

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between (i) EmergeOrtho, P.A. (“EmergeOrtho” or “Defendant”) and (ii) Daniel Green, (“Plaintiff”) both individually and on behalf of the Settlement Class (as defined below), in the case *Green v. EmergeOrtho, P.A.*, Case No. 22CVS3533 in the Superior Court of Durham County, North Carolina. EmergeOrtho and Plaintiff are collectively referred to herein as the “Parties.” The lawsuit is referred to herein as the “Litigation.”

I. FACTUAL BACKGROUND AND RECITALS

1. On September 12, 2022, Plaintiff Daniel Green filed a class action lawsuit in the General Court of Justice, Superior Court Division, State of North Carolina, Durham County (Case No. 22CVS3533) against EmergeOrtho based on a cyberattack on EmergeOrtho’s network in May 2022 (the “Data Incident”, as further defined below), alleging claims of negligence, invasion of privacy, breach of fiduciary duty, breach of implied contract, violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, and for unjust enrichment. The Data Incident resulted in the possible access of personal identifying information (“PII”) and/or personal health information (“PHI”) (defined as part of the “Private Information” below) by an unauthorized third party .

2. On November 21, 2022, the Litigation was transferred to the North Carolina Business Court, as a mandatory complex matter, and was assigned to the Honorable Louis A. Bledsoe, III, Chief Business Court Judge.

3. On December 16, 2022, EmergeOrtho filed its Answer and Affirmative Defenses to Plaintiff’s class action complaint.

4. In January 2023, the Parties began discussing the potential for early resolution, and agreed to attend a mediation with the Hon. Wayne Andersen (Ret.) of JAMS.

5. On February 23, 2023, the Court signed the Parties’ Consent Qualification and HIPAA Qualified Protective Order.

6. Prior to mediation, the Parties served their first sets of interrogatories and document requests as to the Parties’ claims and defenses. Both EmergeOrtho and Plaintiff provided responses to the discovery requests.

7. On April 26, 2023, the Parties attended a mediation via Zoom with the Hon. Wayne Andersen (Ret.) of JAMS. After a full day of vigorous, arms’-length negotiations, the Parties were unable to reach a resolution.

8. Thereafter, the Parties continued written discovery, exchanging multiple rounds of document requests and interrogatories, including the production of further documents as to the Parties’ claims and defenses.

9. On October 10, 2023, Plaintiff appeared for his deposition as noticed by Defendant. Defendant's deposition was noticed to proceed on October 30, 2023.

10. During discovery, the Parties' settlement negotiations continued at arms'-length between Counsel. On October 26, 2023, the Parties reached an agreement on the central terms of a settlement. Over the next few weeks, the Parties diligently negotiated the finer points of the agreement, and drafted the settlement papers and exhibits included herein.

11. The Parties have negotiated a settlement by which the Parties agree and hereby wish to resolve all matters pertaining to, arising from, or associated with the Litigation, including all claims that Plaintiff and the Settlement Class Members (defined below), have or may have had against EmergeOrtho and Related Entities (defined below), as set forth herein.

12. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through the Litigation would require substantial additional risk, uncertainty, discovery, time, and expense for the Parties.

13. EmergeOrtho denies all claims of wrongdoing or liability that Plaintiff, Settlement Class Members, or anyone else have asserted in this Litigation or may assert in the future. Despite EmergeOrtho's position that it is not liable for, and has good defenses to, the claims alleged in the Litigation, EmergeOrtho desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation of any action relating to the matters being fully settled and finally resolved and released in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed, or document created in relation to the Settlement Agreement, or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability.

14. Plaintiff and Class Counsel (defined below) have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class (defined below), recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Class Counsel's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

15. 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.

16. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

17. “**Approved Claims**” means complete and timely Claim Forms submitted by Settlement Class Members that have been approved by the Settlement Administrator.

18. “**Lost Time**” means time spent by a Class Member remedying issues related to the Data Incident.

19. “**Claim Form**” means the form that Settlement Class Members may submit to obtain compensation under this Settlement Agreement, which is attached as **Exhibit C**. The Claim Form shall require a sworn affirmation under penalty of perjury but shall not require a notarization or any other form of verification.

20. “**Claims Deadline**” means the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set as a date ninety (90) days after the Notice date is entered. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

21. “**Class**,” “**Settlement Class**,” “**Class Member**,” or “**Settlement Class Member**” means each member of the Settlement Class, as defined as “all individuals who were issued notice by EmergeOrtho stating that their Private Information may have been involved in the Data Incident discovered by EmergeOrtho on or about May 1, 2022” and who do not timely elect to be excluded from the Settlement Class.

22. “**Class Counsel**” means Danielle L. Perry of Mason LLP and Gary Klinger and Scott Harris of Milberg Coleman Bryson Phillips Grossman.

23. “**Claimant**” means a Settlement Class Member who submits a Claim Form by the Claims Deadline.

24. “**Counsel**” or “**Counsel for the Parties**” means both Class Counsel and Defendant’s Counsel, collectively.

25. “**Court**” shall mean Chief Business Court Judge, Louis A. Bledsoe, III of the North Carolina Business Court, or any judge who is presiding over this Litigation at the time of the Order of Preliminary Approval of this Settlement Agreement or the Judgment (defined below).

26. “**Data Incident**” means the ransomware cyberattack carried out by an unauthorized third party on EmergeOrtho’s computer systems which occurred in May 2022, that resulted in the possible access of Private Information by an unauthorized third party.

27. “**Days**” means calendar days, except, when computing any period of time prescribed or allowed by this Settlement Agreement, does not include the day of the act, event, or default from which the designated period of time begins to run. Further, when computing any period of time prescribed or allowed by this Settlement Agreement, include the last day of the period, unless it is a Saturday, a Sunday, or a Federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday.

28. “**Defendant**” means EmergeOrtho, P.A.

29. “**Defendant’s Counsel**” means Marc J. Shrake and David M. Liu of Freeman Mathis & Gary, LLP;; and Robert E. Buckley, of Freeman Mathis & Gary, LLP.

30. “**Effective Date**” means the date after all of the following material conditions have been fulfilled:

- a) the Court has entered an Order of Preliminary Approval, attached to this Settlement Agreement as **Exhibit D**;
- b) EmergeOrtho has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 91;
- c) the Court has entered the Judgment (defined below) granting final approval to the settlement as set forth herein;
- d) the Judgment has become Final, as defined in ¶ 33; and
- e) means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Judgment or one (1) business day following entry of an order granting final approval of the settlement if no parties have standing to appeal; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to attorneys’ fees and reimbursement of expenses, the date of completion, in a manner that finally affirms and leaves in place the Judgment without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Judgment.

31. “**Fee and Expense Application**” shall mean the motion to be filed by Class Counsel 14 days prior to the deadline for Settlement Class Members to object to or opt-out from

the Settlement, in which they seek approval of an award of attorneys' fees, as well as a Service Award for the Class Representative.

32. “**Fee Award and Expenses**” means the amount of attorneys' fees and reimbursement of litigation expenses awarded by the Court to Class Counsel.

33. “**Final**” means the Final Approval Order has been entered on the docket, and (1) the time to appeal from such order has expired and no appeal has been timely filed; (2) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (3) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

34. “**Final Approval Hearing**” means the hearing before the Court where the Plaintiff may request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award and Expenses, and approving a Service Award to the Class Representative.

35. “**Final Approval Order**” shall mean an order, the proposed form of which is attached as **Exhibit E**, entered by the Court that:

- i. Certifies the Settlement Class pursuant to North Carolina Rule of Civil Procedure 23;
- ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;
- iii. Dismisses Plaintiff's claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
- iv. Approves the Releases provided in Section IX and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties;
- v. Reserves jurisdiction over the Settlement and this Settlement Agreement; and
- vi. Finds that there is no just reason for delay of entry of Final Approval Order with respect to the foregoing.

36. “**Frequently Asked Questions**” or “**FAQs**” are questions and answers to those questions that are frequently posed by Class Members about class action settlements and specifically about this Settlement.

37. “**Judgment**” shall mean the final judgment as ordered, adjudged and decreed by the Court in the Litigation.

38. “**Litigation**” shall mean the action captioned *Green v. EmergeOrtho, P.A.*, Case No. 22CVS3533 in the Superior Court of Durham County, North Carolina, designated to the North Carolina Business Court.

39. “**Long Form Notice**” is the content of the Notice substantially in the form as **Exhibit B** to this Settlement Agreement that will be posted on the Settlement Website and that will include robust details about the Settlement.

40. “**Notice**” means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement and **Exhibits A and B**, and is consistent with the requirements of Due Process. The Notice Deadline in this case will be 30 days after the Court enters the Preliminary Approval Order. This definition also includes the content of Paragraph 80, which includes the term “Notice Date.”

