



Protection Act (“TCPA”), 47 U.S.C. § 227, arising from allegedly nonconsensual calls made by or on behalf of CVS to the cellular telephone numbers of Plaintiff and others using an automatic telephone dialing system. Plaintiff also alleged violations of the Illinois Automatic Telephone Dialers Act (“ATDA”), 815 ILCS 305/1 *et seq.*, arising out of CVS Pharmacy’s and MinuteClinic’s alleged use of an autodialer to call his and others’ phones, and impeding caller identification. Plaintiff subsequently amended his pleadings to add a CVS calling vendor, West, as a defendant, filing a First Amended Complaint on April 13, 2015 (the “Complaint”).<sup>1</sup>

**1.02** On November 9, 2015, the Parties engaged in an all-day, in-person, arms-length mediation with Rodney A. Max, Esq. This mediation did not result in settlement, and the Parties thereafter continued to aggressively litigate the case, including through contested motion practice, extensive adversarial discovery, and engaging in two sets of briefings on class certification, in addition to oral argument.

**1.03** On September 21, 2018, the Parties again participated in mediation, with Hon. Diane M. Welsh (Ret.) of JAMS. This mediation was, likewise, unsuccessful.

**1.04** In April 2019, counsel for the Parties reopened communications to determine the possibility that this case could be resolved through negotiated settlement, which efforts were ultimately successful at reaching an agreement in principle. Based on their investigation and negotiations, which included extensive class and expert discovery, and taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this litigation, and the substantial benefits to be received by Settlement Class Members pursuant to this Settlement Agreement, Plaintiff and Class Counsel have concluded that a settlement with

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<sup>1</sup> Kaiser was joined in these proceedings with another consumer plaintiff, Carl Lowe. Mr. Lowe is not a part of this Settlement Agreement.

Defendants on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class Members.

**1.05** Defendants deny and continue to deny Plaintiff's allegations in the Complaint and maintain that they complied with the TCPA, ATDA, and all applicable laws. Defendants further maintain that if this Action were to be litigated, the Action would not be appropriate for class treatment. Defendants are entering into this Settlement Agreement to avoid the expense, time, and risk associated with the continued defense of the Action through dispositive motions, class certification, trial, and any subsequent appeals. Defendants also have considered the uncertainty, difficulty, and delays inherent in litigation, especially in this complex class action. Therefore, Defendants believe it is desirable that this Action and the Released Claims be fully and finally compromised, settled, dismissed with prejudice, and barred pursuant to the terms set forth herein. Neither the fact of Settlement, this Settlement Agreement, nor any consideration thereof, nor any actions taken to implement the terms of this Settlement Agreement are intended to be, nor may they be, deemed or construed to be an admission or concession of liability or of the validity of any claim or of any point of law or fact based upon, arising out of, relating to, or otherwise in connection with the allegations asserted or that could have been asserted in this Action, and shall not be deemed or construed to be an admission or evidence for any purpose whatsoever.

**1.06** Plaintiff believes that the claims asserted in the Action have merit. Nonetheless, Plaintiff and his counsel recognize and acknowledge the expense, time, and risk associated with continued prosecution of the Action against Defendants through dispositive motions, class certification, trial, and any subsequent appeals. Plaintiff and Plaintiff's counsel also have considered the uncertainty, difficulties, and delays inherent in litigation, especially in complex actions. Therefore, Plaintiff and Plaintiff's counsel believe that it is desirable that the Action and

the Released Claims be fully and finally compromised, settled, dismissed with prejudice, and barred pursuant to the terms set forth herein. Based on their evaluation, which they have confirmed by consulting with their own experts and by performing discovery, Plaintiff and Plaintiff's counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate for the Settlement Class, and that it is in the best interests of the Settlement Class to settle the Released Claims pursuant to the terms and provisions of this Settlement Agreement.

**1.07** The Parties understand, acknowledge, and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of the disputed allegations, facts, and claims alleged or that could have been alleged in this Action. The Parties further understand, acknowledge, and agree that this Settlement Agreement, including all terms hereof, shall be inadmissible as evidence against any of the Parties in any proceeding whatsoever except any such proceeding to enforce the terms of this Settlement Agreement. The Parties further understand, acknowledge, and agree that this Settlement Agreement is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement. The Parties desire and intend to effect a full, complete, and final settlement and resolution of all existing disputes and claims based upon, arising out of, related to, or otherwise in connection with the allegations in this Action as set forth herein.

**1.08** The Settlement contemplated by this Settlement Agreement is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their undersigned respective counsel, subject to final approval by the Court after a hearing or hearings as provided for in this Settlement Agreement, and without admitting or conceding any liability or damages based upon, arising out of, related to, or otherwise in connection with the allegations asserted in this Action, and in consideration of the benefits flowing from the Settlement Agreement set forth herein, that the Action as to Kaiser and the Settlement Class and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Settlement Agreement.

## **II. DEFINITIONS**

As used in this Settlement Agreement and the exhibits attached hereto, the terms set forth below shall have the meanings set forth below. The singular of a term shall include the plural of the term, and the plural of a term shall include the singular of the term. A masculine, feminine, or neuter pronoun shall include each of the other genders.

**2.01** “Action” means *Lowe v. CVS Pharmacy, Inc.*, No. 1:14-cv-03687, currently pending in the United States District Court for the Northern District of Illinois.

**2.02** “Approved Claims” means claims that have been validly completed, timely submitted, and approved for payment, pursuant to the terms of this Settlement Agreement.

**2.03** “CAFA Notice” refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

**2.04** “Cash Award” means a cash payment to an eligible Settlement Class Member.

**2.05** “Claim Form” means the claim form substantially in the form attached hereto as Exhibit A.

**2.06** “Claims Deadline” means ninety (90) days from the Settlement Notice Date.

**2.07** “Claims Period” means the 90-day period that begins on the Settlement Notice Date.

**2.08** “Class Counsel” means Alexander H. Burke and Daniel J. Marovitch of Burke Law Offices, LLC, Matthew P. McCue of the Law Office of Matthew P. McCue, Edward A. Broderick of Broderick Law, P.C., and Brian K. Murphy of Murray Murphy Moul + Basil LLP.

