

# EXHIBIT 1

## CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release is made and entered into by and among the Class Representatives Susan Szucs, Anthony Parrizzi, Terrence Ernest Gidney, Christina Church, Jimmie Hardaway, Jr., Sharon Siegle, Paul Pascucci, James Marciszewski, and Shannon Allgrim, for themselves individually and on behalf of the Settlement Class, and Defendants Excelsior Orthopaedics, LLP and Buffalo Surgery Center, LLC. This Agreement fully and finally resolves and settles all of Plaintiffs' and the Settlement Class's Released Claims, upon and subject to the terms and conditions hereof, and subject to the Court's approval.

### RECITALS

**WHEREAS**, in June 2024, Defendants discovered that unauthorized persons gained access to Defendants' network, resulting in unauthorized access to certain files that may have contained information pertaining to Defendants' patients and other affiliated persons.

**WHEREAS**, during the Incident, Personal Information of approximately 389,000 individuals who are current and/or former patients, or are otherwise affiliated with Defendants, was potentially accessible.

**WHEREAS**, a first action was filed following announcement of the Incident on Defendants' website and notice to employees in July/August 2024, and further litigation was commenced by various plaintiffs relating to the Incident in the Supreme Court of the State of New York, County of Erie after a second set of notices were sent to potentially affected employees and patients on December 31, 2024.

**WHEREAS**, on January 24, 2025, Defendants moved to dismiss the first-filed complaint for lack of standing and failure to state a claim.

**WHEREAS**, after meeting and conferring about the matters, counsel for Plaintiffs sought to consolidate, and the Court subsequently consolidated, the related actions into the first-filed Action and appointed interim class counsel. Thereafter, the Settling Parties agreed to mediate the case.

**WHEREAS**, in preparation for a scheduled mediation, Class Counsel and Defendants exchanged certain documents and information and, prior to the mediation, the Settling Parties met and conferred together and with the mediator to facilitate early negotiations.

**WHEREAS**, on September 30, 2025, Class Counsel and Defendants engaged in an arm's-length, all-day mediation session with mediator Steven Jaffe of Upchurch Watson White & Max. That mediation session did not result in an agreement to settle this matter. Following the mediation session, for weeks the Settling Parties continued to negotiate and,

with the assistance of the mediator, explore resolution of the consolidated matter to determine if a settlement was possible.

**WHEREAS**, in November 2025, the Settling Parties agreed to settle this matter in principle on a classwide basis. For numerous weeks following the agreement, the Settling Parties negotiated the details of this Settlement and drafted all the supporting documents, culminating in this Agreement.

**WHEREAS**, pursuant to the terms set forth below, this Agreement resolves all actual and potential claims, actions, and proceedings as set forth in the release contained herein, by and on behalf of members of the Settlement Class, but excludes the claims of all Class Members who opt out from the Settlement Class pursuant to the terms and conditions herein. The releases set forth herein exclude, and do not release, AMKAI, LLC d/b/a Surgical Information Systems, or any claims or potential claims against it as part of the Settlement.

**WHEREAS**, Class Counsel, on behalf of Plaintiffs and the Settlement Class, have thoroughly examined the law and facts relating to the matters at issue in the Action, Plaintiffs' claims, and Defendants' potential defenses, including conducting independent investigation and confirmatory discovery, conferring with defense counsel through the settlement negotiation process, as well as conducting an assessment of the merits of expected arguments and defenses throughout the Action, including a motion for class certification. Based on a thorough analysis of the facts and the law applicable to Plaintiffs' claims in the Action, and taking into account the burden, expense, and delay of continued litigation, including the risks and uncertainties associated with litigating class certification and other defenses Defendants may assert, a protracted trial and appeal(s), as well as the opportunity for a fair, cost-effective, and assured method of resolving the claims of the Settlement Class, Plaintiffs and Class Counsel believe that this resolution is an appropriate and reasonable means of ensuring that the Class is afforded important benefits expediently. Plaintiffs and Class Counsel have also taken into account the uncertain outcome and the risk of continued litigation, as well as the difficulties and delays inherent in such litigation.

**WHEREAS**, Plaintiffs and Class Counsel believe that the terms set forth in this Agreement confer substantial benefits upon the Settlement Class and have determined that they are fair, reasonable, adequate, and in the best interests of the Settlement Class.

**WHEREAS**, Defendants deny the claims and contentions alleged against them in the Action, and deny all charges of wrongdoing or liability as alleged, or which could be alleged, in the Action.

**WHEREAS**, Defendants have considered the uncertainty and risks inherent in any litigation, and have concluded that ongoing litigation would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

**WHEREAS**, this Agreement, whether or not consummated, and any actions or proceedings taken pursuant to this Agreement, are for settlement purposes only, and Defendants specifically deny any and all wrongdoing. The existence of, terms in, and any action taken under or in connection with this Agreement shall not constitute, be construed as, or be admissible in evidence as, any admission by Defendants of (i) the validity of any claim, defense, or fact asserted in the Action or any other pending or future action, or (ii) any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants.

**WHEREAS**, the foregoing Recitals are true and correct and are hereby fully incorporated in, and made a part of, this Agreement.

**NOW, THEREFORE**, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, the Settling Parties do hereby mutually agree, as follows:

## 1. DEFINITIONS

As used in this Agreement, the following terms shall be defined as follows:

- 1.1 “Action” means the consolidated class action captioned *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Index No. 812753/2024, pending in the Supreme Court of the State of New York, Erie County.
- 1.2 “Administrative Expenses” means all charges and expenses incurred by the Settlement Administrator in the administration of this Settlement, including, without limitation, all expenses and costs associated with the Notice Plan and providing Notice to the Settlement Class. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement, including the costs of providing Credit Monitoring.
- 1.3 “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement and Release. The terms of the Settlement Agreement are set forth herein including the exhibits hereto.
- 1.4 “Approved Claim(s)” means a claim as evidenced by a Claim Form submitted by a Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is physically signed or electronically verified by the Class Member; (c) satisfies the conditions of eligibility for a Settlement Payment as set forth herein; and (d) has been approved by the Settlement Administrator.

