

SETTLEMENT AGREEMENT AND RELEASE

A.M. and A.M. v. Reproductive Biology Associates, LLC and MYEGGBANK North America LLC
Case No. 21-C-06178-S3
State Court of Gwinnett County Georgia

This Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between: (i) Reproductive Biology Associates, LLC (“RBA”) and MYEGGBANK North America LLC (“MEB”) (collectively, “Defendants”); and (ii) A.M. and A.M., individually and on behalf of the Settlement Class (defined below) (collectively, “Plaintiffs”), subject to Court approval as required by O.G.C.A. § 9-11-23. Plaintiffs and Defendants are collectively referred to herein as the “Parties.”

As provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a final order and judgment approving the Settlement, all claims of the Settlement Class arising out of or related to the Data Incident (defined below) against Defendants and other Released Parties (defined below), as alleged in the Action (defined below), shall be settled and compromised upon the terms and conditions contained herein.

I. RECITALS

1. RBA and MEB are fertility / reproductive healthcare entities with locations in Georgia (RBA) and nationwide (MEB).
2. From March 25, 2021 to April 16, 2021, a threat actor temporarily gained access to Defendants’ computer systems, which may have contained portions of Plaintiffs’ personally identifiable information (“PII”), protected health information (“PHI”), or both. (the “Data Incident”). On June 15, 2021, Defendants provided notice of the Data Incident to the Department of Health and Human Services Office of Civil Rights (“OCR”) and each of the individual patients or customers whose information may have been affected.
3. Subsequently, a lawsuit was filed as a class action in the State Court of Gwinnett County, Georgia, *A.M. and A.M. v. Reproductive Biology Associates, LLC and MYEGGBANK North America LLC*, Case No. 21-C-06178-S3 (the “Action”). The Action alleged claims for negligence, negligence *per se*, breach of implied contract, unjust enrichment, negligent training and supervision, invasion of privacy, breach of fiduciary duty of confidentiality, and violations of Georgia’s Fair Business Practices Act.
4. An answer and motion to dismiss were filed, and the motion to dismiss was granted in part and denied in part by the state court. The state court’s order

on the motion to dismiss was appealed to the Georgia Court of Appeals through an application for interlocutory appeal. The Georgia Court of Appeals denied the interlocutory application and the case remained in state court for litigation.

5. On October 10, 2023, counsel for the Parties held an in-person mediation with mediator William Atkins, Esq. in Atlanta, Georgia. No agreement was reached on the day of mediation. However, the parties continued to work with the mediator to reach settlement with regard to the material terms of the proposed settlement for this Action, which are memorialized in this Settlement Agreement.
6. The Parties did not agree on the amount of attorneys' fees, costs and expenses, or service awards for the Class Representatives until after there was an agreement on the material terms of the proposed settlement.
7. Defendants have denied and continue to deny: (1) all of the allegations and claims made in this Action; (2) that they violated any applicable laws; (3) that they are liable for damages, penalties, interest, restitution, injunctive relief, attorneys' fees or costs, or any other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Action; and (4) that class certification or representative treatment of any alleged claim in the Action is proper. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever and without admitting or conceding that class certification or representative treatment is appropriate for any purpose other than settlement purposes alone, Defendants have agreed to settle the Action on the terms and conditions set forth in this Settlement Agreement to avoid the burden, expense, and uncertainty of continuing litigation. Any stipulations or statements by Defendants contained in this Settlement Agreement are made for settlement purposes only.
8. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Settlement Class, as defined below. The Parties intend this Settlement Agreement to bind Plaintiffs, RBA, MEB, and all Settlement Class Members, as defined below, who do not timely and properly exclude themselves from the Settlement.
9. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

The Parties agree to cooperate and to take all steps necessary and appropriate to effectuate all aspects of this Settlement Agreement and to obtain an order approving this Settlement Agreement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Action be settled, compromised, and dismissed on the merits and with prejudice as to Defendants, subject to Court approval as required by O.C.G.A § 9-11-23, on the following terms and conditions:

II. DEFINITIONS

In addition to the terms defined at various points within this Settlement Agreement, the following defined terms apply throughout this Settlement Agreement:

1. **“Action”** means or refers to the matter styled *A.M. and A.M. v. Reproductive Biology Associates, LLC and MYEGGBANK North America LLC*, Case No. 21-C-06178-S3, State Court of Gwinnett County, Georgia.

