

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by and between (1) Michelle Harris-Barber, individually and as a representative of the Settlement Class Members (“Plaintiffs”), as defined below; and (2) UPMC Presbyterian Shadyside (“UPMC”). Plaintiffs, Settlement Class Members, and UPMC are collectively referred to as the “Parties.” This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, settle and extinguish all released rights and claims of Plaintiffs and Settlement Class Members, in accordance with the terms and conditions of this Settlement Agreement.

RECITALS

WHEREAS, on June 6, 2018, Plaintiffs initially commenced a medical negligence action styled *Michelle Harris-Barber, on behalf of herself and all other similarly situated individuals v. UPMC Presbyterian Shadyside*, GD No. 18-007288 (Court of Common Pleas of Allegheny County, Pennsylvania). Due to an inability to secure a Certificate of Merit to support their professional negligence claims, plaintiffs voluntarily discontinued that lawsuit on August 9, 2018;

WHEREAS, on September 24, 2018, Plaintiffs initiated the instant lawsuit styled *Michelle Harris-Barber, on behalf of herself and all other similarly situated individuals v. UPMC Presbyterian Shadyside*, GD No. 18-012330 (Court of Common Pleas of Allegheny County, Pennsylvania);

WHEREAS, the above referenced lawsuit alleges that Ms. Harris-Barber is one of thousands of patients who presented to the emergency room of UPMC Presbyterian Shadyside (Oakland campus) between October 28, 2017, and February 28, 2018, and were allegedly exposed to the tuberculosis bacterium (TB) by a UPMC Presbyterian Shadyside employee who was infected with TB disease. It is alleged that during this time period, a person in the Emergency Department

was permitted to work in the hospital, treat patients and come into contact with patients' loved ones and family members while infected with an active TB infection. In March of 2018, the hospital allegedly finally discovered that the employee was and had been infected with TB. UPMC sent all potentially exposed persons a certified letter dated April 11, 2018, advising that they may be at risk of TB infection and directing all persons to contact the Allegheny County Health Department Tuberculous Clinic for a follow-up appointment to receive a tuberculin skin test and advised that additional steps beyond the skin test may be necessary. Ms. Harris-Barber allegedly complied with the directive and received additional treatment and testing related to her TB exposure;

WHEREAS, the above referenced lawsuit claims that UPMC failed to have in place the required administrative measures and controls to reduce the risk for exposure to persons who might have TB disease and that it breached the standard of care by failing to require health care providers to receive baseline TB screening upon hire as well as annual TB screening. Plaintiffs also allege vicarious liability for the employee's actions in exposing patients to TB;

WHEREAS, on June 9, 2021, Defendant filed an Answer and New Matter, denying the material allegations of the Second Amended Complaint, denying liability and raising defenses to Plaintiffs' claims;

WHEREAS, the Parties are willing to enter into this Settlement Agreement to settle and extinguish all claims of the Plaintiffs and Settlement Class Members because of, among other reasons, the attendant expense, risks, difficulties, delays, and uncertainties of continued litigation;

WHEREAS, Plaintiffs and Settlement Class Counsel believe that this Settlement Agreement provides fair, reasonable, and adequate relief to the Settlement Class Members and, it is in the best interest of the Settlement Class Members for the Litigation to be settled,

compromised, and dismissed on the merits and with prejudice on the terms set forth below, subject to the approval of the Court; and,

WHEREAS, UPMC denies all claims asserted against it in the Litigation, denies that class certification would be appropriate if the case was litigated rather than settled, denies all allegations of wrongdoing and liability, and denies that anyone was harmed by the conduct alleged, but nevertheless desires to settle and extinguish all claims of the Plaintiffs and Settlement Class Members on the terms and conditions set forth in this Settlement Agreement for the purpose of avoiding the burden, expense, risk and uncertainty of continuing the proceedings on those issues in the Litigation and fully, finally, and forever putting to rest and extinguishing the controversies engendered.

NOW THEREFORE, IT IS AGREED, by and among the Parties, without (a) any admission or concession of the lack of merit of the Litigation whatsoever on the part of Plaintiffs, or (b) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by UPMC, that the Litigation and all claims of the Plaintiffs and Settlement Class Members be settled, compromised, extinguished and dismissed with prejudice on the merits and on the terms set forth below, subject to the approval of the Court.

I. DEFINITIONS

As used in this Settlement Agreement, the terms defined below shall have the meanings assigned to them when capitalized in the same fashion as in this Section I. Any other terms have their customary meaning.

1.1 “Settlement Class Members” shall mean those persons identified as follows:

All patients of Defendant UPMC, who, as reflected by UPMC’s records were potentially exposed to active tuberculosis infection, including those persons who: 1) went to the emergency room of UPMC Presbyterian Shadyside for medical treatment between October 28, 2017, and February 28, 2018; 2) to whom UPMC

sent a certified letter dated April 11, 2018, advising them they were at risk of infection or illness; and 3) who thereafter obtained a medical test or tests from UPMC or otherwise.

