual is known as “Class Representative” or “Plaintiff.” Together, the people included in the class action are called a “class” or “class members.” One court resolves the lawsuit for all settlement class members, except for those who opt out from a settlement. In this Settlement, the Class Representative is Katherine Petillo.

4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiff or the Defendants. The Defendants deny all claims and contend that they have not violated any laws. Plaintiff and the Defendants agreed to a Settlement to avoid the costs and risks of a trial, and through the Settlement, Settlement Class Members are eligible to receive payments. Plaintiff and her attorneys think the Settlement is best for all Settlement Class Members.

WHO IS IN THE SETTLEMENT?

5. Who is included in the Settlement?

The Settlement Class consists of all individuals, or their respective successors or assigns, who reside in the United States and whose Personal Information was impacted by the Security Incident.

6. Are there exceptions to being included?

Yes. Excluded from the Settlement Class are (i) Defendants, their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge.

If you are not sure whether you are included in the Settlement Class, you can ask for free help by emailing or writing to Settlement Administrator at:

[email address]

Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210,
Philadelphia, PA 19103.

You may also view the Settlement Agreement and Release (“Settlement Agreement”) at [Website URL].

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

Under the Settlement, Defendants will establish a \$490,000 settlement fund from which they will pay for valid and timely Claims for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, Credit Monitoring, and Cash Compensation (explained below). The Settlement Fund will also pay all Settlement Notice and Administration costs, attorneys' fees and expenses, and Plaintiff's Service Award Payment.

8. How much will my payment be?

Payments will vary – Settlement Class Members may submit a Claim Form for: (1) Extraordinary Loss Claims – up to a total of \$3,000 per claimant; (2) Out-of-Pocket Loss Claims – up to a total of \$500 per claimant; (3) Lost Time - \$25 per hour for up to 4 hours (for a total of \$100 and subject to the \$500 cap for Out-of-Pocket Losses); (4) Credit Monitoring – Settlement Class Members can enroll in Credit Monitoring Services; and (5) Cash Compensation – in lieu of making a Claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, or Credit Monitoring Services, Settlement Class Members can instead submit a Claim for cash compensation initially set at \$50.00, which is subject to pro rata increase or decrease based on the number of Claims received

Extraordinary Loss Claims must be supported with documentation and: (1) The loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Security Incident; (3) the loss occurred or occurs between September 30, 2022 and [insert end of claims period date]; and (4) the loss is not already covered by the Out-of-Pocket Loss or Lost Time reimbursement categories, 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.

Out-of-Pocket Loss Claims must be supported with documentation demonstrating out-of-pocket costs and expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Security Incident, and that have not already been reimbursed by a third party.

Lost Time Claims must be supported by an attestation o that the activities performed were related to the Security Incident.

Credit Monitoring Services. Settlement Class Members can submit a Claim to enroll in two (2) years of credit monitoring services, which shall include credit monitoring through one of the national credit monitoring bureaus and insurance of at least \$1 million.

Cash Compensation. In lieu of making a Claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, or Credit Monitoring Services, Settlement Class Members can instead submit a Claim for cash

compensation initially set at \$50.00, which is subject to pro rata increase or decrease based on the number of claims received.

9. What claims am I releasing if I stay in the Settlement Class?

Unless you opt out of the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants about any of the legal claims this Settlement resolves. The “Releases” section in the Settlement Agreement describes the legal claims that you give up if you remain in the Settlement Class. The Settlement Agreement can be found at [\[Website URL\]](#).

HOW TO GET A PAYMENT – MAKING A CLAIM

10. How do I submit a Claim and get a cash payment?

You may file a Claim if you are an individual who resides in the United States whose Personal Information was impacted by the Security Incident.

Claim Forms may be submitted online at [\[Website URL\]](#) or printed from the website and mailed to the Settlement Administrator at: *Diligent-UCHealth Security Incident* c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

You may also contact the Settlement Administrator to request a Claim Form by telephone 1-[XXX-XXX-XXXX](#), by email [\[Email Address\]](#), or by U.S. mail at the address above.

