

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALICIA CHARLIE, *et al.*,

Plaintiffs,

v.

REHOBOTH MCKINLEY CHRISTIAN
HEALTH CARE SERVICES,

Defendant.

CIVIL NO. 21-652 SCY/KK

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between (1) Alicia Charlie, Leona Garcia Lacey, Darrell Tsosie, and E.H.,¹ by and through his guardian, Gary Hicks (collectively, “Plaintiffs”), on behalf of themselves and a class of similarly situated individuals, and (2) Rehoboth McKinley Christian Health Care Services (“RMCHCS” or “Defendant”) (all parties collectively referred to as the “Parties”).

RECITALS

WHEREAS, on June 4 2021, Plaintiffs filed a putative class action styled, *Charlie v. Rehoboth Christian Health Care Services*, Case No. D-1113-CV-2021-00235 (11th Jud. Dist. McKinley Co., N. Mex.), alleging that RMCHCS failed to adequately safeguard its patients’ electronically stored personally identifiable information (“PII”) and protected health information (“PHI”) in connection with a cybersecurity incident announced by RMCHCS on or about May 19, 2021 (“Data Breach”).

WHEREAS, Plaintiffs alleged causes of action against RMCHCS for: (i) negligence; (ii) intrusion upon seclusion/invasion of privacy; (iii) negligence *per se*; (iv) breach of implied contract;(v) breach of fiduciary duty; (vi) unjust enrichment; (vii) violation of New Mexico Unfair Practices Act, NMSA 1978 §§ 57-12-2 *et seq.*; and (xiii) violation of Arizona Consumer Fraud Act, Ariz. Rev. Stat. §§ 44-1521 *et seq.* Plaintiffs and the putative class sought monetary and equitable relief.

WHEREAS, on July 15, 2021, pursuant to the Class Action Fairness Act of 2005 and 28.U.S.C. Section 1332(d)(2)(A), RMCHCS removed the action to the U.S. District Court for the

¹ The full name of E.H. was provided to Defendant confidentially, and the Parties agree that the person referred to as E.H. is a party to this Agreement.

District of New Mexico, *Charlie v. Rehoboth McKinley Christian Health Care Services*, Civil No. 21-652 SCY/KK (D. N.M. 2021) (the “Lawsuit”).

WHEREAS, on August 17, 2021, RMCHCS filed a Motion to Dismiss Plaintiffs’ Complaint as a whole for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). RMCHCS’s Motion to Dismiss was fully briefed on October 12, 2021.

WHEREAS, on April 11, 2022, the Court granted in part and denied in part RMCHCS’s Motion to Dismiss Plaintiffs’ Complaint. Specifically, the Court dismissed Plaintiffs’ causes of action for: (i) intrusion upon seclusion/invasion of privacy; (ii) breach of implied contract; and (iii) violation of the Arizona Fraud Act, Ariz. Rev. Stat. §§ 44-1521 *et seq.* (insofar as it was based upon affirmative misrepresentations), but denied the remainder of RMCHCS’s motion. The Court also granted Plaintiffs leave to amend until May 22, 2022. On May 12, 2022, RMCHCS filed an Answer to Plaintiffs’ Complaint.

WHEREAS, after the Court’s ruling on RMCHCS’s Motion to Dismiss, the Parties agreed to engage in voluntary settlement negotiations;

WHEREAS, after multiple months of arms’-length negotiation between competent and experienced counsel for the Parties, on July 25, 2022, the Parties agreed to the terms of a settlement, desiring to resolve the Lawsuit rather than continue litigating;

WHEREAS, Plaintiffs and their counsel believe that, in consideration of all the circumstances, and after prolonged and serious arm’s-length settlement negotiations with RMCHCS, the proposed settlement embodied in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of all members of the Settlement Class (as defined in paragraph 1 below);