- 1.5 “Buffalo Surgery Center, LLC” or “BSC” means Defendant Buffalo Surgery Center, LLC and its current and former affiliates, parents, subsidiaries, and successors.
- 1.6 “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the federal government or the New York State Unified Court System.
- 1.7 “Cash Fund Payment” means a pro rata Settlement Payment in cash from the Net Settlement Fund, pursuant to Paragraph 4.1(b).
- 1.8 “Claimant” means a Class Member who submits a Claim Form for a Settlement Payment.
- 1.9 “Claim Form” means the form attached hereto as **Exhibit A**, and as approved by the Court. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the Settlement Website) by Class Members who wish to file a claim for their given share of the Settlement Benefits pursuant to the terms and conditions of this Agreement. The Claim Form shall be available for download from the Settlement Website. The Settlement Administrator shall mail a Claim Form, in hardcopy form, to any Class Member who so requests.
- 1.10 “Claims Deadline” means the date by which all Claim Forms must be received to be considered timely and shall be set as the date 90 days after the Notice Date. The Claims Deadline shall be clearly set forth in the Long Form Notice, the Summary Notice, the Claim Form, and the Court’s order granting Preliminary Approval.
- 1.11 “Claims Period” means the period during which Class Members may submit Claim Forms to receive their given share of the Settlement Benefits and shall commence on the Notice Date and shall end on the Claims Deadline.
- 1.12 “Class Counsel” means attorneys Andrew W. Ferich of Ahdoot & Wolfson, PC, Arturo Peña of Sterlington PLLC, and Tyler J. Bean of Siri & Glimstad LLP.
- 1.13 “Class Member” or “Settlement Class Member” means a member of the Settlement Class.
- 1.14 “Class Representatives” means the Plaintiffs who execute the Settlement Agreement.
- 1.15 “Complaints” means all complaints asserting claims arising out of the Incident that were filed prior to the Consolidated Class Action Complaint.

- 1.16 “Consolidated Class Action Complaint” means the consolidated complaint filed in the Action on June 3, 2025.
- 1.17 “Court” means the Supreme Court of the State of New York, Erie County (or any judge sitting in the Court’s stead or to whom the Action may be transferred).
- 1.18 “Credit Monitoring” means the two years of three credit bureau financial monitoring and insurance services that will be distributed as an automatic benefit to all Settlement Class Members (i.e., inclusion of an activation code on the Summary Notice), and which can be activated following final settlement approval.
- 1.19 “Defendants” collectively refers to both Defendant Excelsior Orthopaedics, LLP (also referred to as Excelsior), and Defendant Buffalo Surgery Center, LLC (also referred to as BSC). The term “Defendants” excludes AMKAI, LLC d/b/a Surgical Information Systems, which is not a party to this Settlement.
- 1.20 “Defendants’ Counsel” means David M. Ross, Brian H. Myers, and other attorneys at Wilson Elser Moskowitz Edelman & Dicker LLP.
- 1.21 “Documented Loss” refers to monetary losses incurred by a Class Member and supported by Reasonable Documentation for attempting to remedy or remedying issues that are more likely than not traceable to the Incident, and that are not otherwise recoverable through insurance, as further described in Paragraph 4.1(a) below. Documented Loss must be supported by Reasonable Documentation that a Class Member actually incurred unreimbursed losses and consequential expenses that are more likely than not traceable to the Incident and incurred on or after June 18, 2024.
- 1.22 “Effective Date” means the date upon which the Settlement contemplated by this Agreement shall become effective as set forth in Paragraph 11.1 below.
- 1.23 “Entity” means any person, corporation, partnership, limited liability company, association, trust, agency, or other organization of any type.
- 1.24 “Excelsior” means Defendant Excelsior Orthopaedics, LLP, and its current and former affiliates, parents, subsidiaries, and successors.
- 1.25 “Fee Award and Costs” means the amount of attorneys’ fees and, separately, amount sought for reimbursement of litigation costs and expenses awarded by the Court to Class Counsel.

- 1.26 “Final Approval Order” means the order to be entered by the Court at or after the Final Approval Hearing, which approves the Settlement Agreement.
- 1.27 “Final Approval Hearing” means the hearing to be conducted by the Court no earlier than 130 days after the Notice Date, to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to New York CPLR 901 *et seq.*, and whether to issue the Final Approval Order.
- 1.28 “Incident” refers to the network incident that is the subject of the Action during which cybercriminals gained unauthorized access to Defendants’ network systems, which Defendants discovered on or about June 24, 2024.
- 1.29 “Long Form Notice” means the long form notice of settlement, to be substantially similar to the form attached hereto as **Exhibit B**.
- 1.30 “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Administrative Expenses (including the cost of providing Notice) incurred pursuant to this Settlement Agreement, (ii) escrow fees and expenses, (iii) any Service Awards approved by the Court, (iv) any amounts approved by the Court for attorneys’ fees, costs, and expenses (i.e., Fee Award and Costs), (v) taxes, if any, (vi) the cost of Credit Monitoring, and (vii) approved claims for Documented Loss Payments.
- 1.31 “Non-Profit Residual Recipient” means the Electronic Frontier Foundation, a 501(c)(3) non-profit third-party recipient agreed upon by the Settling Parties to receive any Residual Funds.
- 1.32 “Notice” means notice of the proposed Settlement to be provided to Class Members pursuant to the Notice Plan approved by the Court in connection with preliminary settlement approval. The Notice shall consist of the Summary Notice (i.e., postcard notice), the Long Form Notice, the Settlement Website, a toll-free number, and, if necessary, a supplemental digital media campaign.
- 1.33 “Notice Date” means the date upon which Notice is initially disseminated to the Settlement Class by the Settlement Administrator, which shall be no later than 35 days after entry of the Preliminary Approval Order.
- 1.34 “Notice Plan” means the settlement notice program, to be approved by the Court, developed by the Settlement Administrator and described in this Agreement for disseminating Notice to the Class Members.
- 1.35 “Objection Deadline” means the date by which Class Members must file and postmark any written objections, pursuant to the terms and conditions herein,