2. **“Agreement”** or **“Settlement Agreement”** means this Settlement Agreement and Release, including its attached Exhibits (which are an integral part of this Settlement Agreement and are incorporated in their entirety herein by reference).

3. **“Approved Claim”** means a Claim Form submitted by a Settlement Class Member that has satisfied the verification process outlined in Section IV, and is (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) fully and truthfully completed and executed, with all of the information requested in the Claim Form, including the Settlement Class Member’s full name and the Settlement Class Member’s current contact information; and (c) signed by the Settlement Class Member, physically or electronically, subject to the penalties of perjury, affirming that the Settlement Class Member is a member of the Settlement Class.

4. **“Claims Deadline”** means the time and date by which a Claim Form must be received by the Settlement Administrator, through any means, including U.S. Mail or through the Settlement Website established pursuant to Section VII below, in order for a Settlement Class Member to be entitled to any of the monetary consideration contemplated in this Settlement Agreement. The Claims Deadline shall be 60 days after the Notice Deadline.

5. **“Claim Form”** or **“Claim”** means the form Settlement Class Members must submit to be eligible for relief under the terms of the Settlement, the proposed form of which is attached hereto as Exhibit 1.

6. “**Class Counsel**” means:

Sharon J. Zinns
ZINNS LAW, LLC
4243 Dunwoody Club Drive, Suite 104
Atlanta, Georgia 30350

Maureen Brady
Lucy McShane
MC SHANE & BRADY
1656 Washington St., Suite 120
Kansas City, Missouri 64108

7. “**Class Representatives**” means A.M. and A.M, the individual named plaintiffs in the Action.

8. “**Court**” means the State Court of Gwinnett County, Georgia.

9. “**Effective Date**” means the date five (5) business days after which all of the following events have occurred: (a) Class Counsel and Defendants' counsel have executed this Agreement; (b) the Court has entered the Final Approval Order without material change to the Parties' agreed-upon proposed Final Approval Order; and (c) either (1) the time for seeking rehearing or appellate or other review of the Final Approval Order has expired, and no appeal or petition for rehearing or review has been timely filed; or (2) the Settlement and Final Approval Order are affirmed on appeal or reviewed without material modification, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired. The Effective Date shall not be delayed beyond the date ten (10) business days after the Court has entered the Final Approval Order in accordance with (b) above in the event the Court declines to approve, in whole or in part, solely the payment of attorneys' fees, costs, and expenses, or of service awards, in the amounts that Class Counsel requests (“**Fee Request**”). Further, the Effective Date shall not be delayed beyond the date ten (10) business days after an appeal is filed in the event that the sole issue on appeal is the Fee Request awarded to Class Counsel.

10. “**Final Approval**” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award (as defined in Section VIII herein). In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

11. “Final Approval Order” means the order and judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

12. “Named Plaintiffs” means A.M. and A.M., the individual named plaintiffs in the Action.

13. “Notice” means the notice of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

14. “Notice Deadline” means 15 days after the Court has entered the Preliminary Approval Order or as soon thereafter as is feasible for the Settlement Administrator.

15. “Notice Program” means the notice methods provided for in this Settlement Agreement and consists of (1) Notice to all Settlement Class Members via summary post card notice via United States Postal Service first class mail at the address on file in Defendants’ business records and (2) Notice posted on the Settlement Website. The forms of Notice shall be substantially in the forms attached as Exhibit 2A (Long Form) and Exhibit 2B (Short Form) to this Agreement and approved by the Court, and the Notice Program shall be affected in substantially the manner provided in Section VIII herein.

16. “Objection Deadline” means 45 days after the Notice Deadline.

17. “Opt-Out Deadline” means 45 days after the Notice Deadline.

18. “Personal Information” means any protected health information (“PHI”) and personal identifiable information (“PII”) of patients whose information was collected and stored by Defendants and that was compromised in the Data Incident including any: (i) patient contact information (such as patient names, addresses, and dates of birth); (2) Social Security numbers; (3) diagnoses; (4) medical conditions; (5) claims information; (6) dates of service; (7) subscriber IDs; (8) medical procedure codes; (9) provider names; (10) laboratory results; and (11) health insurance policy numbers.