41. “**Notice and Administrative Expenses**” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Notice and Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

42. “**Notice Deadline**” means the last day by which Notice must be issued to the Settlement Class Members, and will occur thirty (30) days after the Court enters the Preliminary Approval Order.

43. “**Objection/Exclusion Deadline**” means the date by which a written objection to this Settlement Agreement or a Request for Exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as a date sixty (60) days after the Notice Date, or such other date as ordered by the Court. The definition in Paragraph 43 will also be known as the Objection Date and/or Exclusion Date.

44. “**Opt-Out Deadline**” is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Date and is the same as the Exclusion Deadline.

45. “**Out-of-Pocket Losses**” means out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that are supported by reasonable documentation. “Out-of-Pocket Losses” include things such as the purchase of identity protection services, credit monitoring services, or ID theft insurance different than the services and benefits offered by Defendant, are fairly traceable to the Data Incident, and such expenses have not already been reimbursed by a third party.

46. “**Participating Settlement Class Member**” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline.

47. “**Parties**” shall mean Plaintiff and Defendant, collectively.

48. “**Person**” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

49. “**Plaintiff**” or “**Class Representative**” shall mean the named class representative, Daniel Green.

50. “**Preliminary Approval Order**” shall mean the Court’s Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Settlement Agreement. Attached as **Exhibit D**.

51. “**Private Information**” means any non-public information, including without limitation, dates of birth, Social Security numbers, driver’s license numbers, financial account information, and names and additional personally identifiable information (“PII”) as well as protected health information (“PHI”) such as medical and treatment information that Defendant collected and maintained, as those terms are defined by applicable North Carolina data breach laws, data breach notification laws and under any applicable Health Insurance Portability and Accountability Act (“HIPAA”) rules and regulations.

52. “**Related Entities**” means EmergeOrtho’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of EmergeOrtho’s predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is or could be found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

53. “**Released Claims**” shall have the meaning ascribed to it as set forth in Section 93 of this Settlement Agreement.

54. “**Released Persons**” shall have the meaning ascribed to it as set forth in Section 93 of this Settlement Agreement.

55. “**Releasers**” shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

56. “**Remainder Funds**” means any funds that remain in the Settlement Fund after all deductions from the Settlement Fund and for settlement payments to Class Members. Often in

class actions settlements, some number of class members submitting valid claims and who are then issued a settlement check fail to cash and/or deposit their settlement payments. The funds remaining in the Settlement Fund after settlement payments have been distributed and the time for cashing and/or depositing checks has expired will be Remainder Funds. The Remainder Funds will be *pro rata* distributed to valid claimants, then *de minimis* or otherwise remaining funds will be sent to one or more court-approved charitable organizations as a *cy pres* distribution. The Parties will jointly recommend the entity or entities to the Court that will be the recipients of the *cy pres* distribution.

57. “**Service Award**” shall have the meaning ascribed to it as set forth in Section X of this Settlement Agreement. The Service Award requested in this matter will be \$5,000 to Plaintiff, subject to court approval.

58. “**Settlement Administrator**” means Eisner Amper, an entity jointly selected and supervised by Class Counsel and Defendant to administer the settlement, pursuant to Section IV of this Settlement Agreement.

59. “**Settlement Class**” means the individuals identified on the Settlement Class List whose Private Information may have been involved in the Data Incident. Excluded from the Settlement Class are: (1) the Judge presiding over this Litigation, and members of his direct family; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

60. “**Settlement Class List**” means a list of each Settlement Class Member’s full name and current or last known address, which Defendant or Defendant’s agent shall provide to the Settlement Administrator within seven (7) days of the entry of the Preliminary Approval Order.

61. “**Settlement Fund**” means an amount to be paid by, or on behalf of, Defendant totaling five hundred fifty thousand dollars (\$550,000.00 U.S.D.), including any interest accrued thereon after payment, this being the full and complete limit and extent of Defendant’s obligations with respect to the Settlement.

62. “**Settlement Payment**” means the payment to be made via mailed check and/or electronic payment to a Participating Settlement Class Member by the Settlement Administrator from the Settlement Fund.

63. “**Settlement Website**” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of **Exhibits A-E** (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. The Settlement Website will be publicly viewable and contain broad information about the Settlement, including but not limited to, copies of the Complaint filed in this matter, a copy of the Long Form Notice, Short Form Notice, FAQs, Claim Form that may be submitted online through the Settlement Website or mailed

to the Settlement Administrator, and the deadlines for filing a Claim Form, Objection, Request for Exclusion, and the date of the Final Approval Hearing. The Settlement Website is viewed as an important piece of the Notice to Class Members. The Settlement Website will remain active until 90 days after the Effective Date, or until 90 days after all Settlement Funds are distributed, whichever is longer.

64. “**Short Form Notice**” is the postcard notice that will be mailed to each available Settlement Class Member to the Settlement Class Members. Short Form Notice will include a copy of the Claim Form, in the same or substantially similar form as **Exhibit A** hereto.

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

66. “**Unknown Claims**” means any of the Released Claims that any Class Member, including any Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiff expressly shall have, and each of the other Class Members shall be deemed to have, and by operation of the Judgment shall have waived any right to pursue any possible Unknown Claims against Defendant. Class Members may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiff expressly shall have, and each other Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Parties acknowledge, and Class Members shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

III. SETTLEMENT FUND

67. **Establishment of Settlement Fund.** The total sum owed by Defendant under the terms of this Settlement Agreement is Five Hundred Fifty Thousand Dollars and Zero Cents (\$550,000.00 U.S.D.). The “Net Settlement Fund” is the amount of the Settlement Fund, plus interest accrued thereon, minus the cost of Notice and Administrative Expenses, Settlement Payment(s), Court-approved Fee Award and Expenses, Court-approved Service Awards for Class Representatives, and certain Settlement Fund taxes and costs. Defendant or its insurer shall pay costs sufficient to create the Settlement Fund as follows:

- a) Within thirty (30) days of the Court granting preliminary approval of this Settlement Agreement, EmergeOrtho or its insurer shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement in an amount

estimated by the Claims Administrator (said amount being part of and not in addition to the Settlement Fund);

- b) Within fifteen (15) days of the Effective Date, EmergeOrtho or its insurer shall pay into a Qualified Settlement Fund to be established and maintained by the Settlement Administrator the remaining portion of the Settlement Fund; and,
- c) Within thirty (30) days of the Effective Date, the Settlement Administrator shall pay to Class Counsel any attorneys' fees, costs, expenses, and service award pursuant to §§ X and XI.
- d) Within forty-five (45) days of the Effective Date, or sixty (60) days after the Claims Deadline, whichever is later, the Settlement Administrator shall distribute funds and credit monitoring codes to all valid claimants.

68. **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 ("FDIC"). Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Settlement Agreement, upon request of any of the Parties.

69. **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 this Agreement.

70. **Use of the Settlement Fund.** As further described in this Settlement Agreement and in **Exhibit B** to this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (1) reimbursement for Out-of-Pocket Losses and Lost Time, the cost of purchasing credit monitoring codes, and *Pro Rata* Cash Compensation, all as described in Paragraph 72 (2) Notice and Administrative Expenses; (3) Fee Award and Expenses as awarded by the Court; (4) Service Award payments approved by the Court; and (5) transfer of Remainder Funds to the extent any exist following the preceding administration of payments. If the benefits claimed by all Settlement Class Members meets or exceeds the amount of the Net Settlement Fund, then the payments and/or benefits for Approved Claims may be reduced *pro rata*

by the Settlement Administrator so that the aggregate cost of all payments and benefits does not exceed the amount of the Net Settlement Fund. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court. Responsibility for effectuating payments described in this paragraph shall rest solely with the Settlement Administrator and neither Defendant nor Defendant's agents shall have any responsibility whatsoever with respect to effectuating such payments.

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

IV. SETTLEMENT BENEFITS AND ADMINISTRATION

72. The Settlement Administrator will agree to make the following compensation available 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' Counsel, if they dispute the Settlement Administrator's initial determination.