to this Settlement Agreement and to any application and motion for (i) the Fee Award and Costs, and (ii) the Service Awards, which date shall be 60 days following the Notice Date.

- 1.36 “Opt-Out Period” means the period in which a Class Member may submit a Request for Exclusion, pursuant to the terms and conditions herein, which period shall expire 60 days following the Notice Date. The deadline for filing a Request for Exclusion will be clearly set forth in the Settlement Class Notice.
- 1.37 “Personal Information” is intended to be construed as broadly as possible and means information including, without limitation, name, Social Security number, driver’s license number, state identification number, passport number, date of birth, biometric information, diagnosis, financial account information, health insurance information, health information, and prescription information.
- 1.38 “Plaintiffs” means the Plaintiffs in the Action, which includes Susan Szucs, Anthony Parrizzi, Terrence Ernest Gidney, Christina Church, Jimmie Hardaway, Jr., Sharon Siegle, Paul Pascucci, James Marciszewski, and Shannon Allgrim.
- 1.39 “Preliminary Approval Order” means an order by the Court that preliminarily approves the Settlement (including, but not limited to, the forms and procedure for providing Notice to the Settlement Class), permits Notice to the proposed Settlement Class, establishes a procedure for Class Members to object to or opt out of the Settlement, and sets a date for the Final Approval Hearing, substantially in the form attached hereto as **Exhibit C**.
- 1.40 “Reasonable Documentation” means documentation supporting a claim for Documented Loss showing the claimed loss is more likely than not traceable to the Incident, including, but not limited to, credit card statements, bank statements, invoices, telephone records, and receipts. Documented Loss costs cannot be documented solely by a personal certification, declaration, or affidavit from the Claimant; a Claimant must provide supporting documentation.
- 1.41 “Released Claims” means any claim, liability, right, debt, demand, suit, obligation, agreement, promise, judgment, controversy, refund, reimbursement, restitution, damage, including consequential damage, loss or cost, punitive damage, attorneys’ fees, costs, and expenses, action or cause of action, of every kind or description—whether known or Unknown (as the term “Unknown Claims” is defined herein), suspected or unsuspected, asserted or unasserted, actual or contingent, liquidated or unliquidated, legal,

statutory, or equitable, under federal law, state law, local law, common law or equity, any state’s consumer protection law, rule, regulation or regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any other law, that was or could have been asserted on behalf of the Settlement Class in the Action, arising out of the facts, transactions, events, occurrences, acts, or omissions alleged in the Action, including the Complaints, Consolidated Class Action Complaint, and any amendment thereto as of the Effective Date (excluding, for avoidance of doubt, any claims to enforce the Settlement or the Final Order and Judgment), or related to or arising from the accessibility or compromise of any Class Member’s Personal Information arising out of the Incident. “Released Claims” do not include any claims against AMKAI, LLC d/b/a Surgical Information Systems—and are subject to Section 5 below.

- 1.42 “Released Settling Parties” means Defendants and their respective operating companies, predecessors, successors, assigns, parents, subsidiaries, related entities, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, equity holders, independent contractors, stockholders, partners, members, servants, agents, associates, successors, attorneys, advisors, consultants, auditors, accountants, representatives, vendors, underwriters, creditors, administrators, heirs, estates, legal representatives, or other persons acting on their behalf, insurers, reinsurers, subrogees and assigns of any of the foregoing. Each of the Released Settling Parties may be referred to individually as a “Released Settling Party.” The Released Settling Parties do not include, and specifically excludes, AMKAI, LLC d/b/a Surgical Information Systems.
- 1.43 “Residual Funds” means any funds remaining in the Settlement Fund following deductions from the Settlement Fund for (i) reasonable Administrative Expenses incurred pursuant to this Settlement Agreement, (ii) any Service Awards approved by the Court, (iii) any amounts approved by the Court for attorneys’ fees, costs, and expenses (i.e., Fee Award and Costs), (iv) taxes, if any, (v) approved claims for Documented Loss Payments, (vi) Cash Fund Payments, (vii) the costs for providing the Credit Monitoring benefit, and (viii) escrow fees. For the avoidance of doubt, “Residual Funds” includes any amounts remaining following failure by any Class Members to cash or otherwise accept checks or other payments for Settlement Benefits, and that could not otherwise feasibly be distributed to Class Members.