11. What is the deadline for submitting a Claim?

If you submit a Claim by U.S. mail, the completed and signed Claim Form must be postmarked by [\[Deadline Date\]](#). If submitting a Claim Form online, you must do so by [\[Deadline Date\]](#).

12. When will I get my payment?

The Court is scheduled to hold a Final Approval Hearing on _____, 2024 to decide whether to approve the Settlement, how much attorneys’ fees and costs to award to Settlement Class Counsel for representing the Settlement Class, and whether to award a Service Award Payment to each Class Representative who brought this Action on behalf of the Settlement Class.

If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. Settlement payments will be distributed as soon as possible, if and when the Court grants final approval of the Settlement and after any appeals are resolved.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in the case?

Yes, the Court appointed the law firm of Turke & Strauss LLP to represent you and other members of the Settlement Class. You will not be charged directly for these lawyers; instead, they will seek attorneys' fees of up to one-third of the Settlement Fund (or \$163,333.33) and expenses up to \$10,000 from the Settlement Fund (subject to Court approval). If you want to be represented by your own lawyer, you may hire one at your own expense.

14. Should I get my own lawyer?

It is not necessary for you to hire your own lawyer because Settlement Class Counsel works for you. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

Settlement Class Counsel will file a motion for an award of attorneys' fees and Litigation Costs and Expenses to be paid from the Settlement Fund. They will seek attorneys' fees of up to one-third of the Settlement Fund (or \$163,333.33) and expenses up to \$10,000 from the Settlement Fund (subject to Court approval)

Settlement Class Counsel will also seek a Service Award Payment for the Class Representative in recognition for her contributions to this Action. Settlement Class Counsel will request a Service Award Payment not to exceed \$4,000.00 for the Class Representative.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How do I opt out of the Settlement?

If you do not want to receive any benefits from the Settlement, and you want to keep your right, if any, to separately sue the Defendants about the legal issues in this case, you must take steps to exclude yourself from the Settlement Class. This is called "opting out" of the Settlement Class. The deadline for requesting exclusion from the Settlement is **[Deadline Date]**.

To exclude yourself from the Settlement, you must submit a written Request For Exclusion that includes the following information:

- the case name: *Petillo v. Diligent Corp. & University of Colorado Health dba UC Health*, Case No. 1:23-cv-02439-LLS (S.D.N.Y.);
- your full name;
- current address;
- personal signature; and

- the words “Request for Exclusion” or a comparable statement that you do not wish to participate in the Settlement at the top of the communication.

Your Request For Exclusion must be mailed to the Settlement Administrator at the address below, postmarked no later than **[Deadline Date]**.

Diligent-UCHealth Security Incident Settlement Administrator
ATTN: Exclusion Request
PO Box 58220
Philadelphia, PA 19102

If you exclude yourself, you are telling the Court that you do not want to be part of the Settlement. You will not be eligible to receive a payment or any other benefits under the Settlement if you exclude yourself. You may only exclude yourself – not any other person.

COMMENTING ON OR OBJECTING TO THE SETTLEMENT

17. How do I tell the Court if I like or do not like the Settlement?

If you are a Settlement Class Member, you can choose (but are not required) to object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve the Settlement.

For an objection to be considered by the Court, the objection must include: (i) the name of the proceeding; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member’s attorney.

Any Settlement Class Member who does not file a timely and adequate objection in accordance with above paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement and shall be bound by the terms of the Agreement and by all proceedings, orders, and judgments in the Action.

Objections must be filed with the Court no later than **[Deadline Date]**.

Clerk of the Court
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.

New York, NY 10007-1312

18. What is the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is opting out and stating to the Court that you do not want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because the Settlement no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

19. When is the Court's Final Approval Hearing?

The Court is scheduled to hold a Final Approval Hearing on _____, 2024 at _____ a.m./p.m. E.T., at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312, Courtroom _____, to decide whether to approve the Settlement, how much attorneys' fees and costs to award to Settlement Class Counsel for representing the Settlement Class, and whether to award a Service Award Payment to the Class Representative who brought this Action on behalf of the Settlement Class. If you are a Settlement Class Member, you or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice. Please check www._____ for updates.

20. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you file an objection, you do not have to come to the Final Approval Hearing to talk about it. If you file your written objection on time and in accordance with the requirements above, the Court will consider it. You may also pay your own lawyer to attend, but such attendance is not necessary for the Court to consider an objection that was filed on time and meets the requirements above.

IF I DO NOTHING

21. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will give up the rights explained in **Question 9**, including your right to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against the Defendants and the Released Parties, as defined in the Settlement Agreement, about the legal issues resolved by this Settlement. In addition, you will not receive a payment from this Settlement.

GETTING MORE INFORMATION

22. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at the Settlement Website, [Website URL].

If you have additional questions, you may contact the Settlement Administrator by email, phone, or mail:

Email: [Email Address]

Toll-Free: 1-XXX-XXX-XXXX

Mail: Diligent-UCHealth Security Incident Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103

Publicly filed documents can also be obtained by visiting the office of the Clerk of the United States District Court for the Southern District of New York or by reviewing the Court's online docket.

PLEASE DO NOT CONTACT THE COURT, DILGENT CORPORATION, OR UCHEALTH

— EXHIBIT 3 —

Your Claim must
be submitted online
or
postmarked by:
[DEADLINE]

CLAIM FORM

GENERAL INSTRUCTIONS

Complete this Claim Form if you are a Settlement Class Member and you wish to receive Settlement benefits.

You are a member of the Settlement Class and eligible to submit a Claim Form if:

You are an individual who resides in the United States whose Personal Information was impacted by the cybersecurity incident that Diligent Corporation discovered involving the Incident Manager Application on or around November 9, 2022 (“Security Incident”).

Excluded from the Settlement Class are (i) Defendants, their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge.

Settlement Class Members may submit a Claim Form for: (1) Extraordinary Loss Claims – up to a total of \$3,000 per claimant; (2) Out-of-Pocket Loss Claims – up to a total of \$500 per claimant; (3) Lost Time – \$25 per hour for up to 4 hours (for a total of \$100 and subject to the \$500 cap for Out-of-Pocket Losses); (4) Credit Monitoring – Settlement Class Members can enroll in Credit Monitoring Services; and (5) Cash Compensation – in lieu of making a Claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, or Credit Monitoring Services, Settlement Class Members can instead submit a Claim for Cash Compensation initially set at \$50.00, which is subject to pro rata increase or decrease based on the number of Claims received.

Extraordinary Loss Claims must be supported with documentation and: (1) The loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Security Incident; (3) the loss occurred or occurs between September 30, 2022 and [insert end of claims period date]; and (4) the loss is not already covered by the Out-of-Pocket Loss or Lost Time reimbursement categories, 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.

Out-of-Pocket Loss Claims must be supported with documentation demonstrating out-of-pocket costs and expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Security Incident, and that have not already been reimbursed by a third party.

Lost Time Claims must be supported by an attestation that the activities performed were related to the Security Incident.

Credit Monitoring Services. Settlement Class Members can submit a claim to enroll in two (2) years of Credit Monitoring Services, which shall include credit monitoring through one of the national credit monitoring bureaus and insurance of at least \$1 million.

**Your Claim must
be submitted online
or
postmarked by:
[DEADLINE]**

CLAIM FORM

Cash Compensation. In lieu of making a claim for Extraordinary Losses, Out-of-Pocket Losses, Lost Time, or Credit Monitoring Services, Settlement Class Members can instead submit a Claim for Cash compensation initially set at \$50.00, which is subject to pro rata increase or decrease based on the number of Claims received.

This Claim Form may be submitted electronically *via* the Settlement Website at [REDACTED] or completed and mailed, including any supporting documentation, to: *Diligent-UCHealth Security Incident Settlement Administrator*, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

I. SETTLEMENT CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this Claim Form.

First Name

Last Name

Street Address

City

State

Zip Code

Email Address

Telephone Number

Notice ID Number, if known

II. CASH BENEFIT SELECTION

Check this box if you are requesting compensation for **Extraordinary Losses** up to a total of \$3,000.

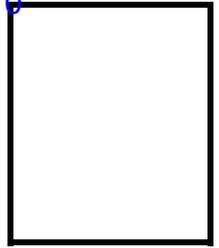
***You must submit supporting documentation demonstrating actual, unreimbursed monetary loss.**

Complete the chart below describing the supporting documentation you are submitting.