**2.09** “Class List” means the list of phone numbers attached as Exhibit E. The Class List will be submitted under seal as part of Plaintiffs’ Motion for Preliminary Approval.

**2.10** “Class Notice” means the notice specified in Section VIII of this Settlement Agreement.

**2.11** “Class Period” or “Settlement Period” means May 20, 2010, until September 18, 2013.

**2.12** “Class Representative” means Plaintiff Kearby Kaiser.

**2.13** “Court” means the United States District Court for the Northern District of Illinois.

**2.14** “Cy Pres Distribution” means monies that may be distributed in connection with the Settlement Agreement pursuant to Section 7.08(f).

**2.15** “Defendants’ Counsel” means the law firm of Foley & Lardner LLP.

**2.16** “Effective Date” means the date on which the judgment becomes final as provided in Section 12.01.

**2.17** “Escrow Account” means an interest-bearing account established at a financial institution, by the Settlement Administrator, into which monies shall be deposited as set forth by this Settlement Agreement.

**2.18** “Final Approval Hearing” means the hearing held by the Court to determine whether to finally approve the Settlement Agreement as fair, reasonable, and adequate.

**2.19** “Final Approval Order” means the order to be submitted to the Court in connection with the Final Approval Hearing, substantially in the form attached hereto as Exhibit B.

**2.20** “Final Distribution Date” means the earlier of (i) the date as of which all the checks for Cash Awards have been cashed, or (ii) 210 days after the date on which the last check for a Cash Award was issued.

**2.21** “Funding Date” means thirty (30) days after the Effective Date.

**2.22** “Objection Deadline” means forty-five (45) days from the Settlement Notice Date.

**2.23** “Opt-Out Deadline” means forty-five (45) days from the Settlement Notice Date.

**2.24** “Preliminary Approval Order” means the order by the Court granting preliminary approval to this Settlement Agreement, substantially in the form attached hereto as Exhibit D.

**2.25** “Released Claims” means any and all of the claims released as set forth in Section 13 of this Settlement Agreement.

**2.26** “Released Parties” means Defendants and each of their respective past, present, and future parents, subsidiaries, holding companies, affiliated companies and corporations, and each of its and their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, employees, insurers, reinsurers, shareholders, members, attorneys, advisors, representatives, predecessors, successors, assigns, and legal representatives.

**2.27** “Settlement Administrator” means A.B. Data, Ltd., the neutral third party selected

by the Parties to effectuate Class Notice and otherwise administer the Settlement Agreement as set forth herein, subject to all applicable privacy laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and Court approval.

**2.28** “Settlement Agreement” or “Agreement” means this Class Action Settlement Agreement and Release, including any incorporated exhibits or attachments.

**2.29** “Settlement Class” or “Class” means the persons on the Class List. For self-identification purposes, the Class List may be described as all persons in the United States whom CVS called using an unattended message in MinuteClinic’s 2013 flu shot reminder campaign that offered a CVS Pharmacy retail coupon, where: (1) the call was made to a cell phone number, or (2) the person was an Illinois resident.

**2.30** “Settlement Class Members” or “Class Members” means those persons who are members of the Settlement Class, as set forth in the definition in Section 2.29, and who do not timely and validly request exclusion from the Settlement Class.

**2.31** “Settlement Costs” means all costs incurred by Plaintiff, the Settlement Class Members, and their attorneys, including but not limited to Plaintiff’s attorneys’ fees, costs of suit, Plaintiff’s expert or consultant fees, any incentive payments paid to the Class Representative, notice costs, costs of claims administration, and all other costs of administering the Settlement Agreement.

**2.32** “Settlement Fund” means the non-reversionary cash sum that will be paid by Defendants to settle this Action in accordance with the terms of this Settlement Agreement, as identified in Section 4.02.

**2.33** “Settlement Notice Date” means thirty (30) days after a Preliminary Approval Order is issued.



**2.34** “Settlement Website” means the internet website operated by the Settlement Administrator as described in Section 8.04.

**2.35** “TCPA” means the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any regulations or rulings promulgated under it.

**III. THE PARTIES RECOMMEND APPROVAL OF THE SETTLEMENT AGREEMENT.**

**3.01** Defendants’ Position on Certification of the Settlement Class. Defendants dispute that, absent settlement, a class would be manageable or that common issues predominate over individual ones, and further deny that a litigation class properly could be certified on the claims asserted in this Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendants do not oppose the certification for settlement purposes only of the Settlement Class. Certification of the Settlement Class for settlement purposes shall not be deemed a concession that certification of a litigation class is appropriate, nor would Defendants be precluded from challenging class certification in further proceedings in this Action or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, certification of the Settlement Class is voidable by either party. In such event, no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in this Action. No agreements made by or entered into by Defendants in connection with the Settlement Agreement may be used by Plaintiff, any person in the Settlement Class or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other judicial proceeding.

**3.02** Plaintiff’s Position on Certification of the Settlement Class. Plaintiff believes that the claims asserted in this Action have merit and that the evidence developed to date supports

those claims. This Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiff that there is any infirmity in the claims asserted by Plaintiff, or that there is any merit whatsoever to any of the contentions and defenses that Defendants have asserted.

Plaintiff recognizes and acknowledges, however, the expense and amount of time which would be required to continue to pursue this Action against Defendants, as well as the uncertainty, risk and difficulties of proof inherent in prosecuting such claims on behalf of the Settlement Class. Plaintiff has concluded that it is desirable that this Action and any Released Claims be fully and finally settled and released as set forth in this Settlement Agreement. Plaintiff and Class Counsel believe that the agreement set forth in this Settlement Agreement confers substantial benefits upon the Settlement Class, and that it is in the best interests of the Class to settle as described herein.