- i. **Compensation for Documented Out-of-Pocket Losses:** The Settlement Administrator, from the Settlement Fund, will provide compensation, up to a total of \$10,000 per person who is a member of the Settlement Class, upon submission of a Claim Form and supporting documentation, for Out-of-Pocket Losses (defined above) incurred as a result of the Data Incident, including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Data Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Settlement Class Members with Out-of-Pocket Losses must submit documentation supporting their claims. This can include receipts or other documentation not "self-prepared" by the claimant that document the costs incurred. "Self-prepared" documents such as handwritten receipts are, by

themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

- ii. **Compensation for Lost Time**: The Settlement Administrator, from the Settlement Fund, will provide compensation for up to 6 hours of lost time, at \$25.00/hour (\$150 cap), for time spent mitigating the effects of the Data Incident. Class Members may submit claims for up to 6 hours of Lost Time with only an attestation demonstrating that they spent the claimed time responding to issues raised by the Data Incident. This attestation may be completed by checking a box next to the sentence: "I swear and affirm that I spent the amount of time noted in response to the EmergeOrtho data security incident." Claims for Lost Time can be combined with claims for Out-of-Pocket Losses but are subject to the \$10,000.00 cap.
- iii. **Credit Monitoring and Identity Theft Protections**: The Settlement Administrator, from the Settlement Fund, will purchase/provide credit monitoring codes for 2 years of 3 bureau monitoring, including \$1 million of identity theft insurance, to valid claimants.
- iv. **Cash Compensation (Pro Rata Cash Payment)**: After the distribution of Fee Award and Expenses, Notice and Administrative Expenses, Service Awards, Compensation for Out-of-Pocket Losses and Lost Time, and distribution of credit monitoring codes, the Settlement Administrator will make *pro rata* settlement payments of any remaining funds to each Class Member who submits an Approved Claim. Any class member may make a claim for a *pro rata* cash payment regardless of whether the member made a claim for Lost Time or Out-of-Pocket Losses or not. This may *pro rata* increase or decrease the cash payment.
- v. **Remediation Efforts**: EmergeOrtho has taken steps to implement additional security measures and has provided training to its employees to protect against similar incidents.

73. **Settlement Administration Fees**: The Settlement Fund amount provided by Defendant, or on behalf of Defendant, will pay the entirety of the Notice and Administrative Expenses. Defendant shall have no obligation to pay any portion of Notice and Administrative Expenses beyond the payment of the Settlement Fund. The Parties agree to solicit competitive bids for the settlement administration fees and to rely upon postcard notice, all in order to limit the Notice and Administrative Expenses while still providing effective Notice to the Class. Notice and Administrative Expenses shall be paid by the Settlement Fund.

74. Defendant agrees to provide reasonable access to confidential confirmatory discovery including the provision of the Settlement Class List to the Settlement Administrator, and reasonable confirmatory discovery as requested by Plaintiff regarding the fact and circumstances of the Data Incident and EmergeOrtho's response thereto. Confirmatory discovery may include the

Settlement Class List and a verification of the records potentially accessed. But it does not include any request that requires Defendant to contact a third party to gather information.

75. Within thirty (30) days of the Effective Date, and receipt of payee instructions and a Form W-9 for the payee, Defendant or its insurer shall provide to the Settlement Administrator the remainder of the Settlement Fund pursuant to ¶ 67 in full satisfaction of its Settlement Fund obligations, and the Settlement Fund will be used to satisfy Approved Claims for Settlement Class Members in exchange for a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Litigation with prejudice.

76. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement. Defendant's contribution to the Settlement Fund shall be fixed under this Section and shall be final. Defendant shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund, except insofar as such obligations are explicitly provided for in this Settlement Agreement.

77. Once a Settlement Administrator is mutually agreed to by the Parties and after the settlement is preliminarily approved by the Court, the Settlement Administrator will provide Notice pursuant to the terms of this Settlement Agreement.

78. After the Court enters a Final Approval Order, the Settlement Administrator shall provide the requested relief to all Settlement Class Members that made an Approved Claim, subject to the procedure set forth herein.

79. The Parties, Class Counsel, and Defendant's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

V. SETTLEMENT CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

80. **Notice.** Within seven (7) days after the date of the Preliminary Approval Order, Defendants shall provide the Settlement Class List to the Settlement Administrator. Within thirty (30) days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to the Settlement Class Members. Notice shall be disseminated via U.S. mail to all Settlement Class Members. The process to issue Notice as described in this paragraph and the creation and maintenance of the Settlement Website shall constitute the "Notice Plan." The date that the notice is sent is the "Notice Date."

81. **Final Approval Hearing.** The Notice must set forth the time and place of the Final Approval Hearing (subject to change) if known at the time of Notice and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph

waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

82. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The Request for Exclusion must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement in the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. A Settlement Class Member who submits a Request for Exclusion must waive their right to object to the Settlement Agreement under paragraph 83 and lacks standing to assert objections.

83. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee and Expense Application by submitting written objections to the Court no later than the Objection/Exclusion Deadline. A written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorneys representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous 5 years; and (vii) the signature of the Settlement Class Member or the Settlement Class Member’s attorney.

VI. DUTIES OF THE SETTLEMENT ADMINISTRATOR

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

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Performing National Change of Address searches and/or skip tracing on the Settlement Class List;
- d. Providing Notice to Settlement Class Members via U.S. mail;
- e. Establishing and maintaining the Settlement Website;

- f. 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 within one (1) business day;
- g. Responding to any mailed or emailed Settlement Class Member inquiries within three (3) business days;
- h. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- i. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Defendants' Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel;
- j. Providing regular status updates to Class Counsel and Defendants' Counsel pertaining to mailing and remailing rates, claims submissions, requests for exclusion, and objections;
- k. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- l. Calculating the amount of Pro Rata Cash Payments, if any, upon notice to Class Counsel and Defendant's Counsel;
- m. Processing and transmitting Pro Rata Cash Payments to Settlement Class Members, if applicable;
- n. Providing weekly or other periodic reports to Class Counsel and Defendant's Counsel that include information regarding the number of Settlement Payments mailed and delivered or checks sent via electronic means, Settlement Payments checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Defendant's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- o. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and

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

VII. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

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

86. 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 thirty (30) days thereof or a date thereafter that is agreeable to the Parties and the Court.

87. 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.

88. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this 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 Plan 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.

VIII. MODIFICATION AND TERMINATION

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

90. Settlement Not Approved. If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order; (2) the Effective Date does not occur; or (3) the Final

Approval Order is modified or reversed in any material respect by any appellate or other court, the Parties shall have 60 days from the date of such non-occurrence during which the Parties shall work together in good faith in considering, drafting, and submitting reasonable modifications to this Settlement Agreement to address any issues identified by the Court or that otherwise caused the Preliminary Approval Order or Final Approval Order not to issue or the Effective Date not to occur. If such efforts are unsuccessful, either Party may at their sole discretion terminate this Settlement Agreement on seven days written notice to the other Party. For avoidance of any doubt, neither Party may terminate the Agreement while an appeal from an order granting approval of the Settlement is pending.

91. Termination. Defendant may also unilaterally terminate this Settlement Agreement on seven (7) days written notice to Class Counsel if more than the agreed-upon number of individuals (more than 100 Class Members) submit valid Requests for Exclusion.

92. Effect of Termination. In the event of a termination as provided in Section VIII, this Settlement Agreement and the Settlement 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 Litigation as if the Parties had not entered into this Settlement Agreement or the Settlement. Further, in the event of such a termination, the certification of the Settlement Class shall be void. Defendant reserves the right to contest class certification for all purposes other than this Settlement. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition: (a) the fact that Defendant did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification and (b) in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of Fee Award and Expenses, and/or Service Award shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, EmergeOrtho shall be obligated to pay amounts already billed or incurred for costs of Notice to the Class and Claims Administration.

IX. RELEASES

93. Upon entry of the Final Approval Order, Settlement Class Members release, acquit, and forever discharge Defendant and its Related Entities, including any past or present agents, subsidiaries, parents, and affiliates, and their respective employees, officers, directors, shareholders, partners, members, managers, owners, heirs, executors, predecessors, successors, assigns, attorneys, Defendant's Counsel, insurers (including excess insurers and reinsurers), and/or sureties ("Released Persons") from any and all Released Claims. "Released Claims" shall collectively mean any and all claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality including claims of negligence; negligence *per se*; breach of contract; breach of implied contract; breach of

fiduciary duty; breach of confidence; intrusion into private affairs; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; breach of the covenant of good faith and fair dealing; and failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, having been asserted presently or in the future, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the complaints filed in the Litigation, defense of the Litigation, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of the Settlement or this Settlement Agreement) from the beginning of time until the Effective Date of the Settlement Agreement. Released Claims shall include Unknown Claims as defined in ¶ 66. Released Claims shall not include the right of any Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Class Members who have timely excluded themselves from the Class.

94. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement.

95. Mutual Understanding. The Parties understand that if the facts upon which this Settlement Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Settlement Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Settlement Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

96. Release of Class Representative and Class Counsel. Upon the Effective Date, Defendant and its representatives, officers, agents, directors, principals, affiliates, employees, insurers, and attorneys shall be deemed to have released, acquitted, and forever discharged the Class Representative and Class Counsel from any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses), whether known or unknown, that arise out of, are based upon, or relate to prosecution of the Litigation, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of the Settlement or this Settlement Agreement).

97. Bar to Future Suits. Upon entry of the Final Approval Order, the Class Representative and other Settlement Class Members and Class Counsel shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Defendant or based on any actions taken by any of the Released Parties that are authorized or required by this Settlement Agreement or by the Final Approval Order. Likewise, Defendant and its representatives, officers, agents, directors, principals, affiliates, employees, insurers, and attorneys shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Class Representative and Class Counsel or based on any actions taken by Class Representative and Class Counsel that are authorized or required by this Settlement 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.