<i>Description of Documentation Provided</i>	<i>Amount</i>
<i>Example: Receipt for credit repair services</i>	<i>\$100</i>

QUESTIONS? VISIT [WWW.\[REDACTED\].COM](http://WWW.[REDACTED].COM) OR CALL TOLL-FREE 1-[REDACTED]

**Your Claim must
be submitted online
or
postmarked by:
[DEADLINE]**



CLAIM FORM

V. PAYMENT SELECTION

Please select **one** of the following payment options, which will be used should you be eligible to receive a Settlement payment:

PayPal - Enter your PayPal email address: _____

Venmo - Enter the mobile number associated with your Venmo account: ____-____-____

Zelle - Enter the mobile number or email address associated with your Zelle account:

Mobile Number: ____-____-____ or Email Address: _____

Virtual Prepaid Card - Enter your email address: _____

Physical Check - Payment will be mailed to the address provided in Section I above.

VI. ATTESTATION & SIGNATURE

I swear and affirm that the information provided in this Claim Form, and any supporting documentation provided is true and correct to the best of my knowledge. I understand that my Claim is subject to verification and that I may be asked to provide supplemental information by the Settlement Administrator before my Claim is considered complete and valid.

Signature

Printed Name

Date

— EXHIBIT 4 —

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>KATHERINE PETILLO, on behalf of herself and all others similarly situated,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DILIGENT CORPORATION, and UNIVERSITY OF COLORADO HEALTH dba UC HEALTH,</p> <p style="text-align: right;">Defendants.</p>	<p>Case No. 1:23-cv-02439-LLS</p> <p>Judge Louis L. Stanton</p> <p style="text-align: center;">[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT</p>
--	---

Before the Court is Plaintiff Katherine Petillo’s Motion for Preliminary Approval of Class Action Settlement (**Doc. No. __**) (the “Motion”), the terms of which are set forth in a Settlement Agreement between Plaintiff and Defendants Diligent Corp. and University of Colorado Health, dba UHealth (“UHealth,” and with Diligent, “Defendants”), with accompanying exhibits attached as **Exhibit 1** to Plaintiff’s Memorandum of Law in Support of her Motion (the “Settlement Agreement”).¹

Having fully considered the issue, the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

1. **Class Certification for Settlement Purposes Only.** The Settlement

Agreement provides for a Settlement Class defined as follows:

All individuals, or their respective successors or assigns, who reside in the United States and whose Personal Information was impacted by the Security Incident.

¹ All defined terms in this Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) have the same meaning as set forth in the Settlement Agreement, unless otherwise indicated.

Excluded from the Settlement Class are (i) Defendants, their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge.

Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving notice is justified. The Court finds that it will likely be able to approve the proposed Settlement as fair, reasonable, and adequate. The Court also finds that it will likely be able to certify the Settlement Class for purposes of judgment on the Settlement because it meets all of the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds for settlement purposes only that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Settlement Class Representative is typical, and the Settlement Class Representative seeks similar relief as Settlement Class Members; (d) the Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this Litigation.

2. **Settlement Class Representatives and Settlement Class Counsel.** The Court finds that Plaintiff Katherine Petillo will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as the Settlement Class Representative. Additionally, the Court finds that

Raina Borrelli of the law firm Turke & Strauss LLP will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as Settlement Class Counsel pursuant to Rule 23(g)(1).

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly is preliminarily approved. In making this determination, the Court has considered the monetary and non-monetary benefits provided to the Settlement Class through the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the good faith, arms' length negotiations between the Parties and absence of any collusion in the Settlement, the effectiveness of the proposed method for distributing relief to the Settlement Class, the proposed manner of allocating benefits to Settlement Class Members, the equitable treatment of the Settlement Class Members under the Settlement, and all of the other factors required by Rule 23 and relevant case law.

