

Feather v. SSM Health Care Corp.
Settlement Agreement
January 14, 2019

- 1.5. “*Class Settlement Amount*” shall have the meaning set forth in § 7.1.
- 1.6. “*Complaint*” shall mean: the First Amended Complaint filed on September 6, 2017.
- 1.7. “*Court*” shall mean: The United States District Court for the Eastern District of Missouri, Eastern Division.
- 1.8. “*Defendants*” shall mean: SSM Health Care Corporation d/b/a SSM Health, SSM Health Care Pension Committee, or such other Committee that has had the primary function of funding or administering the Plans during the relevant period (“*Pension Committee*”), and each individual who was a member of Pension Committee during the period from April 4, 2010, to the present.
- 1.9. “*Effective Date of Settlement*” shall mean: the date on which all of the conditions to settlement set forth in § 2 of this Settlement Agreement have been fully satisfied or waived and the Settlement shall have become Final.
- 1.10. “*ERISA*” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.
- 1.11. “*Final*” shall mean: with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari, or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and complete disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.
- 1.12. “*Incentive Awards*” shall mean: any monetary amounts awarded by the Court in recognition of the Named Plaintiffs’ assistance in the prosecution of the Action and payable pursuant to § 7.1.3 below, as follows: \$3,000 each to Lisa Feather, Stanley Beiermann, and Holly Pyatt.
- 1.13. “*Person*” shall mean: an individual, partnership, corporation, or any other form of organization.
- 1.14. “*Plaintiffs*” and “*Named Plaintiffs*” shall mean: Lisa Feather, Stanley Beiermann, and Holly Pyatt.
- 1.15. “*Plans*” shall mean: the Retirement Plan for Employees of SSM Health Care; the Retirement Plan for Employees of St. Mary’s Hospital, Centralia, Illinois; and the Retirement Plan for Employees of Certain Illinois Entities Related to SSM Health Care. Each of these Plans is a “*Plan*.”
- 1.16. “*Released Claims*” shall have the meaning provided in § 3.1.

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- 1.17. “*Releasees*” shall mean: all Defendants, all affiliates of SSM, including any entity in which SSM has an ownership interest, and/or all entities that are considered to be part of the SSM controlled group under Internal Revenue Code § 414, their employees, agents, directors, members, insurers and legal representatives (in their capacity as such).
- 1.18. “*Settlement*” shall mean: the settlement to be consummated under this Settlement Agreement pursuant to the Final Approval Order.
- 1.19. “*Settlement Class*” shall mean: all vested or non-vested present and past participants of the Plans (and their beneficiaries) as of September 6, 2017.
- 1.20. “*SSM*” shall mean: SSM Health Care Corporation d/b/a SSM Health, a Missouri non-profit corporation, and its successors.
- 1.21. “*Successor-In-Interest*” or “*Successor*” shall mean: a Person’s estate, legal representatives, heirs, successors, or assigns, and any other Person who can make a legal claim by or through such Person.
- 1.22. “*Term Sheet*” shall mean: the document entitled “SSM Health Settlement Term Sheet” dated October 19, 2018.

2. **CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE SETTLEMENT.**

2.1. *Effectiveness of this Settlement Agreement.* This Settlement Agreement shall not become binding unless and until each and every one of the following conditions in §§ 2.2 through 2.6 shall have been satisfied.

2.2. *Court Approval.* The Settlement contemplated under this Settlement Agreement shall have been approved by the Court, as provided for in this § 2.2. The Parties agree jointly to recommend to the Court that it approve the terms of this Settlement Agreement and the Settlement contemplated hereunder. The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps or efforts which may become necessary by order of the Court (unless such order modifies the terms of this Settlement Agreement) or otherwise, to carry out this Settlement Agreement, including the following:

2.2.1. *Motion for Preliminary Approval of Settlement and of Notice.* The Court shall have approved the preliminary motion to be filed by Plaintiffs (“Preliminary Motion”) by issuing an order (the “Preliminary Approval Order”), including a form of class notice approved by the Court (the “Class Notice”):

- (a) Preliminarily approving this Settlement Agreement;
- (b) Directing the time and manner of communication of the Class Notice; and
- (c) Finding that:

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(i) the proposed form of Class Notice fairly and adequately: (A) describes the terms and effect of this Settlement Agreement and of the Settlement; (B) gives notice to the Settlement Class of the time and place of the hearing of the motion for final approval of this Settlement Agreement; and (C) describes how the recipients of the Class Notice may object to approval of this Settlement Agreement;

(ii) the Parties may make non-substantive changes to the Class Notice without additional Court approval; and

(iii) the proposed manner of communicating the Class Notice to the members of the Settlement Class is the best notice practicable under the circumstances.