#### **IV. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS**

**4.01 Discovery:** The Parties have engaged in discovery, and have agreed upon the Class List. The Parties agree that no further discovery need occur.

**4.02 Monetary Consideration.** In consideration of the releases, covenants, and other agreements set forth in this Settlement Agreement, Defendants will pay or cause to be paid into the Escrow Account the Settlement Fund in the amount of fifteen million dollars (\$15,000,000.00), pursuant to the timeline detailed in Section 7.07. Under no circumstances shall Defendants be required to pay or cause to be paid any amount in excess of fifteen million dollars (\$15,000,000.00) under this Settlement Agreement.

**4.03 Eligibility for Cash Awards.** Each member of the Settlement Class who does not timely and validly submit a request for exclusion from the Settlement Class as required in this

Settlement Agreement will be a Settlement Class Member and will be mailed a Cash Award to the extent a valid address can be located or they otherwise make a valid and timely claim. Each Settlement Class Member shall be entitled to one Cash Award, except that any Settlement Class Member who received calls on multiple phone numbers may obtain a Cash Award for each unique phone number called.

**4.04** Amount Paid to Settlement Class Members. Each Settlement Class Member for whom an address can be located or who makes a valid and timely claim shall receive one Cash Award per phone number on the Class List. The amount of each Cash Award shall be determined by the following formula:  $(\text{Settlement Fund} - \text{Settlement Costs}) \div (\text{Total Number of Valid and Timely Claims} + \text{Total Number of Class Members for Whom an Address Can Be Otherwise Located}) = \text{Cash Award}$ . Therefore, the Cash Award for each Settlement Class Member for whom a valid address can be located or who makes a valid and timely claim is the Settlement Class Member's pro rata share of the total payments to Settlement Class Members. (For the distribution of Settlement Class Member payments that go uncashed, see Section 7.08.)

**V. ATTORNEYS' FEES, COSTS AND PAYMENT TO CLASS REPRESENTATIVES**

**5.01** Class Representative and Class Counsel Appointment. For settlement purposes, and subject to Court approval, Kaiser is appointed as the Class Representative for the Settlement Class as a whole.

**5.02** Attorneys' Fees and Costs. Class Counsel shall move the Court for an award of attorneys' fees, not to exceed one-third of the total Settlement Fund, plus costs/expenses incurred by Class Counsel in this Action. Nothing in this Settlement Agreement requires Defendants or Defendants' Counsel to take any position with respect to such request. Class Counsel shall be entitled to payment of any such fees and costs awarded by the Court out of the Settlement Fund

as set forth in Section 7.08. This Settlement Agreement will be binding and enforceable regardless of whether the Court approves the attorneys' fees and costs sought by Class Counsel. Any payment under this Section 5.02 shall be paid exclusively from the Settlement Fund. Any request for attorneys' fees and costs/expenses shall be noticed to be heard at or before the Final Approval Hearing. The Settlement Administrator shall disburse any approved award of attorneys' fees and costs/expenses to Class Counsel no later than thirty (30) days after the Funding Date.

**5.03** Payment to Class Representative. The Class Representative will ask the Court to award an incentive payment for the time and effort he has personally invested in the Action on behalf of the Settlement Class. Within thirty (30) days of the Funding Date, and after receiving a W-9 form from the Class Representative, the Settlement Administrator shall pay to the Class Representative the amount of any incentive payment awarded by the Court in its Final Approval Order. Court approval of any incentive payment, or its amount, is not a condition of the Settlement Agreement. Plaintiff anticipates seeking an incentive award of \$15,000. Any payment under this section shall be paid exclusively from the Settlement Fund. Nothing in this Settlement Agreement requires Defendants or Defendants' Counsel to take any position with respect to such request.

**5.04** Settlement Independent of Award of Fees, Costs and Incentive Payments. The payment of attorneys' fees, costs, and any incentive payment set forth in Sections 5.02 and 5.03 are subject to and dependent upon the Court's approval of the Settlement Agreement as fair, reasonable, adequate and in the best interests of Settlement Class Members. However, this Settlement Agreement is not dependent or conditioned upon the Court approving Plaintiff's requests for such payments or awarding the particular amounts sought by Plaintiff. In the event

the Court declines Plaintiff's requests or awards less than the amounts sought, this Settlement Agreement shall continue to be effective and enforceable by the Parties.

**VI. PRELIMINARY APPROVAL**

**6.01 Order of Preliminary Approval.** As soon as practicable after the execution of this Settlement Agreement, Plaintiff shall move the Court for entry of the Preliminary Approval Order in substantially the form attached as Exhibit D. Pursuant to the motion for preliminary approval, Plaintiff will request that:

a. the Court find that giving notice is justified by the parties' showing that the Court will likely be able to: (i) approve the Settlement under Fed. R. Civ. P. 23(e)(2), and (ii) certify the Class for purposes of judgment on the proposal;

b. the Court conditionally certify the Settlement Class for settlement purposes only, appoint Kaiser as the Class Representative of the Settlement Class for settlement purposes only, and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only;

c. the Court preliminarily approve the Settlement Agreement as fair, adequate and reasonable, and within the reasonable range of possible final approval;

d. the Court approve the form(s) of Class Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances, and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;

e. the Court set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice; and,

f. the Court set the Claims Deadline, the Objection Deadline and the Opt-Out Deadline.

**VII. ADMINISTRATION AND NOTIFICATION PROCESS**

**7.01 Third-Party Settlement Administrator.** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by completing its duties in a rational, reasonable, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under the Settlement and this Settlement Agreement. The Settlement Administrator shall maintain all such records as are required by the Court and applicable law in accordance with its normal business practices, including, but not limited to, a summary of work performed by the Settlement Administrator, including an accounting of all amounts paid from the Settlement Fund to Settlement Class Members. Such records shall be provided to Class Counsel and Defendants' Counsel upon reasonable request. Without limiting the foregoing, the Settlement Administrator shall receive objections and Request for Exclusion forms, and upon such receipt shall promptly provide copies of such objections and Requests for Exclusion forms to Class Counsel and Defendants' Counsel.