X. SERVICE AWARD PAYMENT

98. Service Award Payment. At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee and Expense Application that will include a request for a Service Award payment for the Class Representative in recognition for his contributions to this Litigation not to exceed \$5,000.00 per representative. The Settlement Administrator shall make the Service Award payment to the Class Representative from the Settlement Fund. Such Service Award payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

99. No Effect on Agreement. In the event the Court declines to approve, in whole or in part, the Service Award payment in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Service Award shall constitute grounds for termination of this Settlement Agreement.

XI. ATTORNEYS' FEES, COSTS, EXPENSES

100. Attorneys' Fees and Costs and Expenses. At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee and Expense Application for an award of attorneys' fees to be paid to Class Counsel not to exceed one-third (33.33%) of the Settlement Fund for fees, or \$183,315.00, and the litigation expenses shall not exceed \$25,000.00. Prior to the disbursement or payment of the Fee Award and Expenses under this Agreement to the IOLTA trust account of Mason LLP, Mason LLP shall provide to the Settlement Administrator a properly completed and duly executed IRS Form W-9. Fee Award and Expenses (plus any interest accrued thereon) shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

101. No Effect on Settlement Agreement. In the event the Court declines to approve, in whole or in part, the Fee Award and Expenses in the amount requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect. No decision by the Court, or

modification or reversal or appeal of any decision by the Court, concerning the amount of the Fee Award and Expenses shall constitute grounds for termination of this Settlement Agreement.

XII. NO ADMISSION OF LIABILITY

102. No Admission of Liability. 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.

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

XIII. MISCELLANEOUS

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

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

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

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

108. 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 approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Settlement Agreement.

109. 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 in good faith prior to seeking Court intervention.

110. Governing Law. The Settlement Agreement shall be construed in accordance with, and be governed by, the laws of the State of North Carolina, without regard to the principles thereof regarding choice of law.

111. In the event that one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of the Settlement Agreement, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision(s) had never been a part of this Settlement Agreement as long as the benefits of this Settlement Agreement to Defendant or the Settlement Class Members are not materially altered, positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s) and as long as the Release Claims are not narrowed or eliminated as a result of the invalid, illegal, or unenforceable provision(s). In the event that the invalid, illegal, or unenforceable provision has this effect, the Parties must cooperate in good faith to amend the Settlement Agreement to diminish or eliminate the effect.

112. 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 electronically through e-mail of an Adobe PDF shall be deemed an original.

113. Notices. All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Danielle Perry
Gary E. Mason
MASON LLP
5335 Wisconsin Avenue, NW, Suite 640
Washington, D.C. 20015
dperry@masonllp.com
gmason@masonllp.com

All notices to Defendant provided for herein, shall be sent by overnight mail and email to their contact information below:

Marc J. Shrake and David M. Liu
Freeman Mathis & Gary, LLP
550 South Hope Street, 22nd Floor, Los Angeles, California 90071
mshrake@fmglaw.com
David.Liu@fmglaw.com

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

114. 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 or Parties on whose behalf he or she signs this Settlement Agreement to all of the terms and provisions of this Settlement Agreement.

By: _____
David M. Liu
Freeman Mathis & Gary, LLP
Counsel for Defendant

Date: _____

EMERGEORTHO, P.A.

DocuSigned by:
By: Allison Farmer
Allison H. Farmer
Title: CEO

Date: 2/8/2024

Defendant

By: _____
Danielle L. Perry
Mason LLP

Date: _____

By: _____
Gary M. Klinger / Scott Harris
Milberg Coleman Bryson Phillips Grossman

Date: _____

Counsel for Plaintiffs and the Settlement Class

By: _____
Daniel Green
Plaintiffs

Date: _____

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

114. 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 or Parties on whose behalf he or she signs this Settlement Agreement to all of the terms and provisions of this Settlement Agreement.

By: David Liu
David M. Liu
Freeman Mathis & Gary, LLP
Counsel for Defendant

Date: 2/8/24

EMERGEORTHO, P.A.

By: _____
Allison H. Farmer
Title: CEO

Date: _____

Defendant

By: _____
Danielle L. Perry
Mason LLP

Date: _____

By: _____
Gary M. Klinger / Scott Harris
Milberg Coleman Bryson Phillips Grossman

Date: _____

Counsel for Plaintiffs and the Settlement Class

By: _____
Daniel Green
Plaintiffs

Date: _____

SETTLEMENT TIMELINE

<u>Grant of Preliminary Approval</u>	
EmergeOrtho provides list of Settlement Class Members to the Settlement Administrator	+7 days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	+30 days after Preliminary Approval
Notice Deadline	+30 days after Preliminary Approval
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	-14 days prior to the Objection Deadline and Opt-Out Deadline
Objection Deadline	+60 days after Notice Date
Exclusion Deadline	+60 days after Notice Date
Claims Deadline	+90 days after Notice Date
Settlement Administrator Provide List of Objections/Exclusions to the Court and Settlement Administrator	+7 days after deadline for Opt-Out
<u>Final Approval Hearing</u>	
Motion for Final Approval	+100 days after Preliminary Approval Order -14 Days before Final Approval Hearing
<u>Final Approval</u>	
Effective Date	+1 day after all conditions met pursuant to ¶ 30
Payment of Attorneys' Fees and Expenses Class Representative Service Award	+30 days after Effective Date
Payment of Claims	+45 days of the Effective Date, or +60 days after the Claims Deadline, whichever is later
Settlement Website Deactivation	+120 days after Payment of Claims

EXHIBIT A

IF YOU WERE NOTIFIED BY EMERGEORTHO REGARDING THE MAY 2022 DATA INCIDENT, YOU MAY BE ELIGIBLE FOR PAYMENT AND CREDIT MONITORING SERVICES FROM A CLASS ACTION SETTLEMENT.

Si desea recibir esta notificación en español, llámenos o visite nuestra página web.

A settlement has been reached in a class action lawsuit against EmergeOrtho, PA, (“EmergeOrtho” or “Defendant”) concerning an alleged data security incident affecting Defendant which occurred in or around May 2022 (the “Data Incident”). The computer systems possibly affected by the Data Incident potentially contained the Private Information of certain individuals. The Plaintiff claims that Defendant was responsible for the Data Incident. Defendant denies all of the claims.

WHO IS INCLUDED? Defendant’s records show you received a notification from Defendant regarding the Data Incident, and, therefore, you are included in this Settlement as a “Settlement Class Member” unless you opt out of the Settlement.

SETTLEMENT BENEFITS. The Settlement provides up to \$10,000 to people who submit valid claims for out-of-pocket expenses, lost time relating to the Data Incident, and for two years of credit monitoring and identity protection services. The Settlement also provides an option for Settlement Class Members to submit a claim for an additional *pro rata* cash payment. Defendant also represents that they have adopted and implemented additional security measures following the Data Incident to further strengthen the security of their systems. **The only way to receive a benefit is to file a claim. To get a Claim Form, visit the Settlement Website, at WEBSITE, or call PHONE. The claim deadline is DEADLINE.**

OPT OUT. If you do not want to be legally bound by the Settlement, you must exclude yourself. A more detailed notice is available to explain how to exclude yourself. You must mail your exclusion request, postmarked no later than **DEADLINE**, to the Settlement Administrator. You cannot exclude yourself by phone or email. If you exclude yourself from the Settlement, you will receive no benefits under the Settlement and will not be legally bound by the Court’s judgments related to the Settlement Class and Defendant in this class action.

OBJECT. If you stay in the Settlement, you may object to it by **DEADLINE**, if you do not agree with any part of it. A more detailed notice is available to explain how to object. You must mail your objection, postmarked no later than **DEADLINE**, to the Settlement Administrator. You can object only if you stay in the Settlement Class.

OTHER OPTIONS. If you do nothing, you will remain in the Settlement Class, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue Defendant for the claims resolved by this Settlement.

FOR MORE INFORMATION. Please visit the website or call **PHONE** for a copy of the more detailed notice. On **Month Day, 2024**, the Court will hold a Final Approval Hearing to determine whether to approve the Settlement, Class Counsel’s request for attorneys’ fees not to exceed 33.33% of the Settlement Fund, or \$183,315.00, litigation costs not to exceed \$25,000.00 and for a Service Award Payment of \$5,000 to the Class Representative. The Motion for attorneys’ fees and expenses and service awards will be posted on the Settlement Website, at **WEBSITE**, after it is filed. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. This is only a summary. For more information, call or visit the Settlement Website below.