2.2.2. *Class Certification.*

(a) The Court shall have certified the Action as a non-opt out class action for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2), with Named Plaintiffs as the representatives of the Settlement Class (“Class Representatives”), Keller Rohrback and Kessler Topaz as Lead Class Counsel and Cohen Milstein and Izard Kindall as the Class Counsel Committee, and with a “Settlement Class” as defined in § 1.19 above

(b) The Parties agree to stipulate to certification of the Action as a non-opt out class action for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2), on the foregoing terms. If the Settlement does not become Final, then no Settlement Class will be deemed to have been certified by or as a result of this Settlement Agreement, and the Action will for all purposes revert to its status as of October 18, 2018.

2.2.3. *Issuance of Class Notice.* On the date and in the manner set by the Court in its Preliminary Approval Order, Defendants will cause notice of the Preliminary Approval Order to be delivered to the Settlement Class in the form and manner approved by the Court. The Parties shall confer in good faith with regard to the form of the Class Notice in an effort to utilize cost effective forms of notice. The Parties agree, and the Preliminary Approval Order shall provide, that the last known addresses for members of the Settlement Class in the possession of the Plans’ current record-keeper(s) will suffice for all purposes in connection with this Settlement, including, without limitation, the mailing of the Class Notice. Defendants will pay the cost for the notice program as part of the Settlement administration.

2.2.4. *Internet/Publication of Class Notice.* Class Counsel also shall have given notice by publication of the Settlement Agreement and Class Notice on the firm website of Interim Lead Class Counsel Committee Co-Chair Keller Rohrback.

2.2.5. *The Fairness Hearing.*

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(a) On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in the hearing (the “Fairness Hearing”), during or after which the Court will determine by issuing a written order (the “Final Approval Order”) determining whether: (i) this Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court; (ii) final judgment approving this Settlement Agreement should be entered (“Judgment”); (iii) the Settlement Class should be certified as a mandatory non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23; (iv) the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice to members of the Settlement Class; (v) the requirements of the Class Action Fairness Act have been satisfied; (vi) to award Incentive Award(s) and if so, the amount; and (vii) to award attorneys’ fees and further expenses and, if so, the amounts.

(b) The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Approval Order at the Fairness Hearing and will not do anything inconsistent with obtaining such a Final Approval Order.

2.2.6. *Motion for Final Approval of Class Action Settlement.* On the date set by the Court in its Preliminary Approval Order, Plaintiffs shall have filed a motion (the “Final Approval Motion”) for a Final Approval Order. The Final Approval Motion shall seek the Court’s finding that the Final Approval Order is a final judgment disposing of all claims in the Action.

2.3. *Finality of Final Approval Order.* The Final Approval Order shall have become Final, as defined in § 1.11 of this Settlement Agreement.

2.4. *Compliance with the Class Action Fairness Act.* The Court shall have determined that Defendants complied with the Class Action Fairness Act of 2005 (“CAFA”) and its notice requirements by providing appropriate federal and state officials with information about the Settlement.

2.5. *Dismissal of Action.* The Action shall have been dismissed with prejudice as against Defendants on the Effective Date of Settlement.

2.6. *No Termination.* The Settlement shall not have terminated pursuant to § 9 below.

2.7. *Establishment of Effective Date of Settlement.* If Plaintiffs and Defendants disagree as to whether each and every condition set forth in §§ 2.2 through 2.6 have been satisfied, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes for determination to Robert M. Meyer, the Parties’ mediator, who shall make a final determination regarding the Effective Date of the Settlement

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and whether all the conditions set forth in §§ 2.2 through 2.6 have been satisfied. No portion of the Class Settlement Amount shall be disbursed in the event of such a dispute, pending the mediator's ruling. Disbursement shall thereafter be made pursuant to the Court's order.