The Settlement Administrator shall be responsible for all matters relating to the administration of this Settlement Agreement, including, but not limited to:

- a. Preparing and completing Class Notice;
- b. Creation of the Escrow Account;
- c. Obtaining complete address information for Settlement Class Members including new addresses for any returned Class Notice, settlement checks, or any other documents;
- d. Creating, operating, maintaining, and hosting a Settlement Website, from which Settlement Class Members can access copies of the Complaint, this Settlement

Agreement, Class Notice, the Preliminary Approval Order, and other pertinent documents, materials, and information about this Settlement Agreement;

- e. Acting as a liaison between Settlement Class Members and the Parties;
- f. Issuing and mailing Settlement payments;
- g. Preparing and sending all notices required under CAFA;
- h. Preparing and providing a declaration to Class Counsel and Defendant's

Counsel prior to the submission of the Plaintiff's Motion for Final Approval of the Class Action Settlement: (i) attesting to the compliance of the provisions of this Settlement Agreement concerning Class Notice; and (ii) listing each Settlement Class Member who timely and validly submitted a Request for Exclusion opting out of the Settlement Agreement as described in Section 10.01 of this Settlement Agreement; and

- i. Performing any other tasks reasonably required to effectuate the Settlement and this Settlement Agreement, including, but not limited to, all responsibilities, obligations, and tasks referenced in any Section of this Settlement Agreement.

**7.02** In the exercise of its duties outlined in this Settlement Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member as it relates to the Settlement Agreement.

**7.03** Class List. After the Settlement Administrator is appointed by the Court and agrees to be bound by the Protective Order entered in this Action on September 9, 2014 (Dkt. 41), as may be amended by this Court ("Protective Order"), the Parties shall, no later than fourteen (14) days after entry of the Preliminary Approval Order, cause the Class List to be delivered to the Settlement Administrator solely for the purposes of administering this Settlement Agreement in the manner directed by the Preliminary Approval Order. The agreed Class List

includes the unique phone numbers of Settlement Class Members. Associated names and addresses will also be provided, to the extent available from the data produced by Defendants in the Action. The Settlement Administrator shall perform a reverse-lookup on the Class List as provided in Section 8.02, including any necessary address update, to identify and confirm name and address information for purposes of distributing direct Class Notice.

**7.04** At no time shall the Settlement Administrator share the Class List or any information contained on the Class List, or any Protected Health Information (“PHI”), with the Court, or any other person or entity, without a Court Order or an authorization form that is signed by the Settlement Class Member whose information is to be disclosed (or by someone with legal authorization to sign on their behalf), except that the Settlement Administrator shall comply with any federal and state tax laws and required reporting and withholding with respect to this Settlement Agreement, and Defendants shall have no obligations relating to such matters.

**7.05** Compliance with all Regulatory and Other Requirements. The Class List delivered by the Parties to the Settlement Administrator pursuant to Section 7.03 of this Settlement Agreement and as ordered by the Court and any other information submitted by Claimants to the Settlement Administrator, will be recorded by the Settlement Administrator in a computerized database that will be securely and confidentially maintained by the Settlement Administrator in accordance with HIPAA and all other applicable federal, state and local laws, regulations and guidelines. The Settlement Administrator must: (a) designate specifically-assigned employees to handle its administration of this Settlement Agreement; (b) train them concerning their legal duties and obligations arising out of this Settlement Agreement with respect to the information that they are provided; (c) ensure that all of the information it receives is used properly in accordance with HIPAA and all other applicable federal, state and local laws



and solely for the purpose of administering this Settlement Agreement; and (d) ensure that an orderly system of data management and maintenance is adopted and implemented, and that the information is retained under responsible custody until the conclusion of this Action, at which time all of the information and data shall be destroyed by the Settlement Administrator upon a written certification to be filed with the Court. The Settlement Administrator will keep the database in a form that grants access for settlement administration use only, and shall restrict access rights only to the least possible number of employees of the Settlement Administrator who are working directly on the administration of this Settlement Agreement. The Settlement Administrator shall notify the Court and Counsel for the Parties in writing if there is any breach of applicable privacy laws in any respect.

**7.06** Access to the Class List and Related Information. Only Class Counsel, Defendants, Defendants' counsel, and the Settlement Administrator shall have access to the Class List and other information submitted by Settlement Class Members, except as otherwise specifically provided herein. Other than objections and opt-outs, all information submitted by Settlement Class Members to the Settlement Administrator will be treated as confidential pursuant to the Court's Preliminary Approval Order and the Protective Order.

**7.07** Payment of Notice and Settlement Administration Costs. Upon the later of (i) twenty-one (21) days after entry of the Preliminary Approval Order or (ii) five (5) business days after the Settlement Administrator provides to Defendants a valid, completed W-9 Form, Defendants shall fund the Settlement Fund in the amount of \$500,000. Within thirty (30) days after the Effective Date (i.e., the "Funding Date"), Defendants shall pay the remaining \$14,500,000 balance owed towards the Settlement Fund. The Settlement Administrator shall maintain detailed records of the amounts spent on the administration of the Settlement

Agreement and shall provide those to the Parties monthly. After Defendants have paid or caused the Settlement Fund to be paid, Defendants shall have no further obligation to pay or cause to be paid any amount under this Settlement Agreement, and any additional Settlement Costs shall be paid out of the Settlement Fund. Any dispute between Settlement Class Members and the Settlement Administrator regarding the reasonableness of the Settlement Costs shall create no further obligation on the part of Defendants to pay or cause to be paid any amount in addition to the amount provided for under Section 4.02.