4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on _____, 202____, at the United States District Court, Southern District of New York [INSERT ADDRESS] [or via telephone or videoconference], where the Court will determine, among other things, whether: (a) the Settlement Class should be finally certified for settlement purposes pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (b) the Settlement should be approved as fair, reasonable, and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members (who have not timely and validly excluded themselves

from the Settlement) should be bound by the releases set forth in the Settlement Agreement; (e) the application of Settlement Class Counsel for an award of Attorneys' Fees, Costs, and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the application of the Settlement Class Representative for a Service Award should be approved.

6. **Settlement Administrator**. The Court appoints Angeion Group as the Settlement Administrator, with responsibility for class notice and settlement administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

7. **Notice**. The proposed notice program set forth in the Settlement Agreement and the Notices and Claim Form attached to the Settlement Agreement as **Exhibits 1, 2, and 3** are hereby approved. Non-material modifications to these Exhibits may be made by the Settlement Administrator in consultation and agreement with the Parties, but without further order of the Court.

8. **Findings Concerning Notice**. The Court finds that the proposed form, content, and method of giving Notice to the Settlement Class as described in the Settlement Agreement and its exhibits: (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including, but not limited to, their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; (d) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c); and (e) and meet the requirements of the Due Process Clause(s) of the

United States and New York Constitutions. The Court further finds that the Notice provided for in the Settlement Agreement is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

The Settlement Administrator is directed to carry out the Notice program in conformance with the Settlement Agreement.

9. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must individually sign and timely submit a written request to the designated address established by the Settlement Administrator in the manner provided in the Notice. The written request must clearly manifest a person's intent to be excluded from the Settlement Class, as set forth in the Settlement Agreement, and must be submitted individually, i.e., one request is required for every Settlement Class Member seeking exclusion. To be effective, such requests for exclusion must be postmarked no later than the Opt-Out Deadline, which is no later than sixty (60) days from the Notice Deadline, and as stated in the Notice.

Within seven (7) days after the Opt-Out Deadline, the Settlement Administrator shall furnish to Class Counsel and to Diligent's Counsel a complete list of all timely and valid requests for exclusion.

If a Final Approval Order and Judgment is entered, all Persons falling within the definition of the Settlement Class who do not timely and validly request to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Final Approval Order and Judgment. All Persons who submit valid and timely requests to be excluded from the Settlement Class shall not receive any cash benefits of and/or be bound by the terms of the Settlement Agreement.

10. **Objections and Appearances.** A Settlement Class Member (who does not submit

a timely written request for exclusion) desiring to object to the Settlement Agreement may submit a timely written objection by the Objection Deadline and as stated in the Notice. The Notice shall instruct Settlement Class Members who wish to object to the Settlement Agreement to file their objections with the Court. The Notice also shall advise Settlement Class Members of the deadline for submission of any objections—the “Objection Deadline.” Any such objections to the Settlement Agreement must be written and must include all of the following: (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member’s attorney.

To be timely, written notice of an objection must be filed with the Clerk of Court by the Objection Deadline, which is no later than sixty (60) days from the Notice Deadline.

Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Action, and shall be precluded from seeking any review of the Settlement Agreement and/or Final Approval Order and Judgment by appeal or other means. The provisions stated in Paragraph 70 of the Settlement Agreement shall be the exclusive

means for any challenge to the Settlement Agreement. Any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Order and Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

11. **Claims Process.** Settlement Class Counsel and Defendants have created a process for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves this process and directs the Settlement Administrator to make the Claim Form or its substantial equivalent available to Settlement Class Members in the manner specified in the Notice.

The Settlement Administrator will be responsible for effectuating the claims process.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirement and procedures specified in the Notice and the Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Final Order and Judgment, including the releases contained therein.

12. **Termination of Settlement.** This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing before the Court entered this Preliminary Approval Order and before they entered the Settlement Agreement, if: (a) the Court does not enter this Preliminary Approval Order; (b) Defendants elect to terminate the Settlement because more than 30 Settlement Class Members exclude themselves from the settlement; (c) Settlement is not finally approved by

the Court or is terminated in accordance with the Settlement Agreement; or (d) there is no Effective Date. In such event, (i) the Parties shall be restored to their respective positions in the Action prior to execution of the Settlement Agreement and shall jointly request that all scheduled Action deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and (iii) 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*.

13. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if the Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or propriety of certifying any class. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they may have in this Action or in any other lawsuit.

14. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Settlement Administrator. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

15. **Stay of Litigation.** All proceedings in the Action, other than those related to

approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending Final Approval of the Settlement Agreement.

16. **Schedule and Deadlines.** The Court orders the following schedule of dates for the specified actions/further proceedings:

<u>Event</u>	<u>Deadline</u>
Defendants Provide Class Member Information To Claims Administrator	Within 7 Days Of Entry Of Preliminary Approval Order
Deadline For Claims Administrator To Begin Sending Short Form Notice (By First Class USPS Mail)	Within Thirty (30) Days Of Entry Of Preliminary Approval Order (the “Notice Commencement Date”)
Motion for Attorneys’ Fees, Costs, Expenses, and Service Award to Be Filed by Settlement Class Counsel	At Least 14 Days Prior To Opt-Out/Objection Dates
Opt-Out/Objection Date Deadlines	60 Days After Notice Deadline
Claims Administrator Provides Parties With List Of Timely, Valid Opt-Outs	7 Days After Opt-Out Dates
Claims Deadline	120 Days After Notice Deadline
Motion For Final Approval To Be Filed By Class Counsel	At Least 14 Days Prior To Final Approval Hearing
Final Approval Hearing	[COURT TO ENTER DATE AND TIME] No Earlier Than 160 Days After Entry Of Preliminary Approval Order

IT IS SO ORDERED

Dated

Judge Louis L. Stanton

— EXHIBIT 5 —

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

KATHERINE PETILLO, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

DILIGENT CORPORATION, and
UNIVERSITY OF COLORADO
HEALTH dba UC HEALTH,

Defendants.

Case No. 1:22-cv-07598

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

Before the Court is Plaintiff Katherine Petillo’s Motion for Final Approval of Class Action Settlement (“Motion for Final Approval”). The Motion seeks approval of the Settlement as fair, reasonable, and adequate. Also before the Court is Plaintiff’s Motion for Attorneys’ Fees, Costs, and Expenses to Settlement Class Counsel, and Service Award Payment to Plaintiffs (“Motion for Attorneys’ Fees”).

Having reviewed and considered the Settlement Agreement, Motion for Final Approval, and Motion for Attorneys’ Fees, and having conducted a Final Approval Hearing, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Order.

WHEREAS, on _____[DATE], the Court entered an Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) (**Doc. No. __**) which, among other things: (a) conditionally certified this matter as a class action, including defining the class and class claims, (b) appointed Plaintiff as the Settlement Class Representative and appointed Raina Borrelli of the law firm Turke & Strauss LLP as Settlement Class Counsel;

(c) preliminarily approved the Settlement Agreement; (d) approved the form and manner of Notice to the Settlement Class; (e) set deadlines for opt-outs and objections; (f) approved and appointed the Settlement Administrator; and (g) set the date for the Final Approval Hearing;

WHEREAS, on _____[DATE], pursuant to the Notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Approval Hearing;

WHEREAS, on _____[DATE], the Court held a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with prejudice;

WHEREAS, the Court not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

WHEREAS, the Court being required under Federal Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the Settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Settlement Class Counsel and counsel for Defendants, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair,

adequate, and reasonable, having considered the application made by Settlement Class Counsel for attorneys' fees, costs, and expenses, and the application for a Service Award Payment to the Representative Plaintiff, and having reviewed the materials in support thereof, and good cause appearing:

IT IS ORDERED that:

1. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Settlement Class.

2. The Settlement involves allegations in Plaintiff's Class Action Complaint against Defendants for purported failure to implement or maintain adequate data security measures and safeguards to protect Personal Information, which Plaintiff allege directly and proximately caused injuries to Plaintiff and Settlement Class Members.

3. The Settlement does not constitute an admission of liability by Defendants, and the Court expressly does not make any finding of liability or wrongdoing by Defendants.

4. Unless otherwise indicated, words spelled in this Order and Judgment Granting Final Approval of Class Action Settlement ("Final Approval Order and Judgment") with initial capital letters have the same meaning as set forth in the Settlement Agreement.