- 1.44 “Request for Exclusion” is the written communication by a Class Member in which he or she timely requests to be excluded from the Settlement Class pursuant to the terms of the Agreement.
- 1.45 “Service Awards” means the amount awarded by the Court and paid to the Class Representatives in recognition of their role in this litigation, as set forth in Paragraphs 9.1-9.3 below.
- 1.46 “Settlement” means this settlement of the Action by and between the Settling Parties, and the terms thereof as stated in this Settlement Agreement.
- 1.47 “Settlement Administrator” or “Epiq” means Epiq Class Action & Claims Solutions, Inc., with the approval of the Court. Under the supervision of Class Counsel, the Settlement Administrator shall oversee and implement the Notice plan and receive any Requests for Exclusion from the Class. Class Counsel and Defendants may, by agreement, substitute a different Settlement Administrator, subject to Court approval.
- 1.48 “Settlement Benefit(s)” means any Cash Fund Payment, the Documented Loss Payments, and the equitable relief, all set forth in Sections 2, 3 and 4 herein, and any other benefits Class Members receive pursuant to this Agreement, including non-monetary benefits and relief, the Fee Award and Costs, and Administrative Expenses
- 1.49 “Settlement Class” and “Class” means all living natural persons who are residents of the United States whose Personal Information was potentially accessible as a result of the Incident, including all persons who received notice of the Incident. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Defendants and their officers and directors; (3) AMKAI, LLC d/b/a Surgical Information Systems and its officers and directors; (4) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (5) the successors or assigns of any such excluded natural person.
- 1.50 “Settlement Fund” means the sum of Two Million and Four-Hundred Thousand Dollars and No Cents (\$2,400,000.00), to be paid by or on behalf of Defendants, as specified in Paragraph 3.1 of this Agreement.
- 1.51 “Settlement Payment” means any payment (i.e., Cash Fund Payment or Documented Loss payment) to be made to any Class Member on Approved Claims pursuant to Paragraphs 4.1 herein.

- 1.52 “Settlement Toll-Free Number” means the toll-free telephone number with information relevant to this Settlement to be created, launched, and maintained by the Settlement Administrator.
- 1.53 “Settlement Website” means the internet website to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of Claim Forms and Requests for Exclusion, and provides access to relevant case documents including the Notice, information about the submission of Claim Forms, and other relevant documents, including downloadable Claim Forms.
- 1.54 “Settling Parties” means Plaintiffs and Defendants Excelsior Orthopaedics, LLP and Buffalo Surgery Center, LLC. “Settling Parties” excludes AMKAI, LLC d/b/a Surgical Information Systems, which is not a party to this Settlement.
- 1.55 “Summary Notice” means the summary or short-form postcard notice of the proposed Settlement, to be substantially similar to the form attached as **Exhibit D**.
- 1.56 “Taxes” means all federal, state, or local taxes of any kind on any income earned by the Settlement Fund and the expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants). All (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Settling Parties or their counsel 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, and (ii) expenses and costs incurred in connection with the operation and implementation of this Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Agreement (“Tax Expenses”), shall be paid out of the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, an Administration Expense and shall be timely paid by the Settlement Administrator, out of the Settlement Fund, without prior order from the Court, and the Settlement Administrator shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Class Members with Approved Claims any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(l)(2)). The Settling Parties

agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Agreement. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the Settlement Administrator shall be the “administrator.” The Settlement Administrator shall timely and properly file or cause to be filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund and the Escrow Account (defined below) (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this Agreement) shall be consistent with this Paragraph and in all events 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 as provided in this Agreement.

- 1.57 “Unknown Claims” means any and all Released Claims that Defendants or any Class Representative or Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date and which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to the Settlement. Class Representatives and Class Counsel acknowledge, and each Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

## **2. SECURITY COMMITMENTS; PROSPECTIVE RELIEF**

- 2.1 Defendants have confirmed to Class Counsel that they have made and will make certain changes to their information security practices and have attested or will attest to these changes in a confidential declaration in support of the Settlement, in order to protect the sensitive nature of the measures. Defendants have provided or will provide Class Counsel with a confidential declaration describing their information security enhancements and identifying the one-time and annual cost of approximately six hundred thousand dollars (\$600,000.00) related to those security-related measures. Costs associated with these security-related measures shall be paid by or on behalf of Defendants separate and apart from other Settlement Benefits and separate and apart from the Settlement Fund. The Settling Parties have agreed to provide the confidential declaration to the Court *in camera* should it become necessary.

### 3. SETTLEMENT FUND

- 3.1 Establishment of Settlement Fund. Within 10 days after the Effective Date, Defendants shall pay or cause to be paid to the Settlement Administrator the amount of the Settlement Fund, specifically the sum of two million four hundred thousand dollars and no cents (\$2,400,000.00), minus amounts advanced for Notice and Administrative Expenses as described in the following sentence. Within 20 days of entry of an order preliminarily approving the Settlement and approving the Settlement Administrator, Defendants will pay \$700,000.00 to the Escrow Account (defined below) to defray the actual expenses of Notice and Administrative Expenses. To the extent this Settlement Agreement is not finally approved, Defendants will be entitled to the return of any amounts not already incurred by the Settlement Administrator in connection with Settlement Administration. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendants' monetary liability shall not exceed two million four hundred thousand dollars and no cents (\$2,400,000.00).
- 3.2 Except for amounts advanced for Notice and Administrative Expenses pursuant to Paragraph 3.1, funds paid by Defendants to establish the Settlement Fund shall be deposited in an interest-bearing bank escrow account (the "Escrow Account") and administered by the Settlement Administrator (the "Escrow Agent"). The Escrow Account shall be held in a Qualified Settlement Fund (defined below) in interest-bearing bank account deposits with commercial banks with excess capital exceeding one billion dollars and no cents (\$1,000,000,000.00), with a rating of "A" or higher by S&P and in an account that is fully insured by the United States Government or the FDIC. The Settlement Fund will be used to pay Approved Claims, Credit Monitoring costs, Administrative Expenses (to be agreed upon by both Settling Parties), any approved Fee Award and Costs, and any approved Service Awards.
- 3.3 Interest. All interest on the funds in the Escrow Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Settlement Administrator is responsible for the payment of all Taxes.
- 3.4 Non-Reversionary. The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Defendants in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Section 11.