3. RELEASES AND COVENANT NOT TO SUE.

3.1. *Released Claims.* Released Claims shall mean, under State and Federal law, any and all claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses, and costs arising out of the allegations of the Complaint by any member of the Settlement Class, including without limitation any and all claims that the Plans are subject to ERISA; any and all claims that Releasees have violated reporting and disclosure requirements under State or Federal law; any and all claims that Releasees have violated minimum funding requirements under State or Federal law; any and all claims that ERISA's requirements relating to lump-sum calculations apply to past or future lump-sum distributions from the Plans; any and all claims arising from the payments made from the Plans to the Settlement Class members; any and all claims that Releasees have failed to establish the Plans pursuant to written instruments in violation of State or Federal law; any and all claims that Releasees have failed to establish a trust in compliance with State or Federal law; any and all claims that Releasees have violated fiduciary duties in violation of State or Federal law; any and all claims that the church plan exemption as applied to the Plans violates the Establishment Clause; and any all claims that Releasees' actions in administering or funding the Plans or calculating benefits thereunder constitutes a breach of contract, breach of fiduciary duty, or any other violation of State or Federal law.

3.2. The Parties expressly agree that Released Claims are not intended to include the release of any of the following:

3.2.1. Any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement;

3.2.2. Individual claims for benefits brought pursuant to the applicable Plan's documents that do not arise out of the allegations of the Complaint, provided that in such an individual claim for benefits no Settlement Class member shall challenge any of the Plans' status as a Church Plan exempt from ERISA or claim that ERISA's requirements relating to lump-sum calculations apply to past or future lump-sum distributions from the Plans;

3.2.3. Claims related to any other plan that is merged, adopted or consolidated into any of the Plans after the Effective Date of Settlement;

3.2.4. Any claim arising under ERISA with respect to a Plan after:

3.2.4.1. The Internal Revenue Service issues a written ruling that a Plan does not qualify as a Church Plan;

3.2.4.2. The Plans' sponsor elects for a Plan to be governed by ERISA;

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- 3.2.4.3. A court of law issues a definitive and final ruling that a Plan is not a Church Plan;
- 3.2.4.4. The Roman Catholic Church no longer claims an association with a Plan's sponsor; or
- 3.2.4.5. An amendment to ERISA is enacted and becomes effective as a law of the United States eliminating the Church Plan exemption.

3.3. *Release by Named Plaintiffs and Settlement Class.* Subject to § 9 below, upon the Effective Date of Settlement, Named Plaintiffs on behalf of themselves and on behalf of the Settlement Class absolutely and unconditionally release and forever discharge the Releasees from any and all Released Claims that Plaintiffs or the Settlement Class have. The Settlement Class covenants and agrees: (i) not to file against any of the Releasees any claim based on, related to, or arising from any Released Claim; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such claim against any Releasee.

3.4. *Waiver of California Civil Code § 1542.* Plaintiffs, on behalf of themselves and on behalf of the Settlement Class, hereby expressly waive and relinquish, to the fullest extent permitted by law and equity, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides: "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."

3.5. *Defendants' Releases of Named Plaintiffs, the Settlement Class, and Class Counsel.* Subject to § 9 below, upon the Effective Date of Settlement, Defendants absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class and Class Counsel from any and all claims relating to the institution or prosecution of the Action.

4. COVENANTS.

Named Plaintiffs, on behalf of themselves and on behalf of the members of the Settlement Class, and Defendants, hereby covenant as follows:

4.1. *Plans' Status.* Nothing herein shall be construed as an agreement that the Plans have not been, are not, and will not be, properly treated as Church Plans or that the Plans were or are subject to ERISA. Similarly, nothing herein shall be construed as an agreement that the Plans are properly treated as Church Plans or that the Plans are not subject to ERISA.