Based upon UPMC's records there are approximately 313 Settlement Class Members.

1.2 The "Known Settlement Class Members" consist of those Settlement Class Members as to whom UPMC sent a certified letter advising them they were at risk of infection or illness and as to such persons UPMC has a record of them having obtained a medical test. According to UPMC records there are 313 Known Settlement Class Members

1.3 The "Claiming Settlement Class Members" consist of those Settlement Class Members as to whom UPMC sent a certified letters advising them they were at risk of infection or illness but as to whom UPMC does not have a record of such persons having obtained a medical test.

1.4 "Attorneys' Fees" means the attorneys' fees and expenses applied for by Settlement Class Counsel relating to this Settlement Agreement and approved by the Court.

1.5 "Class Settlement Agreement" or "Settlement Agreement" means this Settlement Agreement and Release.

1.6 "Court" means the Court of Common Pleas of Allegheny County, Pennsylvania.

1.7 "Defendant" means UPMC Presbyterian Shadyside.

1.8 "Effective Date" means the date on which the Court's Final Approval Order has become final because either (i) no appeal of the Final Approval Order has been filed and the time provided by the applicable rules of civil procedure within which an appeal may be filed has lapsed, or (ii) if one or more timely appeals have been filed, all such appeals are finally resolved, with no possibility of further appellate review, resulting in final judicial approval of this Settlement Agreement. For purposes of this definition, the term "appeal" includes writ proceedings. The Court's

determination or approval of Plaintiffs' Petition For Attorneys' Fees shall not affect the Effective Date or be used as a basis for determining the Effective Date.

1.9 “Final Approval” means the approval of the Settlement Agreement by the Court at or after the Final Approval Hearing, and entry on the Court’s docket of the Final Approval Order.

1.10 “Final Approval Order” means a final order and judgment, entered by the Court giving Final Approval to the Settlement Agreement, and dismissing all claims of the Plaintiffs and Settlement Class Members, with prejudice and entering a judgment according to the terms set forth in this Settlement Agreement.

1.11 “Final Approval Hearing” or “Final Fairness Hearing” means the hearing at which the Court will consider and finally decide whether to approve this Settlement, enter the Final Approval Order, and make such other rulings as are contemplated by this Settlement.

1.12 “Litigation” means the lawsuit captioned as: *Michelle Harris-Barber, on behalf of herself and all other similarly situated individuals v. UPMC Presbyterian Shadyside*, GD No. 18-012330 (Court of Common Pleas of Allegheny County, Pennsylvania).

1.13 “Mail Notice” means the notice (in a form substantially similar to that attached hereto as Exhibit A and B approved by the Court) that will be mailed to the proposed Settlement Class Members pursuant to the Notice Plan.

1.14 “Named Plaintiff” or “Plaintiffs” means the Plaintiffs named in the Litigation.

1.15 “Notice and Administration Expenses” means the fees, costs, and expenses incurred by the Settlement Administrator in order to carry out its obligations under this Settlement Agreement.

1.16 “Notice Plan” means the plan for disseminating notice to proposed Settlement Class Members as described in Sections 4.1 and 4.2 hereof.

1.17 “Parties” means Plaintiffs and UPMC.

1.18 “Payment Notice” means the notice sent to Settlement Class Members at the time of payment pursuant to Subsection 7.3.4 of this Settlement Agreement.

1.19 “Preliminary Approval” means preliminary approval, by the Court, of the Settlement Agreement, conditional certification of the Settlement Class, approval of Settlement Class Counsel, and approval of the method and content of notice to the Settlement Class.

1.20 “Preliminary Approval Order” means the order entered by the Court granting Preliminary Approval.

1.21 “Released Parties” means and refers to UPMC Presbyterian Shadyside, and their respective present, former and future affiliates, divisions, parents, subsidiaries, corporate family members, insurers, indemnitors, officers, directors, partners, employees, agents, attorneys, servants, heirs, administrators, executors, members, member entities, shareholders, predecessors, successors, representatives, trustees, principals, vendors, and assigns, individually, jointly and severally.

1.22 “Settlement” means the agreement between the Named Plaintiff (on behalf of herself and as representatives of the Settlement Class Members) and UPMC to settle, compromise, and extinguish Named Plaintiff and the Settlement Class Members’ claims in the Litigation, as to Defendant, as memorialized in this Settlement Agreement and the accompanying documents attached hereto, fully, finally and forever.

1.23 “Settlement Administrator” means Analytics Consulting, LLC.

1.24 “Settlement Class Counsel” or “Class Counsel” means, Brendan Lupetin, Esquire of Lupetin & Unatin, LLC and Mark A. Smith, Esquire of The Law Office of Mark A. Smith.

1.25 “Settlement Fund” means the account established and the funds to be deposited pursuant to Section 7.1.1 of this Settlement Agreement.

1.26 “Settlement Relief” means the consideration each Settlement Class Member shall receive pursuant to this Settlement Agreement or which is available for the Settlement Class Member to receive.