EXHIBIT B

SUPERIOR COURT OF DURHAM COUNTY, NORTH CAROLINA*Green v. EmergeOrtho, P.A., Case No. 22CVS3533***If EmergeOrtho notified you of a Data Incident which occurred
in or around May 2022,
you may be eligible for benefits from a class action settlement.***A court authorized this Notice. This is not a solicitation from a lawyer.**Si necesita ayuda en español, comuníquese con el administrador al **PHONE**.*

- A Settlement has been reached in a class action lawsuit against EmergeOrtho, P.A., (“EmergeOrtho” or “Defendant”) concerning an alleged data security incident affecting Defendant which occurred in or around May 2022 (the “Data Incident”).
- The lawsuit is called *Green v. EmergeOrtho, P.A., Case No. 22CVS3533* (the “Action”). The lawsuit alleges that the Data Incident potentially exposed certain Private Information of Plaintiff and the members of the putative class.
- The Settlement Class includes all individuals identified on the Defendant’s Settlement Class List whose Private Information may have been involved in the Data Incident. It excludes: (1) the Judge presiding over this Action, and members of their direct families; (2) Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.
- Your legal rights are affected regardless of whether you act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

SUBMIT A CLAIM FORM	This is the only way you may receive benefits from this Settlement. The deadline to submit a Claim Form is DEADLINE .
EXCLUDE YOURSELF FROM THE SETTLEMENT	You will receive no payment, but you will retain any rights you currently have with respect to Defendant and the issues in this case. The deadline to exclude yourself from the Settlement is DEADLINE .
OBJECT TO THE SETTLEMENT	Write to the Settlement Administrator explaining why you do not agree with the Settlement. The deadline to object is DEADLINE .
ATTEND THE FINAL	You or your attorney may attend and speak about your objection at the Final Approval Hearing. The Final Approval Hearing will be held on [] , 202 [] .

APPROVAL HEARING	
Do NOTHING	You will not get any benefits from the Settlement, and you will give up certain legal rights. You will remain in the Settlement Class and be subject to the Release.

- These rights and options, and the deadlines to exercise them, are explained in this Notice. For complete details, please see the Settlement Agreement, whose terms control, available at [WEBSITE](#).
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

BASIC INFORMATION

What is this Notice and why should I read it?

The Court authorized this Notice to inform you about a proposed Settlement with Defendant. The case is called *Green v. EmergeOrtho, P.A.*, Case No. 22CVS3533. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

What is a class action lawsuit?

A class action is a lawsuit in which one or more plaintiffs—in this case, Plaintiff and Class Representative Daniel Green—sue on behalf of a group of people who have similar claims. Together, this group is called a “Class” and consists of “Class Members.” In a class action, the court resolves the issues for all class members, except those who exclude themselves from the class.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

What is this lawsuit about?

Plaintiff claims that Defendant failed to implement and maintain reasonable security measures to adequately protect the Private Information in its possession and to prevent the Data Incident from occurring.

Defendant denies that it is liable for the claims made in the lawsuit and denies any allegations of wrongdoing. More information about the complaint in the lawsuit can be found on the Settlement Website, at [WEBSITE](#).

Why is there a Settlement?

The Court has not decided whether the Plaintiff or Defendant should win this case. Instead, both sides agreed to this Settlement. That way, they can avoid the uncertainty, risks, and expense of ongoing litigation, and Settlement Class Members will be eligible to get compensation now rather than years later—if ever. The Class Representatives and attorneys for the Settlement Class Members, called Class Counsel, agree the Settlement is in the best interests of the Settlement Class Members. The Settlement is not an admission of wrongdoing by the Defendant.

WHO'S INCLUDED IN THE SETTLEMENT?

How do I know if I am in the Settlement Class?

You are part of the Settlement as a Settlement Class Member if you received a notification letter from Defendant stating that your Private Information was or may have been compromised in the Data Incident.

Settlement Class Members will have been mailed notice of their eligibility. If you are still not sure whether you are included, you can contact the Settlement Administrator by calling **PHONE**, by emailing **EMAIL**, or by visiting the Settlement Website, at **WEBSITE**.

This Settlement Class does not include (1) the Judge presiding over this Action, and members of their direct families; (2) Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

THE SETTLEMENT BENEFITS

What does the Settlement provide?

Under the proposed Settlement, Defendant will pay (or cause to be paid) \$550,000.00 into a Settlement Fund. The Settlement Fund, plus interest accrued thereon, will pay notice and administration costs, Court-approved attorneys' fees and costs, Court-approved service awards for class representatives, and certain Settlement Fund taxes and tax expenses (the "Net Settlement Fund"). The Net Settlement Fund will be used to provide eligible Settlement Class Members with payments and benefits described below.¹

¹ If the benefits claimed by all Settlement Class Members meets or exceeds the amount of the Net Settlement Fund, then the payments and/or benefits for your Claim may be reduced *pro rata* pursuant to Paragraph 70 of the Settlement Agreement by the Settlement Administrator so that the aggregate cost of all payments and benefits does not exceed the amount of the Net Settlement Fund.

Reimbursement for Lost Time and Out-of-Pocket Losses: If you spent time responding to the Data Incident, you may be eligible to receive compensation for Lost Time. If you incurred financial losses that are fairly traceable to the Data Incident, you may be eligible to receive reimbursement for out-of-pocket losses. This category is capped at \$10,000.00 per individual claimant.

- A. Lost Time:** A claim for reimbursement may also include a claim for up to 6 hours of time spent in response to the Data Incident. Lost Time will be compensated at \$25.00/hour (\$150 cap). Claiming Lost Time requires only an attestation demonstrating that a Class Member spent the claimed time responding to issues raised by the Data Incident, and may be completed by checking a box on the claim form next to the sentence: “I swear and affirm that I spent the amount of time noted in response to the EmergeOrtho data security incident.”
- B. Out-of-Pocket Losses:** A claim for reimbursement may include, but are not limited to the following provided the expenses were incurred primarily as a result of the Data Incident including, without limitation: (1) unreimbursed losses relating to fraud or identity theft; (2) professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; (3) costs associated with freezing or unfreezing credit with any credit reporting agency; (4) credit monitoring costs that were incurred on or after the Incident through the date of claim submission; and (5) miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Settlement Class Members with Out-of-Pocket Losses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that document the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

Claims for Out-of-Pocket Losses and Lost Time are subject to a combined cap of \$10,000.00 per individual.

Credit Monitoring and Identity Theft Protections: The Settlement Administrator, from the Settlement Fund, will purchase/provide credit monitoring codes for 2 years of 3 bureau monitoring, including \$1 million of identity theft insurance, to valid claimants.

Residual Cash Payment: After the distribution of attorneys’ fees, Class Counsel’s Fee Award and Expenses, Notice and Administrative Expenses, Service Awards, Compensation for Out-of-Pocket Expenses and Lost Time, the Settlement Administrator will make *pro rata* settlement payments of any remaining funds to each Class Member who submits a claim. Any class member may make a claim for a *pro rata* cash payment regardless of whether the member made a claim for Lost Time or Out-of-Pocket Losses or not. This may *pro rata* increase or decrease the cash payment.

Remediation Efforts: Defendant has taken steps to implement additional security measures and has provided training to its employees to protect against similar incidents.

For complete details, please see the Settlement Agreement, whose terms control, at [WEBSITE](#).

HOW TO GET BENEFITS

How do I make a Claim?

To qualify for a cash benefit under the Settlement, or to request credit monitoring services, you must complete and submit a Claim Form.

Settlement Class Members who want to submit a Claim must fill out and submit a Claim Form online at the Settlement Website at, [WEBSITE](#), or by mail to the Settlement Administrator. Claim Forms are available through the Settlement Website at, [WEBSITE](#) or by calling [PHONE](#).

All Claim Forms must be submitted no later than [DEADLINE](#).

When will I get my payment?

The hearing to consider the fairness of the Settlement is scheduled for [_____] , 202 . If the Court approves the Settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will be sent payment after all appeals and other reviews, if any, are completed. Please be patient.

THE LAWYERS REPRESENTING YOU

Do I have a lawyer in this case?

Yes, the Court has appointed Mason LLP and Milberg Coleman Bryson Phillips Grossman as “Class Counsel” to represent you and all Settlement Class Members. You will not be charged for these lawyers. You can ask your own lawyer to appear in Court for you at your own expense if you want someone other than Class Counsel to represent you.

How will the lawyers be paid?

To date, Class Counsel has not received any payment for their services in conducting this litigation on behalf of the Class and have not been paid for their out-of-pocket expenses. Class Counsel will ask the Court for an award of attorneys’ fees not to exceed 33.33% of the Settlement Fund, or \$183,315.00 and for the reimbursement of litigation costs and expenses which were incurred in connection with the Action, not to exceed \$25,000.00. Such sums as may be approved by the Court will be paid from the Settlement Fund.

Class Counsel will also request a service award payment of \$5,000.00 for the Class Representative to be paid from the Settlement Fund.

The Court will determine the proper amount of any attorneys’ fees, costs, and expenses to award Class Counsel and the proper amount of any service awards to the Class Representatives.