WHEREAS, RMCHCS indicated its intent to contest every claim in the Lawsuit and maintains that it has consistently acted in accordance with governing laws, but after prolonged and serious arm’s-length settlement negotiations with Plaintiffs’ counsel and considering the expenses that would be necessary to defend the Lawsuit and the benefits of a final resolution of the Lawsuit, concluded that it is in its best interests to settle the Lawsuit on the terms and conditions in the Settlement Agreement;

WHEREAS, the Parties and their respective counsel have engaged in arm’s-length settlement negotiations and mutually desire to settle the Lawsuit fully, finally, and forever on behalf of the Settlement Class and for the Released Claims (defined in paragraph 10 below) in accordance with the terms and conditions of the Settlement Agreement, which the Parties believe constitutes a fair and reasonable compromise of the claims and defenses asserted in the Lawsuit and upon final approval of the Court;

WHEREAS, based on their evaluation of the facts and the law, Plaintiffs and their counsel (hereinafter “Class Counsel”) have agreed to settle the Lawsuit after considering such factors as (1) the benefits to the Settlement Class; (2) the risk, uncertainty, cost, and delay of litigation; and (3) the desirability of obtaining relief for Plaintiffs and the Settlement Class now rather than later (or not at all);

WHEREAS, Plaintiffs and Class Counsel have determined that the Settlement Agreement provides substantial benefits to the Settlement Class and represents a fair, reasonable, and adequate settlement of the claims that are or could have been alleged in the Lawsuit;

WHEREAS, RMCHCS and its counsel have made similar determinations, and, while denying wrongdoing, liability and fault, RMCHCS enters into the Settlement Agreement to avoid the expense, inconvenience, and inherent risk of litigation, as well as the concomitant disruption of its business operations.

CERTIFICATION OF SETTLEMENT CLASS

1. The Settlement Class: The Settlement Class is defined as follows:

All persons to whom on or about May 19, 2021 Rehoboth McKinley Christian Health Care Services sent Notice of a Data Breach that was discovered on February 16, 2021, which involved an unauthorized person gaining access to certain systems containing PII/PHI.

Specifically excluded from the Settlement Class are: (i) RMCHCS's officers and directors; (ii) any entity in which RMCHCS has a controlling interest; and (iii) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of RMCHCS (not including employees). Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff. The Settlement Class is estimated to include approximately 191,009 individuals.

2. Certification of Settlement Class: Promptly after execution of the Settlement Agreement, Class Counsel will ask the Court to issue an order certifying the Settlement Class for settlement purposes only. RMCHCS agrees not to object to this request without waiver of its right to contest certification or the merits of the Lawsuit if the settlement does not receive final approval or the Effective Date (defined in paragraph 14 below) does not occur.

RELIEF TO THE SETTLEMENT CLASS

3. Relief to the Settlement Class: If the proposed settlement receives final approval, RMCHCS will provide benefits to members of the Settlement Class ("Settlement Class Members") who do not submit a timely written request for exclusion from the Settlement Class as follows:

- a. Compensation or Out-of-Pocket Losses and Lost Time: RMCHCS will agree to make available the following compensation to Settlement Class Members who submit valid and timely claim forms. Claims will be subject to review for completeness and plausibility by a Claims Administrator;
- b. Compensation for Ordinary Losses: RMCHCS will reimburse documented out of pocket expenses incurred as a result of the Data Breach, up to a maximum of \$500.00 per person, upon submission of a claim and supporting documentation, such as the following losses:

- i. Bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
 - ii. Fees for credit reports, credit monitoring, or other identity theft insurance product purchased between May 19, 2021 and the date of the Settlement Agreement;
 - iii. Compensation for up to 4 hours of lost time, at \$15/hour, for a maximum of up to \$60 per person, if at least one full hour was spent dealing with the Data Breach. Class members may submit claims for up to 4 hours of lost time with an attestation that they spent the claimed time responding to issues raised by the Data Breach. This payment shall be included in the \$500 per person cap for Compensation for Documented Out-of-Pocket Losses and Lost Time.
 - iv. This list of reimbursable documented out-of-pocket expenses is not meant to be exhaustive, but is exemplary. Settlement Class Members may make claims for any documented out-of-pocket losses reasonably related to the Data Incident or to mitigating the effects of the Data Incident. The Claims Administrator shall have discretion to determine whether any claimed loss is reasonably related to the Data Incident.
- c. Compensation for Extraordinary Losses: RMCHCS will provide up to a maximum of \$3,500.00 per person in compensation to each claimant who was the victim of actual documented identity theft for proven monetary loss if:
 - i. The loss is an actual, documented, and unreimbursed monetary loss;
 - ii. The loss was more likely than not caused by the Data Breach;
 - iii. The loss occurred between May 19, 2021 and the date of the Settlement Agreement;
 - iv. The loss is not already covered by one or more of the normal reimbursement categories; and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.
- d. Credit Monitoring: RMCHCS will pay for credit monitoring services as follows:

Settlement Class Members shall be offered an opportunity to enroll in 2 years of credit monitoring.

4. New Practices: RMCHCS has implemented security-related improvements related to its cybersecurity since the Data Breach. RMCHCS agrees to provide Plaintiffs with information

regarding these improved security-related measures implemented by RMCHCS no later than 60 days after execution of the Settlement Agreement.

5. Confirmatory Discovery: RMCHCS shall provide confidential, discrete, and tailored confirmatory discovery for establishing the appropriateness of the settlement terms as contemplated under Federal Rule of Civil Procedure 23(b)(1) to Plaintiffs. The confidential discovery period will begin on the execution of the Settlement Agreement between the Parties and will conclude no later than 60 days thereafter.

6. Claims Payments.

(a) Payments. For all approved claims, the Claims Administrator shall provide to RMCHCS a list that includes the names of all approved claimants, the dollar amount and type of the claim and, if requested, the documentation that supports the claim. RMCHCS shall have 10 business days from the date the documentation is provided to advise the Claims Administrator and Class Counsel if RMCHCS disputes any approved claim. Within 15 business days of the Effective Date, RMCHCS shall pay into a Settlement Fund administered by the Claims Administrator an amount sufficient to pay all approved claims that are not disputed. As to any approved claim that is disputed, within 5 business days after being advised in writing that RMCHCS disputes the claim, the Claims Administrator shall provide to the Claims Referee all information related to the disputed claims and within 5 business days thereafter RMCHCS shall provide to the Claims Referee any information upon which RMCHCS disputes that claim. The Claims Referee shall as soon thereafter as is reasonably practicable uphold or reverse a disputed claim and advise the Claims Administrator, RMCHCS and Class Counsel of the Claims Referee's decision. For any disputed claim upheld by the Claims Referee, within 5 business days thereafter, or within 15 business days of the Effective Date, whichever is later, RMCHCS shall pay into the Settlement Fund the amount necessary for the Claims Administrator to pay that claim. RMCHCS shall have no obligation to pay any claim that RMCHCS disputes and the Claims Referee determines should not be paid. Payments will be paid to Settlement Class Members by the Claims Administrator as soon as reasonably practicable after RMCHCS funds payment of the approved claim in accordance with this Settlement Agreement. A copy of the claim form agreed to by the parties is attached as **Exhibit D.**

(b) Returned Checks: If a check is returned as undeliverable, the Claims Administrator will re-mail the check if a forwarding address is provided. If a new address is not provided, or if the check is re-mailed and returned, the check will be cancelled and RMCHCS will have no further obligation to attempt to make a payment to that Settlement Class Member.

(c) Uncashed/Cancelled Checks: Checks shall be valid for 90 days from the date of issue. A Settlement Class Member whose check is uncashed after the 90-day period may request a new check for up to 6 months from the date of the original check. Upon request, the Claims Administrator will provide Class Counsel and RMCHCS with a report on uncashed or cancelled checks. If a check remains uncashed for more than 270 days after the original date of issuance by the Claims Administrator, those funds will be returned to RMCHCS.