1.27 “Settlement Website” means the Internet website established by the Settlement Administrator.

1.28 “UPMC’s Counsel” means Dickie, McCamey & Chilcote, P.C.

II. NO ADMISSION OF LIABILITY OR ELEMENTS OF CLASS CERTIFICATION

2.1 UPMC’s Denial Of Wrongdoing Or Liability

UPMC has asserted and continues to assert many defenses in this Litigation and has expressly denied and continues to deny any fault, wrongdoing or liability whatsoever arising out of the conduct alleged in the Litigation. UPMC expressly denies any fault, wrongdoing or liability whatsoever, as well as the validity of each of the claims and prayers for relief asserted in the Litigation. The Parties expressly acknowledge and agree that neither the fact of, nor any provision contained in, this Settlement Agreement, nor any of the implementing documents or actions taken under them, nor UPMC’s willingness to enter into this Settlement Agreement, nor the content or fact of any negotiations, communications, and discussions associated with the Settlement shall constitute or be construed as an admission by or against UPMC, or any of the Released Parties, of any fault, wrongdoing, violation of law or liability whatsoever, the validity of any claim or fact alleged in the Litigation, or any infirmity of any defenses asserted by UPMC in the Litigation.

2.2 No Admission by UPMC of Elements of Class Certification

Plaintiffs and UPMC agree and stipulate that a Settlement Class should be certified for settlement purposes only. Other than for purposes of this Settlement Agreement, UPMC denies that a litigation class could be properly certified, and reserves its rights to continue to contest any class certification motion. Nothing in this Settlement Agreement shall be construed as an

admission by UPMC or any of the Released Parties that this Litigation or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent UPMC from continuing to object to certification of a class or classes if Final Approval of this Settlement is not obtained, or not upheld on appeal, including review by the Appellate Courts of Pennsylvania.

III. MOTION FOR PRELIMINARY APPROVAL

3.1 Motion for Preliminary Approval

3.1.1 On or before June 28, 2023, Settlement Class Counsel shall file this Settlement Agreement with the Court together with a Motion for Preliminary Approval.

3.1.2 The Motion for Preliminary Approval shall seek entry of an order that would, for settlement purposes only: (i) certify a conditional settlement class under Pennsylvania Rules of Civil Procedure 1707, composed of the Settlement Class Members as described in Section 1.1; (ii) preliminarily approve this proposed Settlement Agreement; (iii) approve the proposed Mail Notice to the proposed Settlement Class Members in a form substantially similar to that attached hereto as Exhibits A and B; (iv) certify the Named Plaintiffs as representatives of the Settlement Class; (v) appoint Settlement Class Counsel; and, (vi) appoint the Settlement Administrator.

3.2 Selection of Settlement Administrator

3.2.1 The Parties have agreed that Analytics Consulting, LLC will be retained as the Settlement Administrator.

IV. NOTICE PLAN

4.1 Preparation and Production of Settlement Class Lists

4.1.1 UPMC shall provide a list of Known Settlement Class Members to Settlement Class Counsel and a list of Claiming Settlement Class Members. Each list shall contain, as reflected in UPMC's records, the name, last known address, social security number and telephone number for

each such Settlement Class Member. The Parties shall resolve any disputes regarding the proposed list of Settlement Class Members on or before 5 days before the hearing for Preliminary Approval. Any remaining disputes shall be resolved by the Court at the hearing for Preliminary Approval, or on the papers if no hearing is held.

4.1.2 The Parties agree that there are approximately 313 Settlement Class Members. This estimate constitutes a material term of the Settlement.

4.2 Notice Process

4.2.1 For purposes of providing court-approved class notices and establishing that the best practicable notice has been given, the provision of class notice will be accomplished in accordance with the following provisions.

4.2.2 Those Settlement Class Members identified as being “Known Settlement Class Members” shall receive the notice attached hereto as Exhibit “A”.

4.2.3 Those Settlement Class Members identified as being “Claiming Settlement Class Members” shall receive the notice attached hereto as Exhibit “B” including both a cover letter and a Claim Form.

4.2.4 Mail Notice

4.2.4.1 Mail Notice To Known Settlement Class Members: Within thirty (30) days following Preliminary Approval, the Settlement Administrator shall cause the Exhibit A Mail Notice to be sent via first-class U.S. mail, postage prepaid, to all Known Settlement Class Members on the list provided by UPMC and approved by Plaintiffs. Prior to sending the Mail Notice, the Settlement Administrator shall update mailing addresses of Known Settlement Class Member through the United States Postal Service National Change of Address database or other database for purposes of updating Settlement Class Member addresses and utilize a "best practices" address verification resource to identify missing addresses. For up to thirty (30) days following mailing

of the Mail Notice, the Settlement Administrator will re-mail the Mail Notice via first-class U.S. mail, postage prepaid, to updated addresses of Known Settlement Class Members identified on the lists provided by UPMC and approved by Plaintiffs, to the extent that the Settlement Administrator receives address change notifications from the U.S. Postal Service or is otherwise reasonably able to obtain an updated address.