5. REPRESENTATIONS AND WARRANTIES.

5.1. *Parties' Representations and Warranties.*

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5.1.1. Named Plaintiffs represent and warrant, on behalf of themselves and the Settlement Class, that they shall have no surviving claim or cause of action against any of the Releasees for the Released Claims against them.

5.1.2. The Parties, and each of them, represent and warrant that they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among their counsel and in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently-selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and each Party assumes the risk of and unconditionally waives any and all claims or defenses arising out of any alleged mistake as to facts or law.

5.1.3. The Parties, and each of them, represent and warrant that they have carefully read the contents of this Settlement Agreement; they have made such investigation of the facts and law pertaining to this Settlement Agreement and all of the matters pertaining thereto as they deem necessary; and this Settlement Agreement is executed freely by each Person executing it on behalf of each of the Parties.

5.2. *Signatories' Representations and Warranties.* Each individual executing this Settlement Agreement on behalf of any other Person hereby personally represents and warrants to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that such individual represents or purports to represent.

6. NO ADMISSION OF LIABILITY.

Defendants and all Releasees deny any and all allegations of wrongdoing made in the Complaint. Defendants aver that each of the Plans has been and continues to be properly administered as a Church Plan, as defined in Internal Revenue Code Section 414(e) and ERISA Section 3(33). The Parties understand and agree that this Settlement Agreement embodies a compromise and settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any admission or finding that ERISA governs the Plan and/or of any wrongdoing by any of the Releasees. This Settlement Agreement and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal, equitable, or factual.

7. SETTLEMENT PAYMENTS.

7.1. *The Class Settlement Amount.*

7.1.1. SSM will contribute a minimum of \$15 million per year to the Plans during the calendar years of 2019, 2020, 2021, and 2022, for a total of \$60 million. SSM may use its discretion when during each year it makes these contributions. SSM will allocate these contributions among the Plans to attempt to have the Plans funded

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equally on a percentage basis, funding the Plan with the lowest funding percentage first. Any amount paid in excess of \$15 million during the calendar years of 2019, 2020, and 2021 may be used to reduce subsequent contributions. SSM may satisfy its obligation by making payments to the Plans totaling \$50 million before December 31, 2020.

7.1.2. *Lump-Sum Payments:* Within thirty (30) days of the Effective Date of Settlement, Defendants shall pay or cause a \$115.00 payment to be made from the Plans to each Settlement Class member who received a lump-sum distribution of his or her retirement benefits from the Plans and who is listed on Exhibit A or who receives a lump-sum distribution between the last payment date covered by Exhibit A and the date the Settlement becomes Final (the “Lump-Sum Class Members”). Payments shall be made by check, sent to the last-known address of the Lump-Sum Class Members by first-class mail. Any checks may be voided and a stop-pay order may be placed on such checks if they have not been cashed within one-hundred and twenty (120) days of the date of their issuance, and the expiration date shall be clearly printed on the checks. Checks voided in accordance with this provision shall revert to the Plans. Lump-Sum Class Members whose checks are voided in accordance with this provision shall be deemed to have waived irrevocably any right in or claim to any lump-sum payment under this Settlement Agreement, but the Settlement Agreement shall in all other respects, including the release of claims, remain binding on them.

7.1.3. *Payment to Class Counsel.* Plaintiffs shall apply to the Court for an award of reasonable attorneys’ fees, out of pocket expenses, and incentive awards for Plaintiffs (together, the “Total Award”) in an amount not to exceed Five Hundred Thousand Dollars (\$500,000) (the “Maximum Total Award”). Defendants will cause the Total Award to be paid in addition to any other monetary terms set forth in this Settlement Agreement. The Total Award will be subject to the discretion and approval of the Court, which may award an amount less than Five Hundred Thousand Dollars (\$500,000).

7.1.4. Defendants will pay Class Counsel the Maximum Total Award or any lesser amount the Court may award two weeks after the Court’s entry of the Judgment, notwithstanding the existence of any timely-filed objections thereto, potential for appeal therefrom, or any collateral attack on the Settlement or any part thereof, subject to the obligation of Class Counsel to make appropriate refunds or repayments to SSM plus accrued interest (based on the one year Treasury constant maturity rate) within ten (10) calendar days, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or expense award is reduced or reversed.