5. The Court, having reviewed the terms of the Settlement Agreement submitted by the Parties pursuant to Federal Rule of Civil Procedure 23(e)(2), grants final approval of the Settlement Agreement, and for purposes of the Settlement Agreement and this Final Approval Order and Judgment only, the Court hereby finally certifies the following Settlement Class:

All individuals, or their respective successors or assigns, who reside in the United States and whose Personal Information was impacted by the Security Incident.

Excluded from the Settlement Class are (i) Defendants, their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge.

6. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive. The Settlement is in the best interests of the Settlement Class and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and uncertainties, including as to the outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

- a. Settlement Class Members to be able to submit claims that will be evaluated by the Settlement Administrator.
- b. All costs of Settlement Administration, including the cost of the Settlement Administrator, instituting Notice, processing and administering claims, and preparing and mailing checks, are to be paid from the Settlement Fund.
- c. Subject to the approval and award of the Court, the reasonable attorneys' fees,

costs, and expenses of Class Counsel and Service Award Payment to the Class Representative are to be paid from the Settlement Fund.

The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Federal Rule of Civil Procedure 23(a) and (b)(3) set forth in the Preliminary Approval Order and notes that because this certification of the Settlement Class is in connection with the Settlement Agreement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the Settlement Class proposed in the Settlement Agreement.

8. The terms of the Settlement Agreement are fair, adequate, and reasonable and are hereby approved, adopted, and incorporated by the Court. Notice of the terms of the Settlement, the rights of Settlement Class Members under the Settlement, the Final Approval Hearing, Plaintiff's application for attorneys' fees, costs, and expenses, and the Service Award Payment to the Settlement Class Representative have been provided to Settlement Class Members as directed by this Court's Orders, and proof of Notice has been filed with the Court.

9. The Court finds that the Notice, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their right to object and to appear at the final approval hearing or to exclude themselves from the Settlement Agreement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and other applicable law.

10. The Court finds that Defendants have fully complied with the notice requirements

of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

11. As of the Opt-Out Deadline, _____ potential Settlement Class Members have requested to be excluded from the Settlement. Their names are set forth in **Exhibit A** to this Final Approval Order and Judgment. Those persons are not bound by the Settlement Agreement and this Final Approval Order and Judgment and shall not be entitled to any of the benefits afforded to the Settlement Class Members under the Settlement Agreement, as set forth in the Settlement Agreement. All Settlement Class Members who have not validly excluded themselves from the Settlement Class are bound by this Final Approval Order and Judgment.

12. _____ objections were filed by Settlement Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement Agreement approval, and the objections are hereby overruled in all respects.

13. All Settlement Class Members who have not objected to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

14. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

15. The Parties, their respective attorneys, and the Settlement Administrator are hereby directed to consummate the Settlement in accordance with this Final Approval Order and Judgment and the terms of the Settlement Agreement.

16. Pursuant to the Settlement Agreement, Defendants, the Settlement Administrator, and Settlement Class Counsel shall implement the Settlement in the manner and timeframe as set

forth therein.

17. Within the time period set forth in the Settlement Agreement, the relief provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

18. Pursuant to and as further described in the Settlement Agreement, Plaintiff and the Settlement Class Members release claims as follows:

Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have completely and unconditionally released, acquitted, and forever discharged Defendants and each of the Released Parties from any and all Released Claims, including Unknown Claims.

“Released Claims” means any and all claims, liabilities, rights, demands, suits, actions, causes of action, obligations, damages, penalties, costs, attorneys’ fees, losses, and remedies of every kind or description—whether known or unknown (including Unknown Claims), existing or potential, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that relate to or arise from the Security Incident, the facts alleged in the Class Action Complaint or subsequent operative complaint, Defendants’ information security policies and practices, or Defendants’ maintenance or storage of Personal Information, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law.

“Released Parties” means Diligent and UCHealth and each and every of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, owners, members, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as any and all of Diligent’s, UCHealth’s, and these entities’ respective predecessors, successors, officers,

directors, employees, advisors, vendors, customers, stockholders, partners, servants, agents, attorneys, representatives, insurers, reinsurers, subrogees and assigns. Each of the Released Parties may be referred to individually as a “Released Party.”