4.2.4.2 Mail Notice to Claiming Settlement Class Members: Within thirty (30) days following Preliminary Approval, the Settlement Administrator shall cause the Exhibit B Mail Notice and the Claim Form to be sent via first-class U.S. mail, postage prepaid, to all Claiming Settlement Class Members on the list provided by UPMC and approved by Plaintiffs. Prior to sending the Mail Notice and the Claim Form, the Settlement Administrator shall update mailing addresses of Claiming Settlement Class Member through the United States Postal Service National Change of Address database or other database for purposes of updating Settlement Class Member addresses and utilize a "best practices" address verification resource to identify missing addresses. For up to thirty (30) days following mailing of the Mail Notice, the Settlement Administrator will re-mail the Mail Notice via first-class U.S. mail, postage prepaid, to updated addresses of Claiming Settlement Class Members identified on the lists provided by UPMC and approved by Plaintiffs, to the extent that the Settlement Administrator receives address change notifications from the U.S. Postal Service or is otherwise reasonably able to obtain an updated address.

4.2.4.3 Not later than twenty (20) days before the Final Fairness Hearing, the Settlement Administrator shall cause proof of the mailing of the Exhibit A Mail Notice sent to the Known Settlement Class Members and the Exhibit B Mail Notice sent to Claiming Settlement Class Members to be filed with the Court. Neither the Parties nor the Settlement Administrator shall

have any further obligation to send notice of the Settlement to Settlement Class Members, except as provided in the Settlement Agreement.

4.2.3.5 Internet Notice

The Settlement Administrator shall establish an Internet website containing information about the Settlement at <http://www.UPMCCClassAction.com>. The Settlement Website will be accessible no later than five (5) days prior to the mailing of the Mail Notices described above. The Settlement Website will set forth the following information: (i) the full text of the Settlement Agreement; (ii) the Exhibit A Mail Notice To Known Settlement Class Members; (iii) the Exhibit B Mail Notice And Claim Form To Claiming Settlement Class Members (iv) the Preliminary Approval Order and other relevant orders of the Court; (v) with the consent of UPMC (which shall not be unreasonably withheld), other documents and information determined in good faith by Settlement Class Counsel to be reasonably necessary for effectuating of this settlement and notice process; (vi) if the Settlement is terminated, a notice approved by the Parties notifying Settlement Class Members of such termination; and (vi) contact information for Settlement Class Counsel and the Settlement Administrator.

Any language or information appearing on the website in addition to the above-listed documents shall appear only with the prior consent of all Parties. Not later than twenty (20) days before the Final Fairness Hearing, the Settlement Administrator shall cause proof of the establishment and maintenance of the Settlement Website to be filed with the Court. The Court, without right of appeal, shall resolve any disputes under this Subsection.

4.2.3.6 Telephone Assistance Program

The Settlement Administrator shall establish a toll-free telephone number, which will be staffed by the Settlement Administrator, to answer questions from Settlement Class Members. The

toll-free number will provide access to live support, a voice response unit (“VRU”), or a combination of live support and VRU. Not later than twenty (20) days before the Final Fairness Hearing, the Settlement Administrator shall cause proof of the establishment and maintenance of the Telephone Assistance Program to be filed with the Court. The Settlement Administrator shall maintain the telephone assistance program described in this Subsection until sixty (60) days following the mailing of the last Payment Notice, pursuant to Subsection 7.3.4.

V. PROCEDURES FOR CLAIMS, OPT-OUTS AND OBJECTIONS

5.1 Opt-Out Procedures

The Mail Notices shall contain information about how a Settlement Class Member may opt out of the Settlement, as well as the potential implications of doing so, including that opting out may preclude later participation in any class action against the Released Parties.

5.1.1 A proposed Settlement Class Member may request to be excluded from the Settlement Class by sending a written request for exclusion to “Exclusion Requests – *Harris-Barber v. UPMC Presbyterian Shadyside*, Settlement Administrator” to the address for the Settlement Administrator provided in the Mail Notice. The proposed Settlement Class Member opt-out request must contain the Settlement Class Member’s original signature, current postal address and telephone number, the last four digits of the Settlement Class Member’s Social Security number, and a specific statement that the proposed Settlement Class Member wants to be excluded from the Settlement Class. Opt-out requests must be postmarked no later than twenty-one (21) days before the Final Approval Hearing.

5.1.2 Requests for exclusion that do not comply with Subsection 5.1.1 are invalid.

5.1.3 In no event shall Settlement Class Members as a group, aggregate, or class involving more than one person be considered valid opt-outs.

5.2 List of Opt Outs

No later than five (5) business days after the deadline for submission of opt-out requests, the Settlement Administrator shall provide to Settlement Class Counsel and UPMC's Counsel a complete list of all proposed Settlement Class Members who have properly opted out of the Settlement together with copies of the opt-out requests.