Class Counsel will file their request for attorneys' fees, costs, and expenses and service awards for the Class Representatives with the Court, which will also be posted on the Settlement Website, at [WEBSITE](#).

YOUR RIGHTS AND OPTIONS

What claims do I give up by participating in this Settlement?

If you do not exclude yourself from the Settlement, you will not be able to sue Defendant about the Data Incident, and you will be bound by all decisions made by the Court in this case, the Settlement, and its included Release. This is true regardless of whether you submit a Claim Form. However, you may exclude yourself from the Settlement (*see* below). If you exclude yourself from the Settlement, you will not be bound by any of the Released Claims, which are described in the Settlement Agreement available on the Settlement Website, at [WEBSITE](#).

What happens if I do nothing at all?

If you do nothing, you will receive no benefits under the Settlement. You will be in the Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments of the Court, the Settlement, and its included Release. You will be deemed to have participated in the Settlement and will be subject to the provisions of the Settlement Agreement. Unless you exclude yourself, you won't be able to file a lawsuit or be part of any other lawsuit against Defendant for the claims or legal issues released in this Settlement.

What happens if I ask to be excluded?

If you exclude yourself from the Settlement, you will receive no benefits under the Settlement. However, you will not be in the Settlement Class and will not be legally bound by the Court's judgments related to the Settlement Class and Defendant in this class action.

How do I ask to be excluded?

You can ask to be excluded from the Settlement. To do so, you must send a written notification to the Settlement Administrator stating that you want to be excluded from the Settlement in *Green v. EmergeOrtho, P.A.*, Case No. 22CVS3533. Your written notification must include: (1) the name of the proceeding; (2) your full name and current address; (3) your signature; and (4) the words "Request for Exclusion" or a comparable statement that you not wish to participate in the Settlement at the top of the communication. You must mail your exclusion request, postmarked no later than [DEADLINE](#), to the following address:

EmergeOrtho Settlement Administrator
c/o [ADMINISTRATOR](#)
[ADDRESS](#)
[CITY, STATE, ZIP](#)

You cannot exclude yourself by phone or email. Any individual who wants to be excluded from the Settlement must submit his or her own exclusion request. No group opt-outs shall be permitted.

If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims or legal issues released in this Settlement, even if you do nothing.

If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for any benefits.

How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you do not agree with any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must mail a written objection to the Settlement Administrator stating that you object to the Settlement in *Green v. EmergeOrtho, P.A.*, Case No. 22CVS3533. Your objection must be filed no later than **DEADLINE**.

The objection must be in writing and be personally signed by you. The objection must include: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorneys representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous 5 years; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

Written objections should be submitted to the Court at the address listed below:

Judge Louis A. Bledsoe, III
Chief Business Court Judge
General Court of Justice
Superior Court Division
510 S Dillard St.
Durham, NC 27701

You must also mail the objection to the Settlement Administrator at the address listed below, postmarked no later than **DEADLINE**:

EmergeOrtho Settlement Administrator
c/o ADMINISTRATOR
ADDRESS
CITY, STATE, ZIP

What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

When and where will the Court hold a hearing on the fairness of the Settlement?

The Court will hold the Final Approval Hearing on [InsertHearingDate] at the Courthouse located at [Insert Address or Videoconference Information]. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees, costs, and expenses and the service awards to Class Representatives.

The location, date and time of the Final Approval Hearing are subject to change by Court order. Any changes will be posted at the Settlement Website, at WEBSITE, or through the Court's publicly available docket. You should check the Settlement Website to confirm the date and time have not been changed.

Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. If your written objection was filed or mailed on time and meets the other criteria described in the Settlement, the Court will consider it. However, you may appear on your behalf or pay a lawyer to attend on your behalf to assert your objection if you would like.

May I speak at the hearing?

Yes. If you do not exclude yourself from the Settlement Class, you (or your attorney) may appear and speak at the Final Approval Hearing concerning any part of the proposed Settlement.

GETTING MORE INFORMATION

Where can I get additional information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at **WEBSITE** or by writing to EmergeOrtho Settlement Administrator, c/o **ADMINISTRATOR, ADDRESS, CITY, STATE, ZIP**.

How do I get more information?

Go to the Settlement Website, at **WEBSITE, call **PHONE**, email **EMAIL** or write to EmergeOrtho Settlement Administrator, c/o **ADMINISTRATOR, ADDRESS, CITY, STATE, ZIP**.**

PLEASE DO NOT CALL THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

EXHIBIT C

CLAIM FORM

This Claim Form should be filled out online or submitted by mail if you received a notification from EmergeOrtho that your personal information was or may have been compromised in the "Data Incident" which means the ransomware cyberattack carried out by an unauthorized third party on EmergeOrtho's computer systems which occurred in May 2022, that resulted in the possible access of Private Information by the unauthorized third party.

The Claim Form is to be completed if: (i) you had out-of-pocket losses, or (ii) lost time spent dealing with the Data Incident; (iii) or you wish to collect a pro rata cash payment. You may get a check if you fill out this Claim Form, if the settlement is approved, and if you are found to be eligible for a payment. The Settlement establishes a fund to compensate Settlement Class Members for their lost time and out-of-pocket losses, to provide credit monitoring services, and to provide Settlement Class Members with a pro rata cash payment, as well as for the costs of notice and administration, certain taxes, service award payments, and attorney fee awards and costs as awarded by the Court. If you submit a valid claim you will be eligible for the residual pro rata cash payment, as described in Paragraph 56 of the Settlement Agreement.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website, [WEBSITE](#), or call [PHONE](#) for more information.

If you wish to submit a claim for a settlement payment, you need to provide the information requested below. Please print clearly in blue or black ink. The **DEADLINE** to submit this claim form online (or have it postmarked for mailing) is **DEADLINE**.

Si necesita ayuda en español, comuníquese con el administrador al [PHONE](#).

1. SETTLEMENT CLASS MEMBER INFORMATION (ALL INFORMATION IS REQUIRED):

Name: _____

Address: _____

Telephone: _____ Email: _____

2. PAYMENT ELIGIBILITY INFORMATION.

Please review the notice and Sections III through V of the Settlement Agreement (available at [WEBSITE](#)) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed.

Please provide as much information as you can to help us figure out if you are entitled to a settlement payment.

PLEASE PROVIDE THE INFORMATION LISTED BELOW:

Check the box for each category of benefits you would like to claim. Categories include out-of-pocket losses that you had to pay as a result of the Data Incident, time you had to spend dealing with the effects of the Data Incident, and two years of credit monitoring and identity protection services. You may also choose to receive a pro rata cash payment from any funds remaining in the Settlement Fund.

Please be sure to fill in the total amount you are claiming for each category and to attach documentation of the charges as described in bold type (if you are asked to provide account statements as part of proof required for any part of your claim, you may mark out any unrelated transactions if you wish).

a. Out-of-Pocket Losses Resulting from the Data Incident:
(Class Members can claim up to \$10,000 in Out-of-Pocket Losses and Lost Time)

_____ I incurred unreimbursed charges as a result of the Data Incident.

Examples - unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of your information; costs incurred on or after May 2022 through **CLAIMS DEADLINE** associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; other miscellaneous expenses incurred such as notary, fax, postage, copying, mileage and long-distance telephone charges that were incurred on or after May 2022 through **CLAIMS DEADLINE**.

Total amount for this category \$ _____

If you are seeking reimbursement for fees, expenses, or charges, please attach a copy of a statement from the company that charged you, or a receipt for the amount you incurred.

If you are seeking reimbursement for credit reports, credit monitoring, or other identity theft insurance product purchased between May 2022 through **CLAIMS DEADLINE**, please attach a copy of a receipt or other proof of purchase for each credit report or product purchased. (Note: By claiming reimbursement in this category, you certify that you purchased the credit monitoring or identity theft insurance product primarily because of the Data Incident and not for any other purpose).

Supporting documentation must be provided. You may mark out any transactions that are not relevant to your claim before sending in the documentation.

b. Between one and six hours of Lost Time spent dealing with the Data Incident:
(Class Members can claim up to six (6) hours of Lost Time, compensable at \$25 per hour.)

_____ I swear and affirm that I spent the amount of time noted in response to the EmergeOrtho data security incident:

Examples – You spent valuable time calling customer service lines, writing letters or emails, or on the Internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. You spent valuable time signing up for credit monitoring or identity theft protection services or freezing/unfreezing credit reports with any credit reporting agency.

_____ 1 hour _____ 2 hours _____ 3 hours _____ 4 hours _____ 5 hours _____ 6 hours

c. Two-years of Three-Bureau Credit Monitoring and Identity Protection Services

_____ I would like to claim credit monitoring and identity protection services.

d. Eligibility for a residual cash payment:

_____ I would like to claim a pro rata cash payment.

After all valid claims for ordinary expense reimbursements, valid claims for compensation for lost time, court-approved attorneys' fees and costs, and costs of notice and settlement administration have been paid, any non deminimus funds will be split pro rata amongst valid claimants. Check the box above if you would like to claim your portion of any residual pro rata cash distribution.