7. Attorneys' Fees, Costs, and Incentive Award:

(a) Attorneys' Fees and Costs: RMCHCS agrees not to object to Plaintiffs' request for attorneys' fees to Class Counsel² in an amount not to exceed a total of \$300,000.00, inclusive of costs ("Class Counsel Payment"). Class Counsel and Plaintiffs agree not to seek or accept a Class Counsel Payment greater than \$300,000.00. Class Counsel will petition for approval of the Class Counsel Payment at least 14 days before the deadline for Settlement Class Members to Exclude themselves or Object, or any other deadline set by the Court. RMCHCS will pay the amount approved by the Court that does not exceed \$300,000.00. The Class Counsel Payment was negotiated after the primary terms of the settlement were negotiated.

The Court-approved Class Counsel Payment will not affect any benefits provided to Settlement Class Members or Plaintiffs. RMCHCS shall pay the Court-approved Class Counsel payment in addition to the costs of costs of settlement administration and notice. RMCHCS will pay the Court-approved Class Counsel Payment within 10 business days of the Effective Date or the Court's Order approving this award, whichever is later, by wire transfer to the attorney trust account of Class Counsel David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC, so long as the necessary documentation, including completed and executed tax reporting forms, is provided by co-Class Counsel. RMCHCS's obligations with respect to the Court-approved Class Counsel Payment shall be fully satisfied upon receipt of the funds by Class Counsel. Class Counsel will be responsible for any loss that may occur after receipt of the funds and for allocating the Court-approved Class Counsel Payment among Class Counsel or others. RMCHCS will have no responsibility or liability in connection with the allocation of the Court-approved Class Counsel Payment, or for any tax obligations or payments associated with the payment. Class Counsel will bear all liability, and RMCHCS will bear no liability (beyond the Court-approved Class Counsel Payment itself) in connection with any claim for payment made by any attorney or service provider who claims to have rendered services to, for, or on behalf of Plaintiffs, any Settlement Class Member, or Class Counsel in connection with the Lawsuit and this settlement.

Except for the Court-approved Class Counsel Payment, Class Counsel will be responsible for all fees, costs, and expenses incurred by Plaintiffs or Class Counsel in connection with the Lawsuit. No interest will accrue with respect to the Court-approved Class Counsel Payment.

(b) Service Award: RMCHCS agrees not to object to Plaintiffs' request for Service Awards in an amount not to exceed \$2,500.00 to each named Plaintiff for their time and effort on behalf of the Settlement Class. Class Counsel and each Plaintiff agree not to seek or accept a Service Award greater than \$2,500.00 each. Class Counsel will petition for approval of the Service Awards at least 14 days before the deadline for Settlement Class Members to Exclude themselves or Object, or any other deadline set by the Court. RMCHCS will pay the amount approved by the Court that does not exceed \$2,500.00 per named Plaintiff. The Court-approved Service Awards will not affect any benefit provided to Settlement Class Members, including Plaintiffs. The Service Awards to named Plaintiffs were negotiated after the primary terms of the settlement were negotiated. RMCHCS will pay the Court-approved Service Awards within 10 business days of the Effective Date or the Court's Order approving this award, whichever is later, by check payable to "Milberg Coleman Bryson Phillips Grossman, PLLC IOLTA Account" or by wire transfer to the client trust account of Class Counsel, Milberg Coleman Bryson Phillips Grossman, PLLC IOLTA

² Class Counsel in this matter are David K. Lietz and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC.

Account at Banco Popular, San Juan, Puerto Rico, so long as the necessary documentation, including completed and executed tax reporting forms, is provided by Class Counsel. RMCHCS's obligation for payment of any Court-approved Service Awards will be fully satisfied upon receipt of the check or wire transfer by Milberg Coleman Bryson Phillips Grossman, PLLC. Plaintiffs will bear all liability, and RMCHCS will bear no liability, for payment of taxes due, if any, on the Court-approved Service Awards. No interest will accrue with respect to the Court-approved Service Awards if paid in accordance with the Settlement Agreement.