19. “Released Claims” means any and all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, existing or potential, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, liquidated or unliquidated, legal, statutory or equitable, that have been or could have been asserted in the Action by or on behalf of Named Plaintiffs, any and all of the members of the Settlement Class, and their respective present or past spouses, agents, representatives, assigns, heirs, executors, administrators, beneficiaries, and trustees, and any other representatives of any of these persons, whether

individual, class, direct, representative, legal, equitable or any other type or in any other capacity whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against any or all of the Released Parties, which the Named Plaintiffs or any member of the Settlement Class ever had, now has, or hereinafter may have, by reason of, resulting from, arising out of, relating to, or in connection with, the allegations, facts, events, transactions, acts, occurrences, statements, representations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the alleged claims or events in the Action or the Data Incident. Released Claims shall not include the right of Named Plaintiffs, Settlement Class Members or any Released Party to enforce the terms of the Settlement Agreement and claims not resulting from, arising out of, relating to, or in connection with, the allegations, facts, events, transactions, acts, occurrences, statements, representations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the alleged claims or events in the Action or the Data Incident.

20. “Released Party” means Defendants and all of their present or past direct or indirect affiliates, divisions, predecessors, successors, assigns, parents, or subsidiaries and the associates, employers, employees, agents, insurers, directors, managers, managing directors, officers, partners, principals, members, attorneys, shareholders, successors in interest, officers, directors, and general or limited partners.

21. “Releasing Parties” means Named Plaintiffs, any Settlement Class Member who does not timely and properly opt out from the Settlement, and any person claiming or receiving a benefit under this Settlement, and each of their respective spouses, children, executors, heirs, assigns, beneficiaries, successors and representatives of any kind.

22. “Settlement” or “Settlement Agreement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement, including the exhibits hereto.

23. “Settlement Administrator” presumptively means Atticus Administration LLC as selected by Class Counsel, and approved by Defendants, to serve as the Settlement Administrator. Class Counsel and Defendants’ counsel may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement. In the absence of agreement, either Class Counsel or Defendants’ counsel may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

24. “Settlement Class Members” or “Settlement Class” means all persons who fall within the Georgia Class definition set forth in Section III herein.

25. “Settlement Fund” shall mean the sum of \$1,000,000.00 which Defendants

agree to pay to settle, compromise, and resolve the claims of the Named Plaintiffs and the Settlement Class, subject to Court approval as required by O.C.G.A § 9-11-23, on the terms and conditions in this Settlement Agreement.

26. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the commencement of the Notice Program, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Settlement Agreement, the Notice, Preliminary Approval Order, the Claim Forms, the complaints filed in the Action and such other documents as Class Counsel and Defendants’ counsel agree to post or that the Court orders posted on the website. The URL of the Settlement Website shall be agreed upon by Class Counsel and Defendants. Settlement Class Members shall also be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least five (5) business days after the last payment or credit under this Settlement is made or the Settlement is terminated.

III. SETTLEMENT CLASS

1. For settlement purposes only, the Parties agree that the Court should certify the following class pursuant to O.C.G.A. § 9-11-23 (the “**Georgia Class**” or “**Class**”) defined as:

All individuals with Georgia addresses on file with Defendants whose personal identifying information or protected health information may have been accessed in the Data Incident announced by Defendants in June 2021.

For purposes of determining membership in the Settlement Class, Defendants provided notice of the Data Incident to in excess of 30,000 individuals who had Personal Information compromised by the Data Incident. It is intended that only those patients who had addresses in the State of Georgia on file with Defendants be included in the Settlement Class which comprises 27,244 individuals.

2. Excluded from the Settlement Class are the Court and all members of the Court’s staff, the officers and directors of Defendants, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Incident, and persons who timely and validly request exclusion from the Settlement Class. Named Plaintiffs will move for certification of the Georgia Class contemporaneously with their motion for preliminary approval of the Settlement. For purposes of this Settlement only, Defendants agree not to contest certification of the Class. Should the Settlement not be approved, Defendants reserve all rights and defenses on the merits and as to class certification.

3. For settlement purposes only, Named Plaintiffs shall also seek, and Defendants shall not oppose, the appointment of Class Counsel as Settlement Class counsel and appointment of Named Plaintiffs as Settlement Class representatives (“**Settlement Class Representatives**”).