**7.08** Distribution of the Settlement Fund. The Settlement Administrator shall distribute the funds in the Settlement Fund in the following order and within the time period set forth with respect to each such payment:

a. no later than fourteen (14) days after the Funding Date, the Settlement Administrator shall be paid for any unreimbursed costs of notice and administration incurred;

b. no later than thirty (30) days after the Funding Date, the Settlement Administrator shall pay to Class Counsel the attorneys' fees, costs, and expenses ordered by the Court as set forth in Section 5.02;

c. no later than thirty (30) days after the Funding Date, the Settlement Administrator shall pay to the Class Representative any incentive award ordered by the Court, as described in Section 5.03;

d. no later than thirty (30) days after the Funding Date, the Settlement Administrator shall pay the Cash Awards to eligible Settlement Class Members pursuant to Section 9;

e. if checks that remain uncashed after 210 days of the first pro rata distribution yield an amount that, after administration costs, feasibly allow a further pro rata

distribution to qualifying Settlement Class Members, the Settlement Administrator shall distribute any such funds on a pro rata basis to Settlement Class Members who cashed their initial settlement checks. Such redistributions shall be made until the Settlement Administrator determines that it is administratively infeasible given the available amount in the Settlement Fund.

f. if a further pro rata distribution is administratively infeasible, the uncashed amount will be paid to a mutually agreeable *cy pres* recipient, subject to Court approval. The Parties propose that such funds be paid to the Illinois Bar Foundation.

## **VIII. NOTICES**

**8.01 Timing of Class Notice.** Class Notice shall be provided to all persons in the Settlement Class within thirty (30) days following entry of the Preliminary Approval Order as described herein. The Class Notice shall comport with Rule 23 of the Federal Rules of Civil Procedure.

**8.02 Mailing of Settlement Notice.** The Settlement Administrator will conduct research to identify the owners of the cell phones contained on the Class List and their current addresses. The Settlement Administrator will then compare the results of such research to the names and addresses associated with these numbers as contained in the Defendants' records. Where the Settlement Administrator determines that the research and records identify the correct individual from the Class List, by the Settlement Notice Date, the Settlement Administrator shall send the person so identified the Settlement Notice in the form of Exhibit C-1, via first class mail in a sealed envelope. The Settlement Administrator shall take all reasonable steps to ensure proper delivery, including updating addresses and re-mailing, as needed. All costs of performing the reverse lookup, mailing, and re-mailing of returned Settlement Notices, and other aspects of

Class Notice will be considered Settlement Costs. The Parties reserve the right to add additional email notice upon agreement but such notice shall also be paid solely through the existing Settlement Fund.

**8.03** Online Publication Notice. The Parties recognize that physical address contact information for the vast majority of Settlement Class Members will be identified through Defendants' records produced in discovery in the Action, including via reverse-lookups if necessary. However, to the extent the Settlement Administrator is unable to ascertain a physical address for any phone number on the Class List, the Settlement Administrator shall use its best judgment, with the approval of the Parties, to attempt to provide notice of the Settlement Agreement to such persons. This shall include a targeted Google Ads campaign substantially in the form attached as Exhibit C-3. The online publication notice program will be initiated on the Settlement Notice Date. The parties reserve the right to add additional publication notice upon agreement, and such notice shall also be paid solely through the existing Settlement Fund.

**8.04** Website Notice. By the Settlement Notice Date, the Settlement Administrator shall maintain and administer a dedicated Settlement Website with a set of frequently asked questions and long-form Class Notice in the form of Exhibit C-2. The Settlement Website shall also permit Class Members to view and download the Settlement Agreement, the Parties' operative pleadings, and motions relevant to the Settlement Agreement, as well as a Claim Form that can be completed and mailed to the Settlement Administrator. The Settlement Website will also permit Class Members who did not receive a Settlement Notice to submit a claim online. Class Members may request a Claim Form or a copy of the long-form Class Notice by calling, mailing, or emailing the Settlement Administrator, as well. The Settlement Website shall remain operative until the date of the *cy pres* distribution.

**8.05** Toll-Free Telephone Number. Within ten (10) days of the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the Settlement Agreement, consisting of information concerning the Settlement Agreement, and providing the ability to leave a voicemail message to be called back. That telephone number shall be maintained until thirty (30) days after the Claims Deadline. After that time, and for a period of ninety (90) days thereafter, a recording will advise any caller to the toll-free telephone number that the Claims Deadline has passed and that details regarding the Settlement Agreement may be reviewed on the related Settlement Website or by contacting Class Counsel at an identified phone number.

**8.06** CAFA Notice. Defendants shall be responsible for Class Action Fairness Act ("CAFA") notice as required by 28 U.S.C. § 1715. The Parties agree that Defendants may utilize the Settlement Administrator to accomplish such notice, and that the Settlement Administrator's reasonable and actual cost of CAFA notice shall be deducted from the Settlement Fund.

**IX. PAYMENT PROCESS**

**9.01** Eligibility for Cash Award. Each member of the Settlement Class who does not timely and validly request exclusion from the Settlement Class as required in this Settlement Agreement shall be a Settlement Class Member and be eligible to obtain a Cash Award. Each Settlement Class Member shall be entitled to one Cash Award regardless of the number of times the Settlement Class Member was called on a particular phone number, but Settlement Class Members may obtain one Cash Award for each unique phone number on which they were called, per the Class List.