- 3.5 **Qualified Settlement Fund.** The Settling 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 Settling Parties agree that the Settlement Fund shall be treated as a qualified settlement fund (QSF) from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a QSF from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account and must be insured by the Federal Deposit Insurance Corporation. The Settlement Administrator shall select the financial institution at which the QSF is to be created and held, subject to approval of the Settling Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Settling Parties.
- 3.6 **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Section 11.
- 3.7 **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) escrow fees and expenses; (iii) Taxes; (iv) Service Awards approved by the Court; (v) any Court-approved Fee Award and Costs; (vi) Credit Monitoring; (vii) Documented Loss payments; and (viii) Cash Fund Payments. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.
- 3.8 **Taxes and Representations.** Taxes and tax-related expenses relating to the Settlement Fund 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 Settling Parties and their counsel for Taxes and tax-related expenses (including, without limitation, taxes

payable by reason of any such indemnification payments). The Settling Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by the Class Representatives or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. The Class Representatives and Settlement Class Members shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement. However, where a Settlement Class Member who is entitled to more than five hundred and ninety-nine dollars and no cents (\$599.00) fails to submit an IRS Form W-9 (or equivalent tax document), the Settlement Administrator shall consult with counsel to determine how to remit payment to the Settlement Class Member (i.e., capped at five hundred and ninety-nine dollars and no cents (\$599.00) or withholding necessary taxes and sending the remainder to the Settlement Class Member).

#### 4. MONETARY PAYMENT / BENEFITS DETAILS

4.1 Settlement Payments: Each Class Member may qualify and submit a Claim Form for one of the following Settlement Payments:

- (a) Documented Loss Payment. Class Members may submit a claim for a Settlement Payment of up to \$5,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Class Member must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss made under penalty of perjury; and (iii) Reasonable Documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of this Agreement. Claimants who submit a Claim Form for a Documented Loss Payment will not be permitted to make a claim for the Cash Fund Payment provided for under Paragraph 4.1(b) below. If a Class Member does not submit Reasonable Documentation supporting a Documented Loss Payment claim, or if a Class Member's claim for a Documented Loss Payment is rejected by the Settlement Administrator for any reason, and the Class Member fails to cure his or her claim, the claim will be rejected and the Class Member's claim will instead be considered a claim for a Cash Fund Payment, described below.
- (b) Cash Fund Payment. Alternatively, Class Members may submit a claim to receive a pro rata Settlement Payment (i.e., a Cash Fund Payment). The amount of the Cash Fund Payment will be calculated

in accordance with Paragraph 4.7 below. Cash Fund Payments are available only to Class Members who do not receive a Documented Loss Payment.

- 4.2 Settlement Payment Methods. Class Members will be provided the option to receive any Settlement Payment due to them pursuant to the terms of this Agreement via various digital methods (e.g., PayPal, Venmo, Zelle), but not digital gift cards or prepaid cards. In the event that Class Members do not exercise this option, they will receive their Settlement Payment via a physical check sent by U.S. Mail. Class Members may also elect to receive their Settlement Payment via a physical check.
- 4.3 Credit Monitoring. In addition to submitting a Claim Form for one of the two Settlement Payments, all Class Members will automatically receive the Credit Monitoring benefit, without having to submit a claim. The Credit Monitoring product will be agreed upon by the Settling Parties, but will include at least two years of three credit bureau financial monitoring and insurance services, including \$1 million of identity theft insurance. The Credit Monitoring product activation codes will be provided to Class Members on the Summary Notice (i.e., postcard) and Class Members will be able to activate the codes following final settlement approval.
- 4.4 Deadline to File Claims. Claim Forms must be postmarked or submitted electronically within 90 days after the Notice Date.
- 4.5 The Settlement Administrator. The Settlement Administrator shall have the authority to determine whether a Claim Form is valid, timely, and complete. To the extent the Settlement Administrator determines a claim is deficient for a reason other than late posting, within a reasonable amount of time, the Settlement Administrator shall notify the Claimant of the deficiencies and notify the Claimant that he or she shall have 30 days to cure the deficiencies and re-submit the claim. No notification is required for late-posted claims. The Settlement Administrator shall exercise reasonable discretion to determine whether the Claimant has cured the deficient claim. If the Claimant fails to cure the deficiency, the claim shall stand as denied, and the Class Member shall be so notified if practicable.
- 4.6 Timing of Settlement Payments. Within 60 days after: (i) the Effective Date; or (ii) all Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever date is later, the Settlement Administrator shall cause funds to be distributed to each Class Member who is entitled to funds based on the selection made on their given Claim Form.

- 4.7 Distribution of Settlement Payments: The Settlement Administrator shall utilize the Net Settlement Fund, as defined above in Paragraph 1.28, to make all Cash Fund Payments pursuant to Paragraph 4.1(b).
- (a) The amount of each Cash Fund Payment shall be calculated by dividing the Net Settlement Fund by the number of valid claims submitted for (or honored as) a Cash Fund Payment.
  - (b) In the event that the aggregate amount of all approved Documented Loss Payments exceeds the total amount of the Settlement Fund, then no payments for claims for Cash Fund Payments will be made, and the value of the Documented Loss Payment to be distributed to Class Members shall be reduced, on a pro rata basis, such that the aggregate value of all Documented Loss Payments does not exceed the amount of the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed to Claimants with Approved Claims for Cash Fund Payments. All such determinations shall be performed by the Settlement Administrator.
- 4.8 Deadline to Deposit or Cash Physical Checks or Negotiate E-Payments. Class Members with Approved Claims who receive a Documented Loss Payment or a Cash Fund Payment, by physical check or electronic payment, shall have 90 days following distribution to deposit or cash their benefit check or redeem their electronic payment.
- 4.9 Non-Profit Residual Payment(s). Any Residual Funds that exist as of 120 days after the distribution of all Settlement Payments to the Class Members or 30 days after any reissued settlement checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Settling Parties, shall be provided to the Non-Profit Residual Recipient.
- 4.10 Returned Payments. For any Settlement Payment returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make one additional effort to make any digital payments and engage in a reasonable effort to find a valid address (in the case of physical checks) and resend the Settlement Payment within 30 days after the physical check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to repay or resend a Settlement Payment.
- 4.11 Custody of Settlement Fund. The Settlement Fund shall be deposited into the Escrow Account but 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 returned to Defendants in the event this Settlement Agreement is voided, terminated, or cancelled. In the event this Settlement Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason, any amounts remaining in the Settlement Fund after payment of all Administrative Expenses incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any Taxes, shall be returned to Defendants and/or their insurer, and no other person or entity shall have any further claim whatsoever to such amounts.