IV. SETTLEMENT CONSIDERATION AND BENEFITS

In exchange for mutual releases provided herein, and the payment of the non-reversionary sum of \$1,000,000.00 as provided herein, the Parties agree to the following compensation and benefits to Settlement Class Members who submit valid and timely Claim Forms from the Settlement Fund. Claims will be subject to review for completeness and plausibility by a Settlement Administrator, and claimants will have the opportunity to seek review by the Parties’ respective counsel, if such claimants dispute the Settlement Administrator’s initial determination regarding the completeness, plausibility, or validity of Claims.

1. Claims:

- a. Settlement Class Members who elect to submit a Claim must provide to the Settlement Administrator the information required to evaluate the Claim, including: the Settlement Class Member’s full name and current contact information; the Settlement Class Member’s physical or electronic signature, subject to the penalties of perjury; and an affirmation that the Settlement Class Member is a member of the Settlement Class.
- b. The net settlement proceeds after the deduction of attorneys’ fees, expenses, service awards, costs of settlement notice, reminder notices, and settlement administration costs shall be distributed on a pro rata basis among all Class Members who have filed a valid claim within the deadlines set by the Court. If the total amount of claims by Class Members exceeds the amount available after attorneys’ fees, expenses, service awards, costs of settlement notice, reminder notices, and settlement administration costs, the amounts distributed to all Class Members who have filed a valid claim within the deadlines set by the Court will be reduced on a pro rata basis.
- c. The Settlement Administrator shall deny any Claim, or any part thereof, that it decides, in its sole discretion, is not reasonably supported.

2. Residual Funds

Defendants shall not be entitled to the return of any residual monies in the Settlement

Fund. Any nominal funds remaining after the foregoing *pro rata* distribution will be donated and provided to one or more nonprofit organizations of Defendants' choosing, provided that (1) such nonprofit organization(s) must be primarily focused on fertility research and/or to provide fertility to underprivileged patients; (2) the residual funds donated and provided to such nonprofit organization(s) must be used for fertility research and/or to provide fertility to underprivileged patients.

3. Claims Process

The Settlement Administrator shall only make payments to Settlement Class Members who submit valid claims as described in the verification process and such claims are also Approved Claims. To the extent the Settlement Administrator determines a Claim Form is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member fifteen (15) days to cure the deficiencies. Such notifications shall be sent within fifteen (15) days after the Claims Deadline and be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail if the claimant provided an address. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within seven (7) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations.

V. SETTLEMENT FUND

1. **Establishment of Settlement Fund.** Within twenty-one (21) business days of the entry of the Preliminary Approval Order, Defendants shall cause to be deposited the costs of notice and administration through the date of final approval, as estimated by the Settlement Administrator into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, Defendants' counsel, and Class Counsel, to cover the Settlement Administrator's reasonable set-up costs, notice, and early administration costs. Defendants shall cause to be deposited the balance of the Settlement Fund into the same account within ten (10) business days of the Effective Date. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9 to Defendants' counsel within five (5) business days of the entry of the Preliminary Approval Order and contact Defendants' counsel via telephone to confirm the wiring instructions. The Settlement Administrator shall confirm receipt of all payments required under this paragraph by contacting Defendants' counsel via e-mail and telephone within twenty-four (24) hours of receipt.

2. Defendants shall pay the monies to be deposited into the account established and administered by the Settlement Administrator pursuant to paragraph 1 above in such shares as agreed to in confidence by Defendants. Defendant shall be responsible for ensuring

that the total Settlement Fund amount of \$1 million is sent to the account established by the Settlement Administrator pursuant to paragraph 1 above.

3. **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 Agreement, upon request of any of the Parties.

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 Section XII.

4. **Use of the Settlement Fund.** The Settlement Fund shall be used by the Settlement Administrator to pay for the following in the order listed: (1) reimbursement for Claims made by Settlement Class Members who submit valid claims; (2) Notice and Administration Costs; (3) Fee Award and Costs as awarded by the Court; and (4) Service Award payments approved by the Court. 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.

5. **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 any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or

made pursuant to the Settlement Fund. Each Class Representative and participating 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 Agreement.

VI. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

1. Certification of the Settlement Class. For purposes of this Settlement only, the Parties stipulate to the certification of the Georgia Class, which is contingent upon both the Court entering the Final Approval Order of this Settlement and the occurrence of the Effective Date.