5.3 Representation of Opt-Outs

Settlement Class Counsel agree that this Settlement Agreement is fair, reasonable, and in the best interest of the Settlement Class Members. Settlement Class Counsel agree that persons who seek to opt-out should be represented by counsel who may not agree that the Settlement Agreement is fair, reasonable, and in the best interest of the Settlement Class Members. Accordingly, Settlement Class Counsel shall, if contacted, refer any such opt-outs to the applicable state bar association or other referral organization for appropriate counsel in any subsequent litigation against the Released Parties.

5.4 Objections from Settlement Class Members

5.4.1 Any Settlement Class Member who does not opt out, but who instead wishes to object to the Settlement or any other matters as described in the Mail Notices, may do so by filing with the Court a notice of his or her intention to object (which shall set forth each objection and the basis therefore and containing the objecting Settlement Class Member's signed verification of membership in the Settlement Class), with any papers in support of his or her position, and serve copies of all such papers upon Settlement Class Counsel and UPMC's Counsel at the addresses provided in the Mail Notice. Objections must be filed and served no later than twenty-one (21) days before the Final Fairness Hearing.

5.4.2 Objections to the Settlement Class Counsel's attorneys' fees may be supplemented up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. Finally, the written objection must indicate whether the Settlement Class Member and/or his lawyer(s) intend to appear at the Final Fairness Hearing. Any lawyer who intends to appear at the Final Fairness Hearing must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the date set by the Court in its Preliminary Approval Order and shall include the full caption and case number of each previous class action case in which that counsel has represented an objector.

VI. FINAL FAIRNESS HEARING AND FINAL APPROVAL

6.1 Final Fairness Hearing

The Parties will jointly request that the Court hold the Final Fairness Hearing to consider approval of the Settlement of the Litigation as provided for herein approximately one hundred (100) days after Preliminary Approval. The Parties agree that the Final Approval Order constitutes a final judgment, dismissing the Litigation with prejudice.

6.2 Final Approval

All relief contemplated by this Settlement Agreement is expressly contingent upon the Settlement Agreement receiving the Court's Final Approval.

VII. SETTLEMENT FUND

7.1 Creation of and Deposit Into Settlement Fund

7.1.1 Within five (5) days after Preliminary Approval of this Settlement Agreement by the Court, Settlement Class Counsel shall provide to the Settlement Administrator the information necessary to create an account for placement of the Settlement Fund. Settlement Class Counsel and Defendant's Counsel shall direct the Settlement Administrator to make distributions from the Settlement Fund only in accordance with this Settlement Agreement. No funds shall be distributed

or paid by the Settlement Administrator without written confirmation from both Settlement Class Counsel and Defendant's Counsel. Settlement Class Counsel shall promptly notify UPMC's Counsel of the date of the establishment of the Settlement Fund account. The Settlement Fund may not be commingled with any other funds and may be held in cash, cash equivalents, certificates of deposit or instruments insured by an arm of or backed by the full faith and credit of the United States Government. Interest earned, if any, on the Settlement Fund shall be for the benefit of the Settlement Class Members in the event this Settlement Agreement is not terminated by the Parties, and the Effective Date otherwise occurs.

7.1.2 Within twenty (20) business days following Preliminary Approval, UPMC shall deposit or cause to be deposited, with the Settlement Administrator, by draft or by wire, an initial amount equal to the sum of Six Hundred And Fifty dollars (\$650.00) for each member of the Known Settlement Class Member. The Parties agree that this amount is \$203,450.00 based upon the 313 Known Settlement Class Members who have been identified from UPMC's records.

7.2.2 Settlement Class Claims Process For Claiming Settlement Class Members

7.2.2.1 Each Claiming Settlement Class member is also eligible to be paid Six Hundred And Fifty dollars (\$650.00), but must first affirmatively state in writing through a notice and claims process administered by the Class Action Settlement Administrator that they have obtained blood testing as a result of the incident at the Hospital. A copy of the form of the Claiming Settlement Class claim form is attached to the Exhibit B Mail Notice to be sent to Claiming Settlement Class Members. As set forth above, the Claim Form shall be mailed to each Claiming Settlement Class Member along with the Mail Notice.

7.2.2.2 Each Claiming Settlement Class Member shall have 60 days from the date of mailing of the Mail Notice and Claim Form to submit a completed Claim Form to the Settlement Administrator.

7.2.2.3 The Settlement Administrator shall initially, and if the Settlement Administrator is unable to, then Settlement Class counsel and Defendant shall jointly, make a determination as to whether the Claiming Settlement Class Member has adequately demonstrated eligibility for recovery under this Paragraph.

7.2.2.4 If, after a period of thirty (30) days from the date of Mail Notice, a Claiming Settlement Class Member has not submitted a Claim Form, then the Settlement Administrator shall provide by mail all such Claiming Settlement Members a Reminder Notice of their right to submit a Claim Form to obtain a payment under this settlement. Then after a period of forty-five (45) days from the date of Mail Notice, if any Claiming Settlement Class Member has not submitted a Claim Form, then the Settlement Administrator may contact such Class Member by telephone to remind them of their right to submit a Claim Form.