**9.02** Conditions for Cash Award. Cash Awards will be sent to Settlement Class Members whose Settlement Notice was not ultimately returned as undeliverable by the

Settlement Administrator via U.S. mail, or who otherwise submit a valid and timely Approved Claim. For Settlement Class Members who did not receive a Settlement Notice, to receive a Cash Award, these Settlement Class Members must submit by the Claims Deadline a valid and timely Claim Form by U.S. mail or through the Settlement Website (pursuant to Section 8.04), which shall contain the information set forth in Exhibit A hereto, including the Settlement Class Member's 1) first and last name; 2) current address; 3) cell phone number on which the claimant received a call by or on behalf of MinuteClinic; 4) current, additional contact telephone number, if any; and 5) contact email address, if any. The Claim Form must be signed by the claimant. The Settlement Administrator will notify claimants who submit a first incomplete or incorrect Claim Form of the deficiency, including an incorrect phone number, and provide them the opportunity to submit a corrected Claim Form. Claims will be limited to one claim per person, per unique phone number on the Class List, regardless of the number of times the number was called.

**9.03 Claims Review Process.** As soon as practicable and reasonably contemporaneously with receipt of such, the Settlement Administrator shall confirm whether each Claim Form submitted (1) is in the form required, (2) was submitted in a timely fashion, (3) is complete, (4) is for a phone number and person on the Class List, and (5) is for a phone number that has not previously been submitted on another Claim Form, unless more than one person on the Class List has that same phone number. The Settlement Administrator shall forward its decision and supporting documentation to Defendants and Class Counsel for the claims on a rolling basis. Defendants shall have fourteen (14) days to dispute any claims decision made by the Settlement Administrator directly to Plaintiff, after which the Parties shall meet and confer. To the extent the Parties cannot reach an agreement as to the validity of a claim, the

Settlement Administrator will have the final authority to resolve all such claim disputes, and can request documentation or missing information from the claimant.

**9.04** Mailing of Settlement Checks. Settlement checks shall be sent to qualified Class Members by the Settlement Administrator via U.S. mail no later than thirty (30) days after the Funding Date. If any settlement checks are returned, the Settlement Administrator shall attempt to obtain a new mailing address for that Settlement Class Member by taking the steps described in Section 8.02. If, after a second mailing, the settlement check is again returned, no further efforts need be taken by the Settlement Administrator to resend the check to that Class Member. The Settlement Administrator shall advise Class Counsel and counsel for Defendant of the names of the claimants whose checks are returned by the postal service as soon as practicable. Each settlement check will be negotiable for one hundred eighty (180) days after it is issued. To the extent that any checks to Settlement Class Members expire and become null and void, the Settlement Administrator shall distribute the leftover funds associated with those checks to Settlement Class Members who cashed their check from the previous round of distribution on a *pro rata* basis, if doing so is administratively feasible. Any additional remaining funds, including to the extent a further distribution is not administratively feasible, shall be distributed as a *cy pres* award pursuant to Section 7.08(f).

**X. OPT-OUTS AND OBJECTIONS**

**10.01** Opting Out of the Settlement Agreement. Any members of the Settlement Class who wish to opt-out of the Settlement Agreement (i.e., a request to be excluded from the Settlement Class) must advise the Settlement Administrator of that intent by mailing a request for exclusion (or “opt-out”) by first-class mail, postage prepaid, and postmarked to the address of the Settlement Administrator as specified in the Class Notice. Such Request for Exclusion shall

clearly indicate the name, address, telephone number, the name and case number of the Action, a clear and unequivocal statement that the person wishes to be excluded from the Settlement Class, and the signature of such person or, in the case of a person in the Settlement Class who is deceased or incapacitated, the signature of the legally authorized representative of such person. The Settlement Administrator shall provide copies of all requests for exclusion it receives on a rolling basis to the Parties, and shall provide a list of all Settlement Class Members who timely and validly opted out of the Settlement Agreement in its declaration filed with the Court, as required by Section 11.01. The declaration shall include the names of persons who have excluded themselves from the Settlement Agreement, but it shall not include their addresses or any other personal identifying information. Class Members who do not properly and timely submit a request for exclusion will be bound by this Settlement Agreement and the judgment, including the release in Section 13. Any member of the Settlement Class who submits a valid and timely request for exclusion will not be a Settlement Class Member and shall not be bound by the terms of this Settlement Agreement. “Mass” or “class” opt-outs filed by third parties on behalf of a “mass” or “class” of Settlement Class Members, when not signed by each Settlement Class Member, will not be valid.

**10.02 Objections.** Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement must submit a written objection to the Settlement Administrator by the Objection Deadline. In the written objection, the Class Member must state (1) his or her full name, address, and telephone number, and the telephone number(s) called by or on behalf of MinuteClinic (if different), (2) whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class, (3) the specific grounds for the objection, and a detailed statement of the factual and legal basis for such objections, (4) the identities and contact



information for any counsel representing the objector in relation to the case or objection, (5) the identity of all witnesses, including the witness's name and address, and a summary of such witness's proposed testimony, who the objecting Settlement Class Member may call to testify at the Final Approval Hearing, and describe and produce copies of all evidence such objecting Settlement Class Member may offer at the Final Approval Hearing; and (6) statement whether the objecting Settlement Class Member and/or his/her/its attorney(s) intend to appear at the Final Approval Hearing. A written objection must contain the actual written signature of the Settlement Class Member making the objection. The Settlement Administrator shall provide Class Counsel and Counsel for Defendants with copies of any objections as they are received. The names of any objectors who affirmatively state in writing that they wish to use a pseudonym shall be held in strict confidence by Class Counsel and Counsel for Defendants and shall not be disclosed on the public record without the objector's written permission. Any attorney of an objecting Settlement Class Member who intends to appear at the Final Approval Hearing must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the date set by the Court in its Preliminary Approval Order and shall include the full caption and case number of each previous class action case in which such counsel has represented an objector. The Parties will have the right to issue discovery to or depose any objector as to the basis and circumstances of his or her objection, and to assess whether the objector has standing. A Class Member may not both opt out of the Settlement Agreement and object. If a Settlement Class Member submits both a request for exclusion and objection, the request for exclusion will control.

**10.03** Any Settlement Class Member who timely objects pursuant to Section 10.02, may appear at the Final Approval Hearing, either in person or through an attorney hired at the

Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the Settlement.