2. Preliminary Approval. Following execution of this Settlement Agreement, Class Counsel shall file a motion for preliminary approval of the Settlement, in a form agreeable to the Parties, within ten (10) days thereof or a date thereafter that is agreeable to the Parties and the Court.

3. Authority to Disclose Personal Information. The Court's Order granting preliminary approval of the Settlement shall include an order issued pursuant to 45 CFR 164.512(e) authorizing RBA and MEB to disclose specific protected health information of Settlement Class Members to Plaintiffs and the Settlement Administrator to the limited extent any such protected health information is necessary to implement and administer the Settlement. In addition, the Court's Order granting preliminary approval of the Settlement shall include a provision that, prior to receiving any protected health information from Defendants, the Settlement Administrator shall sign Defendants' Business Associate Agreement.

4. Stay of Actions. The Court's Order granting preliminary approval of the Settlement shall include an order (a) staying the Action or otherwise adjourning all litigation deadlines pending final approval of the Settlement; and (b) staying and/or enjoining, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning a Released Claim.

5. Mailing List. The parties will request that the Court order that within 10 (ten) calendar days of the Court's entry of an ordering granting preliminary approval of the Settlement, Defendants shall provide the Settlement Administrator with a list of the full names, the current or last known addresses, the e-mail addresses, and telephone numbers of the Settlement Class Members as reflected in Defendants' business records.

6. Final Approval. Class Counsel shall move the Court for a Final Approval Order of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline.

VII. SETTLEMENT ADMINISTRATOR

1. The Settlement Administrator shall administer various aspects of the Settlement as described in Section IV and perform such other functions as are specified for the Settlement Administrator elsewhere in this Settlement Agreement, including, but not limited to, overseeing the payment of Claims; providing Notice to Settlement Class Members via summary post card notice via United States Postal Service first class mail or publication as described in Section VIII herein; establishing and operating the Settlement Website and a toll-free number; administering the Claims processes including the verification processes described herein; and distributing cash payments according to the processes and criteria set forth in Section IV herein. The expense for the services of the Settlement Administrator shall be paid from the Settlement Fund.

2. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:

- a. Obtaining from Defendants the name and mailing addresses of Settlement Class Members for the purpose of sending Notice to Settlement Class Members via United States Postal Service first class mail;
- b. Obtaining from Defendants information necessary to establish a reasonably practical procedure to verify Settlement Class Members;
- c. Establishing and maintaining a post office box for mailed written notifications of exclusion or objections from the Settlement Class;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line 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;
- f. Responding to any mailed Settlement Class Member inquiries;
- g. Processing all written notifications of exclusion from the Settlement Class;
- h. Providing weekly reports and, no later than ten (10) business days after the Opt-Out Deadline, a final report to Class Counsel and Defendants' counsel, that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent

information as requested by Class Counsel and Defendants' counsel;

- i. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order and (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class;
- j. Reviewing, determining the validity of, and responding to all Claims submitted by Settlement Class Members, pursuant to criteria set forth in Section IV herein and in Exhibit 3 attached hereto.
- k. Contacting Class Counsel and Defendants' counsel by telephone to establish a secure method for transmitting the Settlement Fund and other payments required herein.
- l. After the Effective Date, receiving money from Defendant, immediately confirming receipt of such money by telephone, and processing and transmitting distributions to Settlement Class Members in accordance with Section IV herein;
- m. Providing weekly reports and a final report to Class Counsel and Defendants' counsel that summarize the number of Claims since the prior reporting period, the total number of Claims received to date, the number of any Claims granted and denied since the prior reporting period, the total number of Claims granted and denied to date, and other pertinent information as requested by Class Counsel and Defendants' counsel; and
- n. Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and Defendant, including, but not limited to, verifying that cash payments have been distributed in accordance with Section IV herein.

VIII. NOTICE, OPT-OUTS, AND OBJECTIONS

1. Upon Preliminary Approval of the Settlement, at the direction of Class Counsel, the Settlement Administrator will implement the Notice Program provided herein, using forms substantially in the nature of the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may object to or opt out of the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access this Settlement Agreement and other related documents and

information.

2. The Notice Program has two components: (1) Notice via direct summary notice via United States Postal Service first class mail; and (2) Notice on the Settlement Website. The Settlement Administrator shall send Notice to all Settlement Class Members via summary notice via United States Postal Service first class mail and shall use the addresses for the Settlement Class Members on file with Defendants. The Settlement Administrator shall also have the option, if requested by Class Counsel, to mail reminder post card notices to Settlement Class Members who have not yet submitted a Claim Form, with such reminder notices to be mailed, if at all, thirty (30) days prior to the Claims Deadline.