7.2.2.5 If a Claiming Settlement Class Member elects not to or fails to submit a Claim Form and is not provided a payment by the Settlement Administrator, such class member shall still be barred from asserting any claim, individually, as a representative of a class, or as a class member of a class of persons under federal or state law, arising from the acts, omissions, facts, matter, transactions, or occurrences alleged in the Litigation.

7.2.2.6 Within fifteen (15) days after the close of the Claim processes described in this Section, the Settlement Administrator will notify the Parties of the number of persons it has determined to be Claiming Settlement Class Members. Within ten (10) days thereafter, Defendant shall make a supplemental funding into the Settlement Fund in an additional amount equal to the

sum of Six Hundred And Fifty dollars (\$650.00) for each Claiming Settlement Class member who has submitted a valid Claim Form.

7.3 Use and Disbursement of Settlement Fund

7.3.1 Each member of the Known Settlement Class shall automatically be paid Six Hundred And Fifty dollars (\$650.00) per class member as of the Effective Date of this settlement by the Settlement Administrator.

7.3.2 Within five (5) days after the Effective Date, the Settlement Administrator shall mail Payment Notices and settlement checks in accordance with paragraphs 7.3.1 and 7.3.2 via U.S. Mail. The Payment Notices accompanying the settlement checks shall notify the recipients that the checks must be cashed within forty-five (45) days from the date on the Payment Notice and that the enclosed check shall not be valid after that date. Forty-five (45) days after the date on the Payment Notice, if the check has not been deposited or cashed, the amount of the check shall remain in the Settlement Fund for further distribution pursuant to this Settlement Agreement.

7.3.3 Each member of the Claiming Settlement Class who has submitted a valid Claim Form shall be paid Six Hundred And Fifty dollars (\$650.00) per class member as of the Effective Date of this settlement by the Settlement Administrator.

7.3.4 Within five (5) days after the Effective Date, the Settlement Administrator shall mail Payment Notices and settlement checks to Claiming Settlement Class Members in accordance with paragraphs 7.2.2.1 whose Claim Forms have been approved via U.S. Mail. The Payment Notices accompanying the settlement checks shall notify the recipients that the checks must be cashed within forty-five (45) days from the date on the Payment Notice and that the enclosed check shall not be valid after that date. Forty-five (45) days after the date on the Payment Notice, if the

check has not been deposited or cashed, the amount of the check shall remain in the Settlement Fund for further distribution pursuant to this Settlement Agreement.

7.3.5 Taxes and Tax Expenses. Taxes and Tax Expenses shall be paid by the Settlement Administrator as an expense of notice and administration.

7.3.6 Cy Pres. Within one-hundred eighty (180) days after the Effective Date, any excess funds remaining in the Settlement Fund shall be paid to an appropriate public interest beneficiary designated by Settlement Class Counsel, subject to Court approval and reasonable objection by Defendant.

VII. ATTORNEYS' FEES, LITIGATION COSTS AND COSTS OF NOTICE AND ADMINISTRATION

8.1 Attorneys Fees and Costs

8.1.1 The Defendant stipulates for purposes of determining an appropriate and reasonable attorneys fee and litigation costs award that the Plaintiffs and the Settlement Class Members are the prevailing parties in their claims brought against UPMC.

8.1.2 UPMC agrees to pay, subject to Court approval, to Settlement Class Counsel: (a) \$67,748.00 for reasonable attorneys' fees; and (b) \$2,902.00 for reasonable litigation costs and expenses. This payment will be independent and not paid from the Settlement Fund or any payment otherwise made to Settlement Class members.

8.1.3 Any awarded attorneys' fees or costs will be paid by UPMC within twenty (20) days after the date such fees and/or costs are ordered, and any appeal rights are exhausted.

8.1.4 The application or applications for Attorneys' Fees, and any and all matters related thereto, shall not be considered part of the Settlement Agreement, and shall be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Plaintiffs and Settlement Class Counsel agree that this Settlement Agreement is

not conditional on the Court's approval of Attorneys' Fees in the requested amount or in any amount whatsoever. The Court's ruling on the application or applications for such fees shall not operate to terminate or cancel the Settlement.

8.2 Service Awards to the Named Plaintiff

The Parties agree that the Named Plaintiff shall receive a service award. Subject to Court approval, UPMC agrees to pay, separate and apart from consideration paid to Settlement Class members service awards as follows: \$7,500.00 to Michelle Harris-Barber.

8.3 Notice and Administration Expenses

8.3.1 The Parties have obtained estimates as to the anticipated Notice and Administration Expenses. Based upon these estimates, the Parties believe that the expenses will be \$7,500.00 or less, in addition to any expense incurred in creating the Settlement Class list. The Parties have agreed that UPMC shall pay the amount of Notice and Administration Expenses without objection.