7.1.5. *Application for Attorneys’ Fees, Expenses, and Incentive Awards for Plaintiffs.* Class Counsel shall petition the Court for the Total Award on the date set by the Court in its Preliminary Approval Order. Defendants and the Releasees expressly agree not to contest or take any position with respect to any application that does not exceed the Maximum Total Award, and acknowledge that these matters are left to the sound discretion of the Court. The procedure for and the allowance or disallowance of any application that does not exceed the Maximum Total Award are matters separate and

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apart from the Settlement and shall be requested to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating solely to a Total Award that does not exceed the Maximum Total Award, or any appeal from any order relating thereto, or any reversal or modification thereof, shall have no effect on the Settlement and shall not operate to, or be grounds to, terminate or cancel the Settlement Agreement or to affect or delay the finality of the Final Approval Order or Judgment.

7.2. *Cost of Notice.* SSM shall pay the cost for Class Notice in addition to the amounts specified in § 7.1 above. In the event that the Settlement Agreement does not become Final for any reason, SSM shall have no recourse to recover amounts expended for Class Notice.

8. **AGREED UPON PLAN PROVISIONS.**

8.1. *Benefits Commitment.* If, at any time during a period of ten years commencing on October 19, 2018, the Plans' Trust becomes insufficient to pay benefits as they are then due and SSM still sponsors the Plans, SSM will contribute sufficient funds to the Plans to pay the Accrued Retirement Benefit, as defined by the Plans, payable to each participant under the terms of the Plan(s) as they are then due during the ten-year period. SSM Health may terminate and/or annuitize some or all benefits provided by any of the Plans as long as there are sufficient assets to pay the Accrued Retirement Benefit(s) of the participants.

8.2. *Plan Mergers.* If, at any time during a period of ten years commencing on October 19, 2018, any of the Plans is merged with or into another plan, adopted by additional employers, or consolidated with another plan, participants and beneficiaries in the Plans will be entitled to an Accrued Retirement Benefit, as defined by the Plans, post-merger, adoption, or consolidation event that is no less than they enjoyed before that event.

8.3. *Plan Amendment and Termination.* Notwithstanding any other provision of this agreement, including the cash contribution requirements of § 7.1.1, SSM retains the right to amend or terminate the Plans at any time, subject to § 8.1 If SSM amends or terminates any of the Plans at any time during a period of ten years commencing on October 19, 2018, such amendment or termination shall not result in a reduction of any participant's or beneficiary's Accrued Retirement Benefit, as defined by the Plans. In the event all of the Plans are terminated, the cash contributions required by § 7.1.1 shall cease.

8.4. *Continuing Obligations.* All continuing obligations of the Defendants under this Settlement Agreement or the Term Sheet shall cease if, prior to the expiration of the period of time such obligations are in effect, the Plans become subject to ERISA.

9. **TERMINATION OF THE SETTLEMENT AGREEMENT.**

9.1. *Automatic Termination.* This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

9.1.1. If the Court declines to approve the Settlement, and if such order declining approval has become Final, then this Settlement Agreement shall automatically terminate,

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and thereupon become null and void, on the date that any such order becomes Final, provided, however, that if the Court declines to approve the Settlement for any reason, the Parties shall negotiate in good faith to cure any deficiency identified by the Court, and further provided that, if necessary to cure any such deficiency, Class Counsel shall re-submit within a reasonable time the Preliminary or Final Approval Motion with an additional or substitute member of the Settlement Class as a Class Representative.

9.1.2. If the Court issues an order in the Action modifying the Settlement Agreement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or by the Parties, then, provided that no Review Proceeding is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first (31st) day after issuance of the order referenced in this § 9.1.2.

9.1.3. If the Eighth Circuit reverses the Final Approval Order, and if within ninety-one (91) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Eighth Circuit or by the Parties, then, provided that no Review Proceeding is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the ninety-first (91st) day after issuance of the Eighth Circuit order referenced in this § 9.1.3.

9.1.4. If the Supreme Court of the United States reverses or remands an Eighth Circuit order approving the Settlement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Supreme Court or by the Parties, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first (31st) day after issuance of the Supreme Court order referenced in this § 9.1.4.