8. Settlement Administration:

(a) The Parties will choose a third-party Claims Administrator ("Claims Administrator") to provide notice of the settlement to the Settlement Class and otherwise administer the settlement in accordance with this Agreement, subject to the approval of the Court. The Claims Administrator will administer the settlement, including (i) providing the Short Form Notice, either by postcard notification of the proposed settlement to the same population as RMCHCS's pre-Lawsuit Data Breach notification, or by email notification when valid email addresses are available; (ii) create and host a Settlement Website, publicly accessible for at least 6 months after the Effective Date, dedicated to providing information related to this Lawsuit, including access to relevant publicly available court documents relating to this Lawsuit, the settlement and the Settlement Agreement, including the Short Form Notice (in postcard/short/email format) and Long Form Notice of the settlement (attached hereto as **Exhibits B and C**, respectively), and provide Settlement Class Members with the ability to submit claims and supporting documentation for compensatory relief on the Settlement Website or to download claim forms from the Settlement Website and submit the claim forms for compensatory relief with supporting documentation via first-class U.S. mail; (iii) maintaining a toll-free telephone number and P.O. Box by which Settlement Class Members can seek additional information regarding the Settlement Agreement; (iv) post notification of the proposed settlement on the Settlement Website, which notification will be retained on the Settlement Website for a period of at least 90 days after the Effective Date; (v) processing claims and supporting documentation submissions, and the provision of approved payments to Settlement Class Members; (vi) processing requests for exclusion from Settlement Class Members; (vii) within 10 days after the filing of the motion to permit issuance of notice, the Claims Administrator acting on behalf of RMCHCS shall have served or caused to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b); and (viii) any other provision of the Settlement Agreement that relates to the settlement and claims administration. Upon reasonable notice, the Claims Administrator and RMCHCS will make available for inspection by Class Counsel information reasonably necessary for Class Counsel to confirm that the Claims Administrator and RMCHCS have complied with the settlement administration aspects of the Settlement Agreement.

(b) **Review and Assistance:** Class Counsel and RMCHCS will be permitted to audit and review actual (or summary reports on) claims made, claims approved or denied, checks issued, calculation of benefits under the settlement, returned checks and uncashed checks to assist with (1) the effectuation of the settlement, and (2) the Parties' mutual desire to reasonably ensure that the benefits are administered in a manner to attempt to reach each Settlement Class Member.

(c) Cost of Settlement Administration: RMCHCS will be responsible for the cost of settlement administration and notice, including the payment of the Claims Administrator and the Claims Referee, if needed. The cost of settlement administration will not affect any benefit provided to Settlement Class Members, including Plaintiffs. Except for the Court-approved Class Counsel Payment and Court-approved Service Awards, RMCHCS will not be responsible for, and will not pay, any additional costs or fees incurred by Plaintiffs or Class Counsel with respect to the negotiation, implementation, or administration of the settlement, or any costs incurred by any Settlement Class Member in connection with participating in, opting out of, or objecting to the settlement.

(d) Dispute Resolution: In the event of a dispute over the validity of a claim, or a dispute over the denial of a check reissuance request, Settlement Class Members shall be entitled to submit their claim to a Claims Referee. Settlement Class Members must first notify the Claims Administrator that they intend to pursue the dispute resolution process, and RMCHCS will have the option, at its sole discretion, to negotiate with the Settlement Class Member to attempt to resolve the dispute, provided that RMCHCS provides prior written notice to Class Counsel of its intent to do so. If RMCHCS elects not to undertake a negotiation process or the process does not resolve the dispute within 30 days from the date the Settlement Class Member notifies the Claims Administrator of the dispute, the Settlement Class Member may then submit the claim to the Claims Referee. RMCHCS will provide notice to Class Counsel of any claims submitted to the Claims Referee. The Claims Referee's findings will be final and binding on both parties. RMCHCS will pay the Claims Referee's fees for the dispute resolution process. Settlement Class Members and RMCHCS will each bear their own attorneys' fees and any other costs of the dispute resolution process, if any. Class Counsel will have the option, but not the obligation, to participate in the dispute resolution process.