- 4.12 Non-Reversionary. This Settlement is a non-reversionary settlement. As of the Effective Date, all rights of Defendants to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as described in Section 11 of this Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to Defendants.
- 4.13 Use of the Settlement Fund. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) all Administrative Expenses and costs of Notice; (ii) any Taxes; (iii) any Service Awards; (iv) any Fee Award and Costs; (v) Approved Claims for Settlement Payments; (vi) Credit Monitoring; and (vii) any escrow fees and expenses, as well as any Non-Profit Residual Payments, pursuant to the terms and conditions of this Agreement.
- 4.14 Payment / Withdrawal Authorization. No amounts from the Settlement Fund may be withdrawn unless (i) expressly authorized by the Settlement Agreement or (ii) approved by the Court. The Settling Parties, by agreement, may authorize the periodic payment of actual reasonable Administrative Expenses from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and Defendants with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least 7 Business Days prior to making such withdrawal or payment.
- 4.15 Payments to Class Members. The Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund to Class Members pursuant to this Agreement.
- 4.16 Taxes. All Taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall

be paid timely by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Settling Parties and their counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Settling Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Taxes do not include any federal, state, and local tax owed by any Claimant, Class Representative and Class Member as a result of any benefit or payment received as a result of the Settlement. Each Class Representative and Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

4.17 Limitation of Liability:

- (a) Defendants and Defendants' Counsel and Released Settling Parties shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their 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, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.
- (b) Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their 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, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

- (c) The Settlement Administrator shall indemnify and hold Class Counsel, the Settlement Class, Class Representatives, Defendants, Defendants' Counsel, and Released Settling Parties harmless for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (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, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

## 5. RELEASE

- 5.1 Upon the Effective Date, and in consideration of the Settlement Benefits described herein, the Class Representatives and all Class Members identified in the settlement class list (as such list is described in Paragraph 7.4), on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, release and discharge all Released Claims, including Unknown Claims, against each of the Released Settling Parties and agree to refrain from instituting, directing or maintaining any lawsuit, contested matter, adversary proceeding, or miscellaneous proceeding against each of the Released Settling Parties that relates to the Incident or otherwise arises out of the facts, transactions, events, occurrences, acts, omissions or circumstances set forth in the Complaints and Consolidated Class Action Complaint in this Action, and any amendment thereto as of the Effective Date. This Settlement does not release, and it is not the intention of the Settling Parties to this Settlement to release, any claims against AMKAI, LLC d/b/a Surgical Information Systems.
- 5.2 The Settling Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Settling Party assumes that risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding such difference in facts. The Settling Parties agree that in entering this Agreement, it is understood and agreed that each Settling Party relies wholly upon its own judgment, belief, and knowledge and that each Settling Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

- 5.3 With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon final approval of this Settlement Agreement, Releasors shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, by federal law, or principle of common law, or the law of any other jurisdiction, or otherwise, which includes or is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

The Class Representatives, the Settlement Class, and Releasors acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any unknown claim they may have, as that term is defined in this Paragraph. The Class Representatives and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the Release was separately bargained for and was a key element of the Settlement Agreement.

## 6. REQUIRED EVENTS AND COOPERATION BY THE SETTLING PARTIES

- 6.1 Preliminary Approval. Class Counsel shall submit this Agreement to the Court and shall promptly move the Court to enter the Preliminary Approval Order, in the form attached as **Exhibit C**.
- 6.2 Cooperation. The Settling Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish all requirements of this Agreement on the schedule set by the Court, subject to the terms of this Agreement. If, for any reason, the Settling Parties determine that the schedule set by the Court is no longer feasible, the Settling Parties shall use their best judgment to amend the schedule to accomplish the goals of this Agreement, subject to any necessary Court approval.

Defendants also agree (a) not to oppose to Plaintiffs' amendment of, or request to amend, the operative complaint to add AMKAI, LLC d/b/a

Surgical Information Systems as a defendant to the Action, and (b) to cooperate with Plaintiffs and Class Counsel in the production of contractual documents with AMKAI, LLC and written correspondence with AMKAI, LLC as relevant to the Incident.

- 6.3 Certification of the Settlement Class. For purposes of this Settlement only, Plaintiffs and Defendants stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order of this Settlement and the occurrence of the Effective Date. Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Defendants reserve the right to contest class certification for all other purposes.
- 6.4 Final Approval. The Settling Parties shall request that the Court schedule the Final Approval Hearing for a date that is no earlier than 130 days after the entry of the Preliminary Approval Order. The Settling Parties may file a response to any objections to the Settlement or the Motion for Final Approval no later than 14 days after the Objection Deadline. Any changes to the Final Approval Hearing date shall be posted on the Settlement Website, without the need for additional notice of the change of hearing date.