3. The Notice shall include a procedure for Settlement Class Members to exclude themselves from the Settlement Class by notifying the Settlement Administrator in writing of the intent to exclude himself or herself from the Settlement Class. This procedure will provide for the submission of an opt-out or exclusion form to be provided to Settlement Class Members by the Settlement Administrator. Such written notification or exclusion form must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. Any written notification or exclusion form must include the individual's name and address; a statement that he or she wants to be excluded from the Settlement Class; and the individual's signature. Only one individual may be excluded from the Settlement Class per each written notification or exclusion form. No group opt-outs from the Settlement Class shall be permitted. The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all individuals who have timely and validly excluded themselves from the Settlement Class. Any Settlement Class Member who does not timely and validly exclude himself or herself shall be bound by the terms of the Settlement.

The Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and Service Awards. Objections to the Settlement or to the application for fees, costs, and expenses and Service Awards must be filed electronically with the Court or mailed to the Clerk of the Court and, additionally, served concurrently therewith upon:

For Class Counsel:

Zinns Law, LLC
Sharon J. Zinns
4243 Dunwoody Club Drive
Suite 104
Atlanta, Georgia 30350

For Defendants:

Suzanna Bonham
Seyfarth Shaw LLP
700 Milam Street
Suite 1400
Houston, Texas 77002-2797

For an objection to be considered by the Court, the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, at the address listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the filed action;
 - b. the objector's full name, address, telephone number;
 - c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
 - d. all grounds for the objection, accompanied by any legal support for the objection;
 - e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards;
 - f. a statement confirming whether the objector intends to appear personally or through counsel and/or testify at the Final Approval Hearing; and
 - g. the objector's signature on the written objection (an attorney's signature is not sufficient).
4. The Parties and their counsel agree that each will not encourage any persons to Opt Out or file Objections to this Settlement Agreement.
 5. The direct summary notice via United States Postal Service first class mail, and any publication notice if required, shall be completed by the Notice Deadline, excluding any attempts to resend Notices that are returned undeliverable.
 6. The Settlement Administrator shall post the Notice on the Settlement Website

in the form agreed to by the Parties and approved by the Court. The Notice shall be posted on the Settlement Website by the Notice Deadline.

7. Within seven (7) days after the Notice Deadline, the Settlement Administrator shall provide Class Counsel and Defendants' counsel with one or more affidavits confirming that the Mail Notice Program, and posting of Notice on the Settlement Website, were completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with the motion for final approval of the Settlement.

8. All costs associated with providing appropriate notice of the Settlement to the Settlement Class Members, including potentially a second wave of notice depending on the claims rate, and settlement administrative costs including payment of the Settlement Administrator shall be paid out of the \$1 million Settlement Fund.

IX. FINAL APPROVAL ORDER AND JUDGMENT

1. Plaintiffs' motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Within 45 calendar days after Preliminary Approval, Plaintiffs shall file a motion for final approval of the Settlement and a motion for attorneys' fees, costs, and expenses and Service Awards. By no later than 14 calendar days prior to the Final Approval Hearing, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards to the Class Representatives. At the Final Approval Hearing, the Court will consider Plaintiffs' motion for final approval of the Settlement, and Class Counsel's application for attorneys' fees, costs, and expenses and Service Awards to the Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the application for attorneys' fees, costs, and expenses and Service Awards, provided the objectors filed timely objections that meet all of the requirements listed in Section VIII herein.

2. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting final approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, and expenses, and Service Awards. The proposed Final Approval Order that will be filed with the motion for final approval shall be in a form agreed upon by Class Counsel and Defendants' counsel. A current version is attached hereto as Exhibit 4, but may be subject to modification with the consent of Class Counsel and Defendant' counsel prior to the Final Approval Hearing. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;

- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfied Due Process requirements;
- d. Dismiss the Action with prejudice;
- e. Bar and enjoin the Releasing Parties from asserting any of the Released Claims, as set forth in Section IX herein, including during the pendency of any appeal from the Final Approval Order;
- f. Release Defendants and the Released Parties from the Released Claims, as set forth in Section IX herein; and
- g. Reserve the Court's continuing and exclusive jurisdiction over Defendants and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. RELEASES

1. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties of and from any and all Released Claims.