9.1.5. If a Review Proceeding is pending of an order declining to approve the Settlement Agreement or modifying this Settlement Agreement, this Settlement Agreement shall not be terminated until Final resolution or dismissal of any such Review Proceeding, except by written agreement of the Parties.

9.2. *Consequences of Termination of the Settlement Agreement.* If the Settlement Agreement is terminated and rendered null and void for any reason, the following shall occur:

9.2.1. The Action shall for all purposes with respect to the Parties revert to its status as of October 18, 2018.

9.2.2. All Releases given or executed pursuant to the Settlement Agreement shall be null and void; none of the terms of the Settlement Agreement shall be effective or enforceable; neither the fact nor the terms of the Settlement Agreement shall be offered

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or received in evidence in the Actions or in any other action or proceeding for any purpose, except in an action or proceeding arising under this Settlement Agreement.

10. MISCELLANEOUS PROVISIONS.

10.1. *Jurisdiction.* The Court shall retain jurisdiction over all Parties, the Settlement Class, the Action, and this Settlement Agreement to resolve any dispute that may arise regarding this Settlement Agreement or the orders and notice referenced in § 2 above, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement, and no Party shall oppose the reopening and reinstatement of the Consolidated Action on the Court's active docket for the purposes of effecting this § 10.1.

10.2. *No Limitation of Remedies.* In the event that Defendants breach this Settlement Agreement, Plaintiffs will continue to have any and all remedies for such breach. In the event that Plaintiffs or the Settlement Class breaches this Settlement Agreement, Defendants will continue to have any and all remedies for such breach.

10.3. *Governing Law.* This Settlement Agreement shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case Missouri law will apply without regard to conflict of law principles.

10.4. *Severability.* The provisions of this Settlement Agreement are not severable.

10.5. *Amendment.* Before entry of a Final Approval Order, any common law to the contrary notwithstanding, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of a Final Approval Order, any common law to the contrary notwithstanding, the Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court.

10.6. *Waiver.* The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous with this Settlement Agreement.

10.7. *Construction.* None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against a drafter.

10.8. *Principles of Interpretation.* The following principles of interpretation apply to this Settlement Agreement:

10.8.1. *Headings.* The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

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10.8.2. *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.

10.8.3. *Gender.* Definitions apply to the masculine, feminine, and neuter genders of each term defined.

10.8.4. *References to a Person.* References to a Person are also to the Person's permitted successors and assigns.

10.8.5. *Terms of Inclusion.* Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

10.9. *Further Assurances.* Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

10.10. *Survival.* All representations, warranties and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.

10.11. *Notices.* Any notice, demand, or other communication under this Settlement Agreement (other than notices to members of the Settlement Class) shall be in writing and shall be deemed duly given if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

A. IF TO NAMED PLAINTIFFS:

Lynn Lincoln Sarko
Laura R. Gerber
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Fax: (206) 623-3384

Ron Kilgard
KELLER ROHRBACK L.L.P.
3101 North Central Ave., Suite 1400
Phoenix, AZ 85012
Fax: (602) 248-2822

Mark K. Gyandoh
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road

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Radnor, PA 19087
Fax: (610) 667-7056

B. IF TO DEFENDANTS:

Amy L. Blaisdell
GREENSFELDER, HEMKER & GALE, P.C.
10 S. Broadway, Suite 2000
St. Louis, MO 63102
Fax: (314) 241-8624

Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

10.12. *Entire Agreement.* This Settlement Agreement contains the entire agreement among the Parties relating to the settlement of the Action. It specifically supersedes any settlement terms or settlement agreements relating to Defendants that were previously agreed upon orally or in writing by any of the Parties, including the terms of the Term Sheet and any and all discussions, representations, warranties, or the like prior to the Effective Date of Settlement.

10.13. *Counterparts.* This Settlement Agreement may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

10.14. *Binding Effect:* This Settlement Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors and Successors-in-Interest.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

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FOR NAMED PLAINTIFFS AND THE SETTLEMENT CLASS

Dated this the 14th day of January, 2019.

By: **Redacted**
Lynn Lincoln Sarko
Laura R. Gerber
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
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