## 7. CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

- 7.1 Notice shall be disseminated pursuant to the Preliminary Approval Order.
- 7.2 The Settlement Administrator shall oversee and implement the Notice Plan approved by the Court. All costs associated with the Notice Plan shall be paid from the Settlement Fund.
- 7.3 Direct Notice. No later than the Notice Date, or such other time as may be ordered by the Court, the Settlement Administrator shall disseminate the Summary Notice to the Class Members by direct mail (i.e., postcard). In order to achieve the greatest Notice practicable, direct notice shall proceed as follows:
- (a) The Settlement Administrator will send the Summary Notice in postcard form by U.S. Mail, postage prepaid;
  - (b) For any Summary Notice that has been mailed via U.S. Mail and returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail;

- (c) Neither the Settling Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been mailed as provided pursuant to this Section; and
  - (d) In the event the Settlement Administrator transmits a Summary Notice via U.S. Mail, then the Settlement Administrator shall perform any further investigations deemed appropriate by the Settlement Administrator, including using the National Change of Address (“NCOA”) database maintained by the United States Postal Service, in an attempt to identify current mailing addresses for individuals or entities whose names are provided by Defendants.
- 7.4 Settlement Class List. Within 14 days after the issuance of the Preliminary Approval Order, Defendants will provide to the Settlement Administrator a list of all persons identified by Defendants to be Settlement Class Members with current or last known mailing addresses.
- 7.5 Confidentiality. Any information relating to Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to the Class Members (as set forth herein) and allowing them to recover under this Agreement; shall be kept in strict confidence by the Settling Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall not be used for marketing purposes by the Settlement Administrator; shall be destroyed after all distributions to Class Members have been made; and shall not be used for any other purpose.
- 7.6 Fraud Prevention. The Settlement Administrator shall use reasonable and customary fraud-prevention mechanisms to prevent (i) approval of claims by persons other than Class Members, (ii) submission of more than one Claim Form per Class Member, and (iii) submission of Claim Forms seeking amounts to which the Class Member is not entitled. In the event a Claim Form is submitted without a unique Class Member identifier, the Settlement Administrator shall employ reasonable efforts to ensure that the Claim is valid.
- 7.7 Settlement Website. Prior to any dissemination of the Summary Notice and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the internet in accordance with this Agreement. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claim Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, the

Preliminary Approval Order entered by the Court, and the operative Consolidated Class Action Complaint in the Action, and will (on its URL landing page) notify the Settlement Class of the date, time, and place of the Final Approval Hearing. The Settlement Website shall also provide the toll-free telephone number and mailing address through which Class Members may contact the Settlement Administrator directly. The Settlement Website shall also allow for submission of Requests for Exclusion electronically through the Settlement Website. The Settlement Website shall remain active until 90 days after the Effective Date.

- 7.8 Opt-Out/Request for Exclusion. The Notice shall explain that the procedure for Class Members to opt out and exclude themselves from the Class is by notifying the Settlement Administrator in writing, postmarked no later than 60 days after the Notice Date. Any Class Member may submit a Request for Exclusion from the Settlement at any time during the Opt-Out Period. To be valid, the Request for Exclusion must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. Requests for Exclusion must be in writing and must identify the case name, *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Supreme Court of the State of New York, Erie County, Case No. 812753/2024; state the name, address and telephone number of the Class Member seeking exclusion; be physically signed by the person(s) seeking exclusion; and must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Supreme Court of the State of New York, Erie County, Case No. 812753/2024.” Any person who elects to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. Requests for Exclusion may only be made on an individual basis, and no person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

The Settlement Administrator shall provide the Settling Parties with the opt-out list no later than 5 days following the conclusion of the Opt-Out Period.

- 7.9 Objections. The Notice shall explain that the procedure for Class Members to object to the Settlement is by submitting written objections to the Court no later than 60 days after the Notice Date (the “Objection Deadline”). Any Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Class Member does not enter an appearance, they will be represented by Class Counsel. Any Class Member who wishes to object to the Settlement, the Settlement

Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Final Approval Hearing and show cause, if any, for why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement Benefits should not be approved, or why the Service Awards and/or the Fee Award and Costs should not be granted, may do so, but must proceed as set forth in this paragraph. No Class Member or other person will be heard on such matters unless they have filed in this Action the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider, within 60 days following the Notice Date. All written objections and supporting papers must clearly (a) identify the case name and number; (b) state the Class Member's full name, current mailing address, and telephone number; (c) contain a statement by the Class Member that he or she believes themselves to be a member of the Settlement Class; (d) include proof that the Class Member is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Incident); (e) identify the specific factual and legal grounds for the objection; (f) identify whether the Objection is an objection to the Settlement in part or in whole; (g) state whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class; (h) identify all counsel representing the Class Member, if any; (i) include a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past 5 years; (j) include all documents or writings that the Class Member desires the Court to consider; (k) contain a statement regarding whether the Class Member (or counsel of his or her choosing) intends to appear at the Final Approval Hearing; and (l) contain the signature of the Class Member or the Class Member's duly authorized attorney or representative. All objections must be (1) sent to the designated Post Office Box established by the Settlement Administrator, (2) served upon Class Counsel and Defendants' counsel identified below, and (3) submitted to the Court (a) either by mailing them to the Erie County Chief Clerk's Office, 25 Delaware Avenue, Buffalo, NY 14202, or by filing them in person at the Supreme Court of the State of New York, Erie County, or (b) submitted in the manner specified by the Court in a Preliminary Approval Order or other applicable order. All objections must be filed or postmarked on or before the Objection Deadline, as set forth above. Any Class Member who does not make their objections in the manner and by the date set forth in this paragraph shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court. Without limiting the foregoing, any challenge to the Settlement Agreement, the Order Granting Preliminary Approval of the Class Action Settlement Agreement, and the Final Approval Order shall be

pursuant to appeal under the applicable rules of appellate procedure and not through a collateral attack.