**XI. FINAL APPROVAL AND JUDGMENT ORDER**

**11.01** No later than fourteen (14) calendar days prior to the Final Approval Hearing, the Settlement Administrator shall cause to be filed with the Court and served on counsel for all Parties a declaration stating that the Notice required by the Settlement Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

**11.02** If the Settlement Agreement is approved preliminarily by the Court, and all other conditions precedent to the Settlement have been satisfied, no later than fourteen (14) calendar days prior to Final Approval Hearing:

a. The Parties shall both request, individually or collectively, that the Court enter the Final Approval Order in substantially the form attached as Exhibit B, with Class Counsel filing a memorandum of points and authorities in support of the motion; and,

b. Class Counsel and/or Defendants' Counsel may file a memorandum addressing any objections submitted to the Settlement Agreement.

**11.03** At the Final Approval Hearing, the Parties will ask the Court to, among other things:

a. certify the Settlement Class for settlement purposes only;

b. find that the Court has personal jurisdiction over all Settlement Class Members;

c. find that the Court has subject matter jurisdiction over the Action and the Released Claims such that the Court may approve this Settlement Agreement and all exhibits hereto;

d. find final approval of this Settlement Agreement and the Settlement to be fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members, that each Settlement Class Member shall, upon the Effective Date, be bound by this Settlement Agreement, including as to the Released Claims as described in Section 13 of this Settlement Agreement, and that this Settlement Agreement should be and is approved;

e. direct the Parties and their counsel to implement this Settlement Agreement according to its terms and provisions;

f. declare this Settlement Agreement to be binding on, and have preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff, the Settlement Class Members, and the Releasing Parties;

g. find that the Class Notice as described in this Settlement Agreement satisfies the requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and all applicable rules of the Court, constitutes the best practicable notice under the circumstances, constitutes notice that is reasonably calculated to apprise the Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the proposed Settlement Agreement, and to appear at the Final Approval Hearing, and is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the Settlement Agreement.

h. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering and implementing the Settlement Agreement;

i. dismiss the Action as to Kaiser and the Settlement Class, including, without limitation, all Released Claims against the Released Parties, on the merits and with

prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

j. approve and incorporate the releases described in Section 13.01 of this Settlement Agreement, make such releases effective as of the Effective Date, and forever discharge the Released Parties from the Released Claims as described in Section 13.01 of this Settlement Agreement;

k. without affecting the finality of the Final Approval Order and Judgment, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Settlement Agreement; and

l. permanently enjoin each Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against Defendants or any of the Released Parties.

**11.04** If the Court refuses to issue the Final Approval Order and Judgment in substantially the same form as Exhibit B, then the Settlement and this Settlement Agreement in its entirety shall become null and void, unless the Parties promptly agree in writing to proceed with the Settlement and this Settlement Agreement consistent with the change or modification under which the Settlement and this Settlement Agreement are otherwise rendered null and void. In the event the Settlement and this Settlement Agreement become null and void, the Parties shall be restored without prejudice to their respective litigation positions in the Action prior to execution of this Settlement Agreement as described in Section 14.03 of this Settlement Agreement.

## **XII. FINAL JUDGMENT**

**12.01** The judgment entered at or after the Final Approval Hearing shall be deemed final:

a. One (1) business day after the entry of the judgment granting final approval of the Settlement Agreement provided that no Class Member objected to the settlement;

b. If there are objections but no appeal, or if a Class Member files a document within thirty (30) days after entry of the judgment granting final approval of the Settlement Agreement seeking appeal, review, or rehearing of the judgment, then five (5) days after the date upon which all appellate and/or other proceedings have been finally terminated in such a manner as to permit the judgment to take effect in substantially the form described in Section 11.

### **XIII. RELEASE OF CLAIMS**

**13.01** Upon the Effective Date, Plaintiff and the Settlement Class Members who have not opted out or been otherwise excluded from the Settlement Class, and those claiming through them such as their respective assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, and employees, do hereby release and forever discharge Defendants and the other Released Parties from any and all liability for any and all Telephone Consumer Protection Act or state analog (including, but not limited to, the Illinois Automatic Telephone Dialers Act) claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, that exist as of the date of the Preliminary Approval Order, arising out of

MinuteClinic's or CVS Pharmacy's (or West's operating on either CVS Pharmacy's or MinuteClinic's behalf) telephonic contact of Settlement Class Members, or alleged impediment of caller identification during such calls, during the Class Period.

**XIV. TERMINATION OF SETTLEMENT AGREEMENT.**

**14.01 Either Side May Terminate the Settlement Agreement.** Plaintiff and Defendants shall each have the unilateral right to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement, by providing written notice of his, her, or its election to do so to the Court and all other Parties hereto ("Termination Notice") within twenty (20) calendar days of any Party's actual notice of any of the following occurrences:

- a. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;
- b. an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;
- c. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement Agreement in a way that is material, unless such modification, amendment, or change is accepted in writing by all Parties;
- d. the Effective Date does not occur for any reason;
- e. the judgment does not become final pursuant to Section 12.01; or
- f. any other ground for termination provided for elsewhere in this Settlement Agreement occurs.

**14.02** Termination if Large Number of Opt-Outs. If, as of the Opt-Out Deadline, more than 2,000 Settlement Class Members have opted-out of the Settlement Agreement pursuant to Section 10.01, Defendants shall have, in their sole and absolute discretion, the option to terminate this Settlement Agreement within ten (10) calendar days after the Opt-Out Deadline.

**14.03** Revert to Status Quo. If either Plaintiff or Defendants terminate this Settlement Agreement as provided herein, the Settlement Agreement shall be of no force and effect, and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if this Settlement Agreement had never been executed, and any orders entered by the Court in connection with this Settlement Agreement shall be vacated. However, any payments made or due to the Settlement Administrator for services rendered shall not be refunded to Defendants.