(e) In the event of a dispute over the validity of a claim, or a dispute over the denial of a check reissuance request, so that the services of a Claims Referee are required, Class Counsel and RMCHCS will promptly meet and confer to reach agreement on selection of a Claims Referee. If the Parties are unable to reach agreement within 3 business days, either side may ask the Court before whom this matter is filed to appoint a Claims Referee.

9. No Other Financial Obligations on RMCHCS: RMCHCS will not be obligated to pay any fees, expenses, or costs in connection with the Lawsuit or the Settlement Agreement other than the amounts and categories specifically provided for in the Settlement Agreement.

RELEASE

10. Release: Upon the Effective Date, Plaintiffs named in this Settlement Agreement and Release and every Settlement Class Member (except those who timely opt-out), for themselves, their attorneys, spouses, beneficiaries, executors, representatives, heirs, successors, and assigns, in consideration of the relief set forth in the Settlement Agreement, fully and finally release RMCHCS, all subsidiary, parent and related entities, all officers, directors, shareholders, employees, attorneys, insurers, successors, and persons who acted on their behalf from any and all claims or causes of action, whether known or unknown, that concern, refer or relate to (a) the Data Breach; and (b) all other claims or causes of action that were pleaded, or that could have been pleaded based on the Data Breach and/or RMCHCS's response to the Data Breach in the Lawsuit.

The claims released in this paragraph are referred to as the “Released Claims,” and the parties released are referred to as the “Released Parties.”

Plaintiffs waive any principles of law similar to and including Section 1542 of the California Civil Code, which provides:

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

Plaintiffs agree that Section 1542 and all similar federal or state laws, rules, or legal principles of any other jurisdiction are knowingly and voluntarily waived in connection with the claims released in the Settlement Agreement, and agree that this is an essential term of the Settlement Agreement. Plaintiffs and the Settlement Class Members acknowledge that they may later discover claims presently unknown or suspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in the Settlement Agreement. Nevertheless, Plaintiffs and Settlement Class Members fully, finally, and forever settle and release the Released Claims against the Released Parties.

11. No Release of Unrelated Claims: Notwithstanding the foregoing, the Parties expressly agree and acknowledge that the Release negotiated herein shall not apply to any litigation or claim not related to or arising out of the Data Breach, or any such litigation or claims pending against RMCHCS.

SETTLEMENT APPROVAL PROCESS

12. Preliminary Approval Order: Plaintiffs will petition the Court for a preliminary order approving the Settlement Agreement (the “Preliminary Approval Order”) promptly after the Settlement Agreement has been fully executed. A copy of the proposed Preliminary Approval Order is attached as **Exhibit D**.

13. Class Notice: Within ten (10) days after entry of the Preliminary Approval Order, RMCHCS will provide a class list to the Claims Administrator with the last-known names, addresses, and emails (if any) of the Settlement Class Members. Within 30 days after entry of the Preliminary Approval Order (the “Notice Deadline”), the Claims Administrator will send the Short Notice (entitled “Notice of Proposed Class Action Settlement”) (attached as **Exhibit B**) to Settlement Class Members by U.S. mail or email, if available, which notice will advise that Settlement Class Members have 90 days from the date the Short Form Notice is sent to submit a claim for compensation. The Claims Administrator will send Settlement Class Members to whom RMCHCS previously mailed notice of the Data Breach the above notice via U.S. mail or, if a valid email address is available, by email. Before mailing the notice, the Claims Administrator will update the Settlement Class Members address through a reliable service of the Claims Administrator’s choosing that is consistent with its customary business practices. If a notice is returned to the Claims Administrator as undelivered and a forwarding address is provided, the

Claims Administrator will re-mail one additional time to the new address. If a notice that has been emailed is returned as undeliverable, the Claims Administrator shall attempt one additional email execution, and, if not successful, the Claims Administrator shall send the notice by U.S. mail.