*****You do not need to claim ordinary losses or lost time in order to claim you pro rata portion of the residual cash payment.**

3. SIGN AND DATE YOUR CLAIM FORM.

I declare under penalty of perjury under the laws of the United States and the laws of my State of residence that the information supplied in this claim form by the undersigned is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that I may be asked to provide supplemental information by the Settlement Administrator before my claim will be considered complete and valid.

_____/_____/_____
Signature Print Name Date

4. MAIL YOUR CLAIM FORM, OR SUBMIT YOUR CLAIM FORM ONLINE.

This claim form must be:

Postmarked by **CLAIMS DEADLINE** and mailed to: **ADDRESS**; OR

Emailed by midnight on **CLAIMS DEADLINE** to **EMAIL**; OR

Submitted through the Settlement Website by midnight on **CLAIMS DEADLINE** at: **WEBSITE**.

EXHIBIT D

STATE OF NORTH CAROLINA

DURHAM COUNTY

IN THE GENERAL COURT OF
JUSTICE SUPERIOR COURT

DIVISION
FILE NO.: 22 CVS 3533

DANIEL GREEN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

EMERGEORTHO, P.A.,

Defendant.

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

WHEREAS, the above-captioned class action is pending in this Court (the “Action”);

WHEREAS, Plaintiff DANIEL GREEN, individually and on behalf of all others similarly situated (“Plaintiff”) and Defendant EmergeOrtho, P.A., (“EmergeOrtho” or “Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the above-captioned action on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, Plaintiff has made an application, pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiff as Class Representative, appointing Class Counsel as counsel for the Settlement Class, appointing EisnerAmper as Settlement Administrator, and allowing notice to Settlement Class Members as more fully described herein;

WHEREAS, the Court has read and considered: (a) Plaintiff’s motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith; and (b) the Settlement Agreement and exhibits attached thereto; and

WHEREAS, unless otherwise defined herein, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes Only**. For settlement purposes only and pursuant to North Carolina Civ. R. 23(c), the Court certifies, solely for purposes of effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:

“All individuals who were issued notice by EmergeOrtho stating that their Private Information may have been involved in the Data Incident discovered by EmergeOrtho on or about May 1, 2022”

The Settlement Class includes approximately 72,500 people. The Settlement Class specifically excludes: (1) the judge presiding over this Action, and members of his direct family; (2) Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or their parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

2. **Class Findings**: The Court provisionally finds, for settlement purposes only, that: (1) a class exists such that shared issues of law or fact predominate over individual issues; (2) the named representative is an adequate representative (i.e. he will fairly and adequately represent the class, there is no conflict of interest between the named representative and the class, and the named party has a genuine personal interest in the outcome of the case); (3) class members are so

numerous to make joinder impractical; (4) adequate notice can be given to the class; and (5) a class action is superior to individual actions.

3. **Class Representative and Settlement Class Counsel:** Daniel Green is hereby provisionally designated and appointed as the Class Representative. The Court provisionally finds that the Class Representative is similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class and that he will be an adequate Class Representative. The Court further finds that Mason LLP and Milberg Coleman Bryson Phillips Grossman, PLLC, are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel.

4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below. The Court finds that the proposed settlement is within the range of reasonableness and that it is worthwhile to provide notice to the class.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held at ___: __.m. on _____, 2023, in the Durham County Superior Court, at the Courthouse located at _____, _____, _____, _____ [by videoconference] for the following purposes:

- a. To determine whether the proposed Settlement is fair, reasonable, and adequate to the Class and should be approved by the Court;
- b. To determine whether to enter a Final Approval Order, as defined in the Settlement Agreement;
- c. To determine whether the Notice Plan conducted was appropriate;

- d. To determine whether the claims process under the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. To determine whether the requested Class Representative Service Award in the combined amount of \$5,000, and Class Counsel's combined Fee Award and Expenses in the amount of \$183,315.00 and costs not to exceed \$25,000 should be approved by the Court;
- f. To determine whether the settlement benefits are fair, reasonable, and adequate; and,
- g. To rule upon such other matters as the Court may deem appropriate.

6. **Retention of Claims Administrator and Manner of Giving Notice.** Class Counsel is hereby authorized to retain Eisner Amper (the "Settlement Administrator") to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claim Forms as set for more fully below.

7. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Long Form Notice, Short Form Notice, and Claim Form attached to the Settlement Agreement as Exhibits A, B and C, and (b) finds that the Notice provided to Settlement Class Members as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for Fee Award and Expenses, of Class Representative's request for a Service Award, of their right to object to the Settlement, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the North Carolina Rules of Civil Procedure, the United States Constitution (including

the Due Process Clause), and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before it is distributed so long as that date is known at the time of Notice.

8. **Participation in the Settlement.** Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form and must do so within ninety (90) days after Notice is mailed to the Settlement Class Members. If a Final Approval Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Approval Order and Judgment.

9. **Claims Process and Distribution and Allocation Plan.** The Settlement Agreement contemplates a process for the Settlement Administrator to assess and determine the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the claims process described in the Settlement Agreement and directs that the Settlement Administrator to effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **60 Days after the date Notice is mailed to the Settlement Class**

Members (the “Opt-Out/Exclusion Deadline”). The written notification must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication.

Any Settlement Class Member who does not timely and validly exclude himself or herself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Approval Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Approval Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

11. **Objections and Appearances**. No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is mailed first-class postage prepaid to the Settlement Administrator at the address listed in the Notice, and postmarked by no later than the Objection/Exclusion Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 83 of the Settlement Agreement, which is as follows: (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the

identity of any attorneys representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous 5 years; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

12. Any Settlement Class Member who fails to comply with the provisions in Paragraph 11 may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if a Final Approval Order and Judgment is entered. If a Final Approval Order and Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this Action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the motion for Service Award, or the motion for Fee Award and Expenses.

13. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

14. **Use of Order.** This Order shall be of no force or effect if a Final Approval Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representative or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

15. **Stay of Proceedings and Temporary Injunction.** Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiff, and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Released Entities.

16. **Settlement Fund.** The contents of the Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

17. **Taxes.** The Settlement Administrator is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

18. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

19. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

<u>Grant of Preliminary Approval</u>	
EmergeOrtho provides list of Settlement Class Members to the Settlement Administrator	+7 days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	+30 days after Preliminary Approval
Notice Deadline	+30 days after Preliminary Approval
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	-14 days prior to the Objection Deadline and Opt-Out Deadline
Objection Deadline	+60 days after Notice Deadline
Exclusion Deadline	+60 days after Notice Deadline
Claims Deadline	+90 days after Notice Deadline
Settlement Administrator Provide List of Objections/Exclusions to the Court and Settlement Administrator	+7 days after deadline for Opt-Out
<u>Final Approval Hearing</u>	
Motion for Final Approval	+100 days after Preliminary Approval Order
	-14 Days before Final Approval Hearing
<u>Final Approval</u>	
Effective Date	+1 day after all conditions met pursuant to ¶ 30 of Settlement Agreement
Payment of Attorneys' Fees and Expenses Class Representative Service Award	+30 days after Effective Date
Payment of Claims	+45 days of the Effective Date, or +60 days after the Claims Deadline, whichever is later
Settlement Website Deactivation	+90 days after Effective Date

IT IS SO ORDERED this ___ day of _____, 202___.

Hon. Louis Bledsoe, III

EXHIBIT E

WHEREAS, the above-captioned class action is pending in this Court (the “Action”);

WHEREAS, Plaintiff DANIEL GREEN, individually and on behalf of all others similarly situated (“Plaintiff”) and Defendant EmergeOrtho, P.A., (“EmergeOrtho” or “Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the above-captioned action on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated , 202_ (“Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding Final Approval of the Settlement;

WHEREAS, due and adequate Notice has been given to the Settlement Class;

WHEREAS, [XX] Class Members submitted objections or Requests for Exclusion;

WHEREAS, the Court conducted a hearing on [INSERT FINAL APPROVAL HEARING DATE] (the “Final Approval Hearing”) to consider, among other things, (a) the Objection(s) to the Settlement; (b) whether the terms and conditions of the Settlement were fair, reasonable and adequate to the Settlement Class, and should therefore be approved; (c) whether Class Counsel’s motion for Fee Award and Expenses should be granted; (d) whether the Class

Representative's motion for Service Award should be granted; and (e) whether a judgment should be entered dismissing the Action with prejudice as against Defendant; and

WHEREFORE, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings had in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction**: This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents**: This Judgment incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on [REDACTED], 2023; and (b) the Notice documents filed with the Court on [REDACTED], 2023.