**XV. NO ADMISSION OF LIABILITY**

**15.01** Defendants deny any liability or wrongdoing of any kind associated with the alleged claims in the operative Complaint, whether related to their conduct or the conduct of third parties on their behalf. Defendants have denied and continue to deny each and every material factual allegation and all claims asserted against them in the Action. Nothing herein shall constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein shall constitute an admission by Defendants that the Action is properly brought on a class or representative basis, or that a class may be certified in the Action, other than for settlement purposes. To this end, the settlement of the Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement Agreement: (i) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the allegations in the Action; (ii) are not and shall not be

deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal or administrative proceeding in any court, arbitration forum, administrative agency or other tribunal; and, (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

**15.02** Pursuant to Federal Rules of Evidence Rule 408 and any similar provisions under the laws of other states, neither this Settlement Agreement nor any related documents filed or created in connection with this Settlement Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Settlement Agreement.

## **XVI. TAXES**

**16.01 Qualified Settlement Fund.** The Parties agree that the account into which the Settlement Fund is deposited is intended to be and will at all times constitute a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. The Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of Section 7, including, if necessary, the “relation back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of the Settlement Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

**16.02 Settlement Administrator is “Administrator”.** For the purpose of § 1.468B of the Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated



as the “administrator” of the Settlement Fund. The Settlement Administrator shall cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund. Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

**16.03 Taxes Paid by Administrator.** All taxes arising in connection with income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or any of the other Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, shall be paid by the Settlement Administrator from the Settlement Fund.

**16.04 Expenses Paid from Fund.** Any expenses reasonably incurred by the Settlement Administrator in carrying out its duties, including fees of tax attorneys and/or accountants and the cost of issuing 1099s (for example if the amount of a claim exceeds \$600), shall be paid by the Settlement Administrator from the Settlement Fund.

**16.05 Responsibility for Taxes on Distribution.** Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

## **XVII. MISCELLANEOUS**

**17.01 Entire Agreement.** This Settlement Agreement and the exhibits hereto constitute the entire agreement between the Parties. Any previous memoranda regarding settlement are superseded by this Settlement Agreement. No representations, warranties, or inducements have

been made to any of the Parties, other than those representations, warranties, covenants, and inducements contained in this Settlement Agreement.

**17.02 Governing Law.** This Settlement Agreement shall be governed by the laws of the State of Illinois.

**17.03 Jurisdiction.** The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including Plaintiff, Defendants, and all Settlement Class Members, for purposes of the administration and enforcement of this Settlement Agreement.

**17.04 No Construction Against Drafter.** This Settlement Agreement was drafted jointly by the Parties and, in construing and interpreting this Settlement Agreement, no provision of this Settlement Agreement shall be construed or interpreted against any Party based upon the contention that this Settlement Agreement or a portion of it was purportedly drafted or prepared by that Party.

**17.05 Resolution of Disputes.** The Parties shall cooperate in good faith in the administration of this Settlement Agreement and agree to use their best efforts to promptly file a motion for preliminary approval with the Court and otherwise effectuate the provisions herein. Any unresolved dispute regarding the administration of this Settlement Agreement shall be decided by the Court, or by a mediator upon agreement of the Parties.

**17.06 Counterparts.** This Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or scanned and e-mailed signatures shall be treated as original signatures and shall be binding.

**17.07 Time Periods.** The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

**17.08 Authority.** Each counsel or other Party executing this Settlement Agreement, any of its exhibits, or any related settlement documents on behalf of any Party hereto hereby warrants and represents that such Party has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

**17.09 No Oral Modifications.** This Settlement Agreement may not be amended, modified, altered, or otherwise changed in any manner, except by a writing signed by a duly authorized agent of Defendants and Plaintiff, and approved by the Court.

**17.10 Waiver.** The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement Agreement.

**17.11 Consultation with Counsel.** The Parties have relied upon the advice and representation of their respective counsel concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing Settlement Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

**17.12 Notices.** Unless otherwise stated herein, any notice required or provided for under this Settlement Agreement shall be in writing and may be sent by electronic mail, overnight delivery by a nationally recognized carrier service (i.e., UPS, FedEx, or the equivalent), or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Alexander H. Burke  
BURKE LAW OFFICES, LLC  
155 N. Michigan Ave., Suite 9020  
Chicago, IL 60601  
Telephone: (312) 729-5288  
aburke@burkelawllc.com

If to Counsel for Defendants:

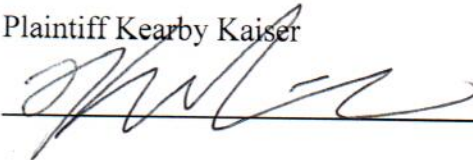
Michael D. Leffel  
FOLEY & LARDNER LLP  
150 E. Gilman St., Suite 5000  
Madison, WI 53703  
Telephone: (608) 258-4216  
mleffel@foley.com

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

DATED: 7-26-19

Plaintiff Kearby Kaiser

  
\_\_\_\_\_

DATED: \_\_\_\_\_

Defendant CVS Pharmacy, Inc.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

Defendant MinuteClinic, LLC

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

Defendant West Corporation

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

DATED: \_\_\_\_\_

Plaintiff Kearby Kaiser

\_\_\_\_\_

DATED: 7/24/19

Defendant CVS Pharmacy, Inc.



Name: **Thomas S. Moffatt**  
**Vice President and Corporate Secretary**

Title: \_\_\_\_\_

DATED: 7/24/19

Defendant MinuteClinic, LLC



Name: **Thomas S. Moffatt**  
**Vice President and Corporate Secretary**

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

Defendant West Corporation

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

DATED: \_\_\_\_\_

Plaintiff Kearby Kaiser

\_\_\_\_\_

DATED: \_\_\_\_\_

Defendant CVS Pharmacy, Inc.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

Defendant MinuteClinic, LLC

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

Defendant West Corporation

  
\_\_\_\_\_

Name: Sean Ward

Title: Associate Counsel