14. Right of Exclusion: Settlement Class Members who submit a timely written request for exclusion from the Settlement Class will be excluded from the Settlement Class. Only Settlement Class Members who do not submit a timely written request for exclusion from the Settlement will remain Settlement Class Members entitled to receive benefits pursuant to this Settlement Agreement. A request for exclusion must be in writing and must state the name, address, and phone number of the person seeking exclusion. Each request must also contain a signed statement to the following effect: "I request to be excluded from the Settlement Class in the RMCHCS lawsuit." The request must be mailed to the Claims Administrator at the address provided in the Class Notice no later than 60 days after the Notice Deadline, or any other date set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Class Notice, or that is not mailed by the deadline will be invalid, and the person submitting the request will remain a Settlement Class Member. A Settlement Class Member who cashes a check from RMCHCS or submits a valid claim form is not eligible for exclusion, and any request for exclusion will be invalid. Class Counsel will file a list of Settlement Class Members requesting exclusion with the Court. If more than two percent of the Settlement Class Members request exclusion, RMCHCS will have 5 business days from the date it receives written notice from the Claims Administrator of the final number of opt-outs to elect whether or not to cancel this agreement and render the settlement void and of no effect. A copy of the Exclusion Form is attached as **Exhibit F**.

15. Right to Object: Any Settlement Class Member who does not submit a timely written request for exclusion from the Settlement Class may object to the settlement and may appear in person or through counsel, at his or her own expense, at the final approval hearing to present any relevant evidence or argument. No Settlement Class Member will be heard and no papers submitted by any Settlement Class Member will be considered unless, no later than 60 days after the Notice Deadline, or any other date set by the Court, the Settlement Class Member files with the Court and mails to Class Counsel and RMCHCS's counsel written objections that include: (1) the title of the case; (2) the Settlement Class Member's name, address, and telephone number; (3) all legal and factual bases for any objection; and (4) copies of any documents that the Settlement Class Member wants the Court to consider. Should the Settlement Class Member wish to appear at the Final Approval Hearing, the Settlement Class Member must so state, and must identify any documents or witnesses the Settlement Class Member intends to call on his or her behalf. Any Settlement Class Member who fails to object in this manner will be deemed to have waived any objections. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Section. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final Order and Judgment approving this Settlement Agreement, or any other judgment entered thereon shall be pursuant to appeal under the Federal Appellate Rules of Procedure and not through a collateral attack.

16. Final Judgment Order: At the final approval hearing, the parties will ask the Court to enter final judgment (the "Final Judgment and Order"). A copy of the proposed Final Judgment and Order is attached as **Exhibit E**. In the event that the Settlement Agreement is not

granted final approval by the Court: (i) the Parties shall be restored to their respective positions in the Lawsuit and shall jointly request that all scheduled deadlines in the Lawsuit be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Lawsuit or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*, unless the Parties mutually agree in writing to proceed with the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, RMCHCS shall be obligated to pay amounts already billed or incurred for costs of notice and claims administration, and shall not, at any time, seek recovery of same from any other Party to the Lawsuit or from counsel to any other Party to the Lawsuit.

17. Finality of Judgment: The Final Judgment and Order will be deemed final, and the Effective Date will occur: (a) 35 days after the Final Judgment and Order is entered if no notice of appeal or motion tolling the time for appeal is filed; or (b) if any such document is filed, 14 days after all appellate proceedings (including proceedings in the Court in the event of a remand) have been finally terminated and the Settlement Agreement has been finally approved in all material respects.

MISCELLANEOUS PROVISIONS

18. Integration and Drafting: The Settlement Agreement was drafted and negotiated by counsel for the Parties at arm's length. It sets forth the entire agreement among the Parties.

19. Amendment, Court Approval, Extensions: The Settlement Agreement may not be amended without the written consent of all Parties and approval of the Court; provided, however, that the Parties may agree to reasonable extensions of time to carry out any provision of the Settlement Agreement, and provided further that any extension of more than 30 days must be approved by the Court.