3. **Class Certification for Settlement Purposes**: The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure on behalf of the Settlement Class consisting of, "All individuals who were issued notice by EmergeOrtho stating that their Private Information may have been involved in the Data Incident discovered by EmergeOrtho on or about May 1, 2022.". The Settlement Class specifically excludes: (1) the Judge presiding over this Action, and members of their direct families; (2) Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

4. **Adequacy of Representation**: Pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiff as Class Representative for the Settlement Class and appointing Class Counsel to serve as counsel for the Settlement Class. Plaintiff and Class Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of North Carolina Rule of Civil Procedure 23.

5. **Notice**: The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action, (ii) the effect of the proposed Settlement (including the releases to be provided thereunder), (iii) Class Counsel's motion for a Fee Award and Expenses, (iv) Class Representative's motion for a Service Award, (v) their right to object to any aspect of the Settlement, Class Counsel's motion for a Fee Award and Expenses, and/or Class Representative's motion for a Service Award, (vi) their right to exclude themselves from the Settlement Class, and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) was carried out as ordered by this Court's Preliminary Approval Order and satisfied the requirements of Rule 23 of the North Carolina Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Objection**: [TO BE DETERMINED]

7. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Rule 23 of the North Carolina Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects (including, without limitation: the amount of the Settlement Fund; the Releases provided for in the Settlement Agreement; and the dismissal with prejudice of the claims asserted against Defendant in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

8. Upon the Effective Date, the Action shall be, and hereby is dismissed with prejudice in its entirety as to Defendant, with each party to bear their own costs and attorneys' fees, except as provided in the Settlement Agreement, and all of the claims of the Settlement Class Members shall be, and hereby are, dismissed and released pursuant to the Settlement Agreement.

9. **Binding Effect:** The terms of the Settlement Agreement and this Judgment shall be forever binding on Defendant, Plaintiff, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submitted a Claim Form or seeks or obtains a distribution or benefits from the Net Settlement Fund), as well as their respective successors and assigns.

10. **Releases:** The releases set forth in the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that, upon the Effective Date, and in consideration of the Settlement benefits described in the Settlement Agreement, each Settlement Class Member shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Persons from any and all Released Claims.

11. Notwithstanding Paragraph 10 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

12. **No Admissions**: This Judgment and Order, and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by the Defendant of any liability, claim or wrongdoing in this Action or in any other proceeding.

13. **Retention of Jurisdiction**: Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) Class Counsel's motion for a Fee Award and Expenses; (d) the Class Representative's motion for Service Award; and (e) the Settlement Class Members for all matters relating to the Action.

14. Upon consideration of Class Counsel's Motion for a Fee Award and Expenses, and consistent with Paragraph 99 of the Settlement Agreement, Class Counsel is hereby awarded attorneys' fees in the amount of \$183,315.00 and costs in the amount of [INSERT], to be paid as specified in the Settlement Agreement.

15. Upon consideration of Plaintiff's Motion for Service Award, and consistent with Paragraph 97 of the Settlement Agreement, the Class Representative is hereby awarded Five thousand Dollars and Zero Cents (\$5,000.00), to be paid as specified in the Settlement Agreement.

16. **Modification of the Agreement of Settlement**: Without further approval from the Court, Plaintiff and Defendant are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do

not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiff and Defendant may agree to reasonable extensions of time to carry out any provisions of the Settlement.

17. **Termination of Settlement:** If the Settlement is terminated as provided in the Settlement Agreement or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Settlement Agreement, and this Judgment shall be without prejudice to the rights of Plaintiff, the other Settlement Class Members and Defendant, and the Parties shall revert to their respective positions in the Action as of [REDACTED], 2023, as provided in the Settlement Agreement.

18. **Entry of Judgment:** There is no just reason for delay of entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final Judgment in the Action.

IT IS SO ORDERED this [REDACTED] day of [REDACTED], 202[REDACTED].

Hon. Louis Bledsoe, III

EXHIBIT E

WHEREAS, the above-captioned class action is pending in this Court (the “Action”);

WHEREAS, Plaintiff DANIEL GREEN, individually and on behalf of all others similarly situated (“Plaintiff”) and Defendant EmergeOrtho, P.A., (“EmergeOrtho” or “Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the above-captioned action on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated , 202_ (“Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding Final Approval of the Settlement;

WHEREAS, due and adequate Notice has been given to the Settlement Class;

WHEREAS, [XX] Class Members submitted objections or Requests for Exclusion;

WHEREAS, the Court conducted a hearing on [INSERT FINAL APPROVAL HEARING DATE] (the “Final Approval Hearing”) to consider, among other things, (a) the Objection(s) to the Settlement; (b) whether the terms and conditions of the Settlement were fair, reasonable and adequate to the Settlement Class, and should therefore be approved; (c) whether Class Counsel’s motion for Fee Award and Expenses should be granted; (d) whether the Class

Representative's motion for Service Award should be granted; and (e) whether a judgment should be entered dismissing the Action with prejudice as against Defendant; and

WHEREFORE, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings had in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction**: This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents**: This Judgment incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on [REDACTED], 2023; and (b) the Notice documents filed with the Court on [REDACTED], 2023.

3. **Class Certification for Settlement Purposes**: The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure on behalf of the Settlement Class consisting of, "All individuals who were issued notice by EmergeOrtho stating that their Private Information may have been involved in the Data Incident discovered by EmergeOrtho on or about May 1, 2022.". The Settlement Class specifically excludes: (1) the Judge presiding over this Action, and members of their direct families; (2) Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

4. **Adequacy of Representation**: Pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiff as Class Representative for the Settlement Class and appointing Class Counsel to serve as counsel for the Settlement Class. Plaintiff and Class Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of North Carolina Rule of Civil Procedure 23.

5. **Notice**: The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action, (ii) the effect of the proposed Settlement (including the releases to be provided thereunder), (iii) Class Counsel's motion for a Fee Award and Expenses, (iv) Class Representative's motion for a Service Award, (v) their right to object to any aspect of the Settlement, Class Counsel's motion for a Fee Award and Expenses, and/or Class Representative's motion for a Service Award, (vi) their right to exclude themselves from the Settlement Class, and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) was carried out as ordered by this Court's Preliminary Approval Order and satisfied the requirements of Rule 23 of the North Carolina Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Objection**: [TO BE DETERMINED]

7. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Rule 23 of the North Carolina Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects (including, without limitation: the amount of the Settlement Fund; the Releases provided for in the Settlement Agreement; and the dismissal with prejudice of the claims asserted against Defendant in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

8. Upon the Effective Date, the Action shall be, and hereby is dismissed with prejudice in its entirety as to Defendant, with each party to bear their own costs and attorneys' fees, except as provided in the Settlement Agreement, and all of the claims of the Settlement Class Members shall be, and hereby are, dismissed and released pursuant to the Settlement Agreement.

9. **Binding Effect:** The terms of the Settlement Agreement and this Judgment shall be forever binding on Defendant, Plaintiff, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submitted a Claim Form or seeks or obtains a distribution or benefits from the Net Settlement Fund), as well as their respective successors and assigns.

10. **Releases:** The releases set forth in the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that, upon the Effective Date, and in consideration of the Settlement benefits described in the Settlement Agreement, each Settlement Class Member shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Persons from any and all Released Claims.

11. Notwithstanding Paragraph 10 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

12. **No Admissions**: This Judgment and Order, and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by the Defendant of any liability, claim or wrongdoing in this Action or in any other proceeding.

13. **Retention of Jurisdiction**: Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) Class Counsel's motion for a Fee Award and Expenses; (d) the Class Representative's motion for Service Award; and (e) the Settlement Class Members for all matters relating to the Action.

14. Upon consideration of Class Counsel's Motion for a Fee Award and Expenses, and consistent with Paragraph 100 of the Settlement Agreement, Class Counsel is hereby awarded attorneys' fees in the amount of \$183,315.00 and costs in the amount of [INSERT], to be paid as specified in the Settlement Agreement.

15. Upon consideration of Plaintiff's Motion for Service Award, and consistent with Paragraph 98 of the Settlement Agreement, the Class Representative is hereby awarded Five thousand Dollars and Zero Cents (\$5,000.00), to be paid as specified in the Settlement Agreement.

16. **Modification of the Agreement of Settlement**: Without further approval from the Court, Plaintiff and Defendant are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do

not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiff and Defendant may agree to reasonable extensions of time to carry out any provisions of the Settlement.

17. **Termination of Settlement:** If the Settlement is terminated as provided in the Settlement Agreement or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Settlement Agreement, and this Judgment shall be without prejudice to the rights of Plaintiff, the other Settlement Class Members and Defendant, and the Parties shall revert to their respective positions in the Action as of [REDACTED], 2023, as provided in the Settlement Agreement.

18. **Entry of Judgment:** There is no just reason for delay of entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final Judgment in the Action.

IT IS SO ORDERED this [REDACTED] day of [REDACTED], 202[REDACTED].

Hon. Louis Bledsoe, III