“Releasing Parties” means the Settlement Class Representative and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, predecessors, successors, attorneys, assigns, and any other person purporting to assert a claim on their respective behalves.

“Unknown Claims” means claims that could have been raised in the Action and that Plaintiffs, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiffs, the Settlement Class, and any Releasing Party shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights, and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Settlement Class Representative, the

Settlement Class, and the Releasing Parties acknowledge that they may 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 Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Agreement to have acknowledged, that the foregoing waiver is a material term of the Agreement.

19. Neither Defendants nor their Related Parties, shall have or shall be deemed to have released, relinquished, or discharged any claim against any person other than Plaintiff and each and all of the Settlement Class Members. In addition, none of the releases in the Settlement Agreement shall preclude any action to enforce the terms of the Settlement Agreement by Plaintiff, Settlement Class Members, Settlement Class Counsel, and/or Defendants.

20. The Court grants final approval to the appointment of Plaintiff Katherine Petillo as Settlement Class Representative. The Court concludes that the Settlement Class Representative has fairly and adequately represented the Settlement Class and will continue to do so.

21. Pursuant to the Settlement Agreement, and in recognition of her efforts on behalf of the Settlement Class, the Court approves a payment to the Settlement Class Representative in the amount of \$4,000.00 as a Service Award Payment, to be paid from the Settlement Fund consistent with the terms of the Settlement.

22. The Court grants final approval to the appointment of Raina Borrelli of the law firm Turke & Strauss LLP as Settlement Class Counsel. The Court concludes that Settlement Class Counsel has adequately represented the Settlement Class and will continue to do so.

23. The Court, after careful review of the fee petition filed by Settlement Class Counsel,

and after applying the appropriate standards required by relevant case law, hereby grants Settlement Class Counsel's application for attorneys' fees of one-third of the Settlement Fund (or \$163,333.33) and expenses of \$10,000, to be paid from the Settlement Fund. Payment shall be made pursuant to the terms of the Settlement Agreement.

24. This Final Approval Order and Judgment and the Settlement Agreement, and all acts, statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendants of any claim, any fact alleged in the Action, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Defendants or of the validity or certifiability for litigation the Settlement Class or any claims that have been, or could have been, asserted in the Action. This Final Approval Order and Judgment, the Settlement Agreement, and all acts, statements, documents, or proceedings relating to the Settlement Agreement shall not be offered or received or be admissible in evidence in any action or proceeding, nor shall they be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; provided, however, that the Settlement Agreement and this Final Approval Order and Judgment may be filed in any action by Defendants, Settlement Class Counsel, or Settlement Class Members seeking to enforce the Settlement Agreement or the Final Approval Order and Judgment (including, but not limited to, enforcing the releases contained herein). The Settlement Agreement and Final Order and Judgment shall not be construed or admissible as an admission by Defendants that Plaintiff's claims or any similar claims are suitable for class treatment. The Settlement Agreement's terms shall be forever binding on, and shall have maximum *res judicata*, collateral estoppel, and all other preclusive effect in, all pending and future lawsuits, claims, suits, demands, petitions, causes of

action, or other proceedings as to Released Claims and other prohibitions set forth in this Final Approval Order and Judgment that are maintained by, or on behalf of, any Settlement Class Member or any other person subject to the provisions of this Final Approval Order and Judgment.

25. If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Approval Order and Judgment and the Preliminary Approval Order shall be deemed vacated, and shall have no force and effect whatsoever; the Settlement Agreement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order and Judgment and the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the 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*, and the Parties shall be restored to their respective positions in the Action, as if the Parties never entered into the Settlement Agreement (without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue). In such event, the Parties will jointly request that all scheduled deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel. Further, in such event, Defendants will pay amounts already billed or incurred for costs of notice to the Settlement Class, and Settlement Administration, and will not, at any time, seek recovery of same from any other Party to the Action or from counsel to any other Party to the Litigation.

26. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

27. Without affecting the finality of this Final Order and Judgment, the Court will retain

jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes.

28. This Order resolves all claims against all Parties in this action and is a final order.

29. The matter is hereby dismissed with prejudice and without costs except as provided in the Settlement Agreement.

IT IS SO ORDERED

Dated

Judge Louis L. Stanton