XI. RELEASE OF CLAIMS

9.1 Settlement Class Member Release

Upon the Effective Date, and in exchange for the relief described in this Settlement Agreement, all Settlement Class Members, who did not validly opt out of the Settlement and each of their respective spouses, heirs, executors, trustees, guardians, wards, administrators, representatives, agents, attorneys, partners, successors, predecessors and assigns and all those acting or purporting to act on their behalf (including the government in its capacity as *parens patriae*) completely, finally and forever release and discharge the Released Parties of all claims, actions, demands, lawsuits, rights, liabilities, damages, losses, attorneys' fees, interest, expenses, costs, except attorneys' fees, interest, expenses and costs as provided in this settlement agreement, and causes of action, whether accrued or unaccrued, known or unknown, fixed or contingent, including without limitation extra contractual damages, damages at law or in equity, or penalties

of any kind or description which now exist or heretofore existed, by or on behalf of any Settlement Class Member against UPMC, which arise from the acts, omission, facts, matter, transactions, or occurrences alleged in the action, or which could have been, or were indirectly alleged, asserted, described, set forth or referred to in the Action.

9.2 No Waiver of Right of Contribution or Indemnity

Nothing contained in this Settlement Agreement or in any proceedings concerning the Litigation shall in any way affect UPMC's rights to seek contribution, indemnity or any other relief from any person or entity not a party to this Settlement Agreement. All such rights and remedies are specifically retained and preserved.

X. TERMINATION AND SUSPENSION

10.1 Rights to Terminate Agreement

UPMC's willingness to settle this Litigation on a class-action basis and to agree to the certification of a conditional Settlement Class is dependent upon achieving finality in this Litigation and avoiding the expense of this and other litigation. Consequently, either party shall have the right to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement if any of the following conditions subsequently occurs:

- (a) The Court fails or declines to grant Preliminary Approval;
- (b) The Court materially modifies the Final Approval Order such that it is not acceptable to that party;
- (c) The estimates of Settlement Class Members stated in Subsection 4.1.3 increases by more than 3%, unless Defendant elects to make a proportionate increase in the amount it deposits or cause to be deposited into the Settlement Fund;

(d) The Effective Date does not occur for any reason, including the entry of an order by any court that would require either material modification or termination of the Settlement.

(e) In addition, UPMC shall have the unilateral right to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement if more than 6% of the proposed Settlement Class Members request to opt-out of the Settlement pursuant to Section 5.1.

10.2 The failure of any Court to approve the Attorneys' Fees or incentive award in the requested amounts, or any amounts whatsoever, shall not be grounds for Named Plaintiff or Settlement Class Counsel to terminate this Settlement Agreement.

10.3 Procedure for Terminating Agreement

To terminate this Settlement Agreement, the Party wishing to terminate shall provide written notice of termination to counsel for the non-terminating Party, via e-mail and first-class U.S. Mail. Termination of this Settlement Agreement shall become effective on the date such written notice is provided via email.

10.4 Effect of Termination on This or Future Litigation

If this Settlement Agreement is terminated:

(a) Counsel for the Parties shall seek to have any Court orders, filings, or other entries in the Court's file that result from this Settlement Agreement set aside, withdrawn, and stricken from the record;

(b) The Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection with either of them, shall be

without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and

(c) The Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

10.5 Effect on Monies Paid Pursuant to Settlement Agreement

If this Settlement Agreement is terminated or the Effective Date otherwise does not occur, the Settlement Fund, including interest earned but less Taxes and Tax Expenses that have been properly disbursed pursuant to this Settlement Agreement, shall be returned directly to UPMC or its designee(s) within five (5) days of notification by UPMC.

XI. MISCELLANEOUS PROVISIONS

11.1 Public Statements

Settlement Class Counsel agree to make no statements, directly or indirectly, to any media source, including but not limited to press releases, concerning the Settlement prior to the Preliminary Approval Hearing.

11.2 Admissibility of Settlement Agreement

This Settlement Agreement shall not be offered or be admissible in evidence in any action or proceeding except (1) the hearings necessary to obtain and implement Court approval of this Settlement; (2) any hearing to enforce the terms of this Settlement Agreement or any related order by the Court; or (3) any proceeding related to the assertion of enforcement of UPMC's rights of indemnification and contribution.

11.3 Successors and Assigns

The terms of this Settlement Agreement shall apply to and bind the Parties as well as their heirs, successors and assigns.

11.4 Communications with Parties Relating to Settlement Agreement

All notices, requests for consent, and other formal communications under this Settlement Agreement shall be in writing and sent by mail to counsel for the Party to whom the notice is directed at the following addresses:

If to Plaintiffs:

Brendan B. Lupetin, Esquire
Lupetin & Unatin, LLC
707 Grant Street
Gulf Tower, Suite 3200
Pittsburgh, PA 15219
Email: blupetin@pamedmal.com

Mark A. Smith, Esquire
The Law Office of Mark A. Smith
707 Grant Street, Suite 3250
Pittsburgh, PA 15219
Email: msmith@injurylawyerpgh.com

If to UPMC:

Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote, P.C.
2 PPG Place, Suite 400
Pittsburgh, PA 15222
412-392-5491
Email: cleee@dmclaw.com

Any Party may, by written notice to all the other Parties, change its designated recipient(s) or notice address provided above.