2. For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under consumer protection statutes in effect in the United States or in any states and territories of the United States); causes of action under the common or civil laws of any state or territory of the United States, including but not limited to: state statutory consumer protection, fair business practices, or privacy claims, invasion of privacy, public disclosure, unjust enrichment, negligence, negligent training, negligent supervision, negligent hiring, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of confidentiality, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure; and also including, but not limited to, any and all claims in any state or federal court of the United States for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, and any other form of relief arising out of, or relating to, or in any way connected with, the Data Incident, and which have been asserted or could have been asserted in the Action against any of the Released Parties. The Released Claims do not include any claims (a) not resulting from, arising out of, relating to, or in connection with, the allegations, facts, events, transactions, acts, occurrences, statements, representations,

omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the alleged claims or events in the Action or the Data Incident, and/or (b) any claims arising from or relating to any conduct by Defendants after the date the Settlement Agreement is executed. Released Claims also do not include the right of Named Plaintiffs, Settlement Class Members or any Released Person to enforce the terms of the Settlement Agreement.

3. As of the Effective Date, the Released Parties will be deemed to have completely released and forever discharged Named Plaintiffs and the Settlement Class Representatives, the other members of the Settlement Class, and Class Counsel from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Action.

4. Upon entry of the Final Approval Order, the Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs 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. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

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

1. **Service Awards.** The Settlement Class Representatives will ask the Court to approve a service award not to exceed seven thousand five hundred dollars (\$7,500.00) for each Settlement Class Representative, which is intended to compensate such individuals for their effort in the litigation and commitment on behalf of the Settlement Class ("**Service Award**"). Neither Class Counsel's application for, nor Class Representatives' entitlement to, a Service Award shall be conditioned in any way upon support for this Settlement Agreement. Any Service Award shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than ten (10) days after the Effective Date.

2. **Attorneys' Fees, Costs, and Expenses.** Class Counsel will ask the Court to approve an award of Attorneys' Fees of up to one-third of the Settlement Fund (\$333,333.33) plus litigation costs and expenses not to exceed \$100,000.00 to be paid from the Settlement Fund. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount on their Fee Request and shall not alter the Effective Date. Attorneys' Fees, Costs, and Expenses shall be paid by the Settlement Administrator from the Settlement Fund, in the amount approved by the Court, no later than ten (10) days after the Effective Date.

3. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses in the amount that Class Counsel requests, the remaining provisions of this Settlement Agreement shall remain in full force and effect. No order of the Court, or modification, or reversal, or appeal, of any order of the Court, concerning the amount(s) of attorneys' fees, costs, and expenses shall constitute grounds for cancellation or termination of this Agreement. Any amount not awarded to Class Counsel will not revert back to Defendants.

XII. TERMINATION

1. This Settlement may be terminated by either Named Plaintiffs or Defendants by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 14 calendar days (or such longer time as may be agreed to in writing between Class Counsel and Defendants' counsel) after any of the following occurrences:

- a. Class Counsel and Defendants' counsel agree to termination before the Effective Date;
- b. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- d. The Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the Preliminary Approval Order, the proposed Final Approval Order, or the Settlement; or
- e. The Effective Date does not occur.

2. In the event of a termination as provided in Paragraph 1 of this Section, this Settlement Agreement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Actions as if the Parties had not entered into this Settlement Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

XIII. NO ADMISSION OF LIABILITY

1. Defendants dispute the claims alleged in the Action and do not by this Settlement Agreement or otherwise admit any liability or wrongdoing of any kind.

Defendants have agreed to enter into this Settlement Agreement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

2. Class Counsel and Named Plaintiffs believe that the claims asserted against Defendants have merit. Nevertheless, after a thorough examination of the facts and law, the Named Plaintiffs and Class Counsel recognize and acknowledge that Defendants have raised factual and legal defenses that present a risk that the Named Plaintiffs and the Settlement Class may not prevail.

3. Named Plaintiffs and Class Counsel believe, and the Parties have agreed, that the Settlement confers substantial benefits upon the Settlement Class. Based on their comprehensive examination and evaluation of the law and facts relating to the matters at issue in the Action, Class Counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Actions pursuant to the terms and provisions of this Settlement Agreement.