20. Construction: The Settlement Agreement has been drafted by all Parties and shall not be construed for or against any of the Parties.

21. Integration of Exhibits: The exhibits to the Settlement Agreement are incorporated by reference and are an integral part of the Settlement Agreement.

22. Counterparts: The Settlement Agreement may be executed in counterparts, each of which will be considered an original. Executed signature pages are valid and enforceable whether they are originals or copies, and whether transmitted by facsimile, email, or any other means.

23. No Evidence, No Admission: In no event shall the Settlement Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it be offered or received as evidence in the Lawsuit or in any other proceeding, except in a proceeding to enforce the Settlement Agreement (including its release). Without limiting the foregoing, neither the Settlement Agreement nor any related negotiations will be offered or received as evidence, or as an admission or concession, by any person of any matter, including but not limited to any alleged

wrongdoing on the part of RMCHCS or the appropriateness of certification of any class. By entering into this Settlement Agreement RMCHCS does not admit liability or fault.

24. Tax Consequences: RMCHCS gives no opinion as to the tax consequences of the settlement to Settlement Class Members or anyone else. Each Settlement Class Member's or other person's tax obligations, if any, and the determination of those obligations, are the sole responsibility of the Settlement Class Member or other person. RMCHCS will act as it determines is required by the Internal Revenue Code in reporting any settlement benefit provided pursuant to the Settlement Agreement.

25. Cooperation in Effecting Settlement: The Parties, their successors and assigns, and their attorneys will implement the Settlement Agreement in good faith, use good faith in resolving any disputes that may arise in the implementation of the Settlement Agreement, cooperate with one another in seeking Court approval of the Settlement Agreement, and use their best efforts to affect the prompt consummation of the Settlement Agreement.

26. Publicity: The Parties will cooperate with each other regarding public statements about the settlement and may issue a joint statement/press release if they mutually agree to do so. Notwithstanding the foregoing, the Parties may include on their websites or provide to Settlement Class Members, the notice, any signed orders from the Court regarding the settlement, and may respond to inquiries from Settlement Class Members regarding the substance of the settlement, provided however that such responses shall in no way be disparaging to a Party. RMCHCS may, at its sole discretion, make a public statement about its operating procedures, or changes to these procedures, relating to cybersecurity.

27. Authority to Execute Agreement: Each person executing the Settlement Agreement represents that he or she is authorized to execute it.


Alicia Charlie (Oct 24, 2022 16:00 MDT)

Alicia Charlie

Oct 24, 2022

Date:


Darrell Tsosie (Oct 24, 2022 15:41 MDT)

Darrell Tsosie

Oct 24, 2022

Date:


Leona Garcia Lacey (Oct 25, 2022 06:55 MDT)

Leona Garcia Lacey

Oct 25, 2022

Date:


Gary N Hicks for EH (Oct 24, 2022 17:25 PDT)

E.H. (by and through his guardian, Gary Hicks)

Oct 24, 2022

Date:

**REHOBOTH MCKINLEY CHRISTIAN
HEALTH CARE SERVICES**

Signature

By: _____
Name

Title

Date: _____

Approved as to Form by Counsel:

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC
Attorneys for Plaintiffs and the Settlement Class

David Lietz
David Lietz (Oct 24, 2022 17:33 EDT)

David K. Lietz
Gary M. Klinger

Date: **Oct 24, 2022**

LEWIS BRISBOIS BISGAARD & SMITH, LLP
Attorneys for Rehoboth McKinley Christian
Health Care Services

Jon Kardassakis

Date: _____

**REHOBOTH MCKINLEY CHRISTIAN
HEALTH CARE SERVICES**

Robert Whitaker
Signature

By: Robert Whitaker
Name

CEO
Title

Date: 24 OCT 2022

Approved as to Form by Counsel:

**MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC
Attorneys for Plaintiffs and the Settlement Class**

David K. Lietz
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Date: October 24, 2022