11.5 UPMC's Communications with Persons in the Ordinary Course of Business

UPMC reserves the right to continue communicating with its patients, including Settlement Class Members, in the ordinary course of business. To the extent that patients initiate communications regarding this Settlement Agreement, UPMC and its counsel may confirm the fact of a settlement and refer inquiries to the Settlement Administrator.

11.6 Efforts to Support Settlement

The Parties and their counsel agree to cooperate fully in seeking Court approval for this Settlement Agreement and to use their best efforts to effect the consummation of the Settlement and to protect the Settlement Agreement by applying for appropriate orders enjoining others from

initiating or prosecuting any action arising out of or related to facts or claims alleged in the Litigation, if so required.

11.7 Disputes Between Parties Relating to the Settlement Agreement

To the extent any disputes or issues arise with respect to documenting or effecting the Settlement Agreement, the Parties agree to use their best efforts to informally resolve any such disputes or issues; but in the event any such dispute or issue cannot be resolved informally, to bring any such dispute or issue to the Court for resolution.

11.8 Entire and Voluntary Agreement

The Parties intend the Settlement Agreement to be a final and complete resolution of the Litigation. The Parties agree that the terms of the Settlement Agreement were negotiated at arm's length and in good faith and were reached voluntarily after consultation with competent legal counsel. There shall be no presumption for or against any Party that drafted all or any portion of this Settlement Agreement. This Settlement Agreement contains the entire agreement and understanding concerning the subject matter between the Parties and supersedes all prior negotiations and proposals, whether written or oral. No other party or any agent or attorney of any other party has made any promise, representation or warranty whatsoever not contained in this Settlement Agreement and the other documents referred to in this Settlement Agreement to induce Plaintiffs or Settlement Class Counsel to execute the same. The Parties represent that they have not executed this Settlement Agreement or the other documents in reliance on any promise, representation or warranty not contained or referred to in this Settlement Agreement.

11.9 Headings for Convenience Only

The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

11.10 Amendments

The Settlement Agreement may be amended or modified only by a written instrument signed by UPMC and Settlement Class Counsel, or their respective successors-in-interest.

11.11 Authorization of Counsel

Settlement Class Counsel, on behalf of the Settlement Class, are expressly authorized by Plaintiffs and the Settlement Class Members to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class that they deem necessary or appropriate. Each attorney or other person executing the Settlement Agreement on behalf of any Party hereto hereby warrants that such attorney or other person has the full authority to do so.

11.12 Confidentiality

All agreements made and Orders entered during the course of the Litigation relating to the confidentiality of information, including any Stipulated Protective Order entered by the Court, shall survive this Settlement Agreement.

11.13 Court's Jurisdiction

The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement.

11.14 Construction

Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction to be made of this Settlement Agreement, the same shall not be construed against any of the Parties. Before declaring any provision of this Settlement Agreement invalid, a court should first attempt to construe the provision valid to the fullest extent

possible consistent with applicable precedent so as to find all provisions of this Settlement Agreement valid and enforceable.

11.15 No Claims Arising from this Settlement Agreement

No person shall have any claim against any Released Party, or counsel for any Released Party, Named Plaintiff, or Settlement Class Counsel, based on distribution of settlement benefits made substantially in accordance with this Settlement Agreement or any Settlement Agreement-related order(s) of the Court.

11.16 Severability

Should the Court reject or otherwise refuse to approve any of the provisions of this Settlement, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

11.17 Applicable Law

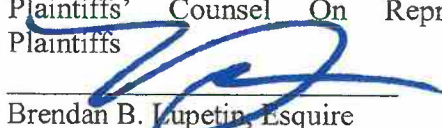
This Settlement Agreement shall, in all respects, be interpreted, construed and governed by and under the laws of the Commonwealth of Pennsylvania shall be applied. All judicial proceedings regarding this Settlement Agreement shall be brought only in the Court. Any notice period set forth in this Settlement Agreement shall be calculated pursuant to the applicable rules of civil procedure of the Court.

11.18 Counterparts

This Settlement Agreement may be executed in one or more counterparts and by facsimile. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts, and a complete set of executed counterparts shall be filed with the Court.

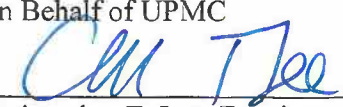
Date _____

Plaintiffs' Counsel On Representative
Plaintiffs


Brendan B. Lupetin, Esquire
Lupetin & Unatin, LLC
707 Grant Street
Gulf Tower, Suite 3200
Pittsburgh, PA 15219

Mark A. Smith, Esquire
The Law Office of Mark A. Smith
707 Grant Street, Suite 3250
Pittsburgh, PA 15219

On Behalf of UPMC


Christopher T. Lee, Esquire
Grant W. Cannon, Esquire
Dickie, McCamey & Chilcote, P.C.
2 PPG Place
Suite 400
Pittsburgh, PA 15222