4. The Parties understand and acknowledge that this Settlement 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 Settlement Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

5. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) 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 Named Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Actions or in any proceeding in any court, administrative agency, or other tribunal.

XIV. MISCELLANEOUS

1. Singular and Plurals. As used in this Settlement 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.

2. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

3. Cooperation of Parties. The Parties to this Settlement Agreement agree to

cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court disapproval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Settlement Agreement, including securing certification of the Settlement Class for settlement purposes and the prompt, complete, and final dismissal with prejudice of the Actions as to Defendants.

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

5. Integration. This Settlement Agreement (along with any Exhibits attached hereto) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

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

7. Governing Law. The Settlement Agreement shall be construed in accordance with, and be governed by, the laws of the State of Georgia, without regard to its choice of law or conflict of laws principles.

8. Counterparts. This Settlement 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 by facsimile or through e-mail of an Adobe PDF shall be deemed an original.

9. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Settlement 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 Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

10. Notices. All notices to Class Counsel provided for herein shall be sent by overnight mail to:

Sharon J. Zinns
Zinns Law, LLC
4243 Dunwoody Club Drive
Suite 104
Atlanta, Georgia 30350

All notices to Defendants provided for herein, shall be sent by overnight mail to:

Suzanna Bonham
Seyfarth Shaw LLP
700 Milam Street
Suite 1400
Houston, Texas 77002-2797

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

11. Authority. Any person executing this Settlement 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 Settlement Agreement to all of the terms and provisions of this Settlement Agreement.

12. Signatures of All Settlement Class Members Unnecessary to be Binding. The Parties agree that, because the members of the Settlement Class are numerous, it is impractical, if not impossible, to have each Settlement Class Member execute this Settlement Agreement. The Notice discussed above advises all Settlement Class Members of the binding nature of the Release provided herein, and therefore the Release provided herein shall have the same force and effect as if this Settlement Agreement were executed by each individual Settlement Class Member.

13. No Construction Against Drafter. This Settlement Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Settlement Agreement.

14. No Media Announcements. No Party shall make any public statements to the news, print, electronic, or Internet media concerning the Settlement, and the Parties shall decline to respond to media inquiries concerning the Settlement. Class Counsel shall not use either Defendant's name, or any variation thereof, when referencing the Settlement in their marketing materials, website, or other advertising media.

15. Destruction of Confidential Documents and Information. Class Counsel agree that they will destroy all confidential documents and information provided to them by Defendants within 60 calendar days after the Effective Date. Class Counsel further agree that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of this Action. Class Counsel shall provide a certification of compliance with this Paragraph within 60 calendar days after the Effective Date.

16. No Solicitation of Objections or Requests for Exclusion. The Parties represent and warrant that they have not and will not solicit, encourage, or assist in any fashion any effort by any entity or person to object to or to seek exclusion from this Settlement Agreement.

XV. SETTLEMENT TIMELINE

<u>Grant of Preliminary Approval</u>	
Settlement Administrator provides W-9 to Defendant	10 days after Preliminary Approval Order
Defendant provides list of Settlement Class Members to the Settlement Administrator	10 days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	30 days after Preliminary Approval
Notice Date	30 days after Preliminary Approval
Reminder Notice	30 days before Claims Deadline
Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	90 days after Preliminary Approval
Objection Deadline	50 days after Notice Date
Opt Out Deadline	50 days after Notice Date
Claims Deadline	75 days after Notice Date
Settlement Administrator to Provide List of Objections/Opt Outs to the Court and Counsel	10 days after Objection and Opt Out Deadline
<u>Final Approval Hearing</u>	120 days after Preliminary Approval Order
Motion for Final Approval	75 days after Notice Deadline
<u>Final Approval</u>	
Effective Date	30 days after Final Approval Order
Payment of Attorneys’ Fees and Expenses/ Class Representative Service Award	10 days after Effective Date
Settlement Website Deactivation	90 days after Effective Date

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed on their behalf by their authorized counsel of record:

SIGNED AND AGREED TO BY:



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On Behalf of Plaintiffs and Putative Class



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On Behalf of Plaintiffs and Putative Class



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On Behalf of Defendants

DocuSigned by:



Andrew Toledo, MD
REPRODUCTIVE BIOLOGY
ASSOCIATES

DocuSigned by:



TJ Farnsworth
MYEGGBANK NORTH AMERICA LLC