## 8. SETTLEMENT ADMINISTRATION

### 8.1 Submission of Claims:

- (a) Submission of Electronic and Hard Copy Claims. Class Members may submit electronically verified Claim Forms to the Settlement Administrator through the Settlement Website or may download Claim Forms to be filled out, signed, and submitted physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period on or before the Claims Deadline. The Settlement Administrator shall reject any Claim Forms that are incomplete, inaccurate, or not timely received and will provide Claimants notice and the ability to cure defective claims, unless otherwise noted in this Agreement.
- (b) Review of Claim Forms. The Settlement Administrator will review Claim Forms submitted by Class Members to determine whether they are eligible for a Settlement Payment.

### 8.2 Settlement Administrator's Duties:

- (a) Cost Effective Claims Processing. The Settlement Administrator shall administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner, and calculate Settlement Payments in accordance with this Agreement.
- (b) Dissemination of Notices. The Settlement Administrator shall disseminate Notices as provided for in this Agreement.
- (c) Maintenance of Records. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendants' Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with information concerning Notice, administration, and implementation of the Settlement. Without limiting the foregoing, the Settlement Administrator also shall:

- (i) Receive Requests for Exclusion from Class Members and provide Class Counsel and Defendants' Counsel a copy thereof no later than 5 days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion or other requests from Class Members after expiration of the Opt-Out Period, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel;
- (ii) Receive Objections from Class Members and provide Class Counsel and Defendants' Counsel a copy thereof no later than 5 days following the deadline for submission of the same. If the Settlement Administrator receives any Objections after expiration of the Objection Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel;
- (iii) Provide weekly reports to Class Counsel and Defendants' Counsel that include, without limitation, reports regarding the number of Claim Forms received, the number of Claim Forms approved by the Settlement Administrator, the amount of Claim Forms received (including a breakdown of what types of claims were received and approved), and the categorization and description of Claim Forms rejected by the Settlement Administrator. The Settlement Administrator shall also, as requested by Class Counsel or Defendants' Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- (iv) Make available for inspection by Class Counsel and Defendants' Counsel the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice;
- (v) Cooperate with any audit by Class Counsel or Defendants' Counsel, who shall have the right but not the obligation to review, audit, and evaluate all Claim Forms for accuracy, veracity, completeness, and compliance with the terms and conditions of this Agreement.

8.3 Requests For Additional Information. In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Settling Parties or any Class Member who submits a Claim Form.

**9. SERVICE AWARDS**

- 9.1 Class Representatives and Class Counsel may seek Service Awards to the Class Representatives in an amount not to exceed two thousand five hundred dollars and no cents (\$2,500) per Class Representative. Class Counsel may file a motion seeking Service Awards for the Class Representatives on or before 14 days prior to the Objection Deadline.
- 9.2 The Settlement Administrator shall pay the Service Awards approved by the Court to the Class Representatives from the Settlement Fund. Such Service Awards shall be paid by the Settlement Administrator, in the amount approved by the Court, within 10 Business Days after the Effective Date.
- 9.3 In the event the Court declines to approve, in whole or in part, the payment of the Service Award in the amounts 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 cancellation or termination of this Agreement.
- 9.4 The Settling Parties did not discuss or agree upon the amount of the maximum amount of Service Awards for which Class Representatives can apply for, until after the substantive terms of the Settlement had been agreed upon.

**10. ATTORNEYS' FEES, COSTS, AND EXPENSES**

- 10.1 Class Counsel may file a motion for an award of attorneys' fees of up to one-third (1/3 or approximately 33.33%) of the Settlement Fund and, separately, reasonable out-of-pocket litigation costs and expenses to be paid from the Settlement Fund no later than 14 days prior to the Objection Deadline. The motion for a Fee Award and Costs shall be posted on the Settlement Website. Any attorneys' fees, costs, and expenses awarded by the Court to Class Counsel shall be paid in the amount approved by the Court by the Settlement Administrator from the Settlement Fund within 10 Business Days after the Effective Date.
- 10.2 Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst themselves.
- 10.3 The Settlement is not conditioned upon the Court's approval of Service Awards or an award of Class Counsel's attorneys' fees, costs, or expenses. The Settling Parties did not discuss the amount of attorneys' fees, costs, and

expenses until after the substantive terms of the Settlement had been agreed upon and there is no agreement on these amounts.

## 11. EFFECTIVE DATE, MODIFICATION, AND TERMINATION

- 11.1 The Effective Date of the Settlement shall be 5 days after all of the following conditions have occurred:
- (a) Defendants and Class Counsel execute this Agreement;
  - (b) The Court enters the Preliminary Approval Order, without material change to the Settling Parties' agreed-upon proposed preliminary approval order attached hereto as **Exhibit C**;
  - (c) Notice is provided to the Settlement Class consistent with the Preliminary Approval Order;
  - (d) The Court enters the Final Approval Order, without material change to the Settling Parties' agreed-upon proposed Final Approval Order to be submitted with the forthcoming motion for final approval; and
  - (e) The Final Approval Order has become "Final" because: (i) the time for appeal, petition, rehearing or other review has expired; or (ii) if any appeal, petition, request for rehearing or other review has been filed, the Final Approval Order is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, requests for rehearing or other review has expired.
- 11.2 If the Court declines to enter the Preliminary Approval Order, declines to enter the Final Approval Order, or the Final Approval Order does not become Final (as described in Paragraph 11.1(e) of this Agreement), Defendants may at their sole discretion terminate this Agreement on 5 Business Days' written notice from Defendants' Counsel to Class Counsel.
- 11.3 In the event the terms or conditions of this Settlement Agreement are materially modified by any court, any Settling Party in its sole discretion to be exercised within 14 days after such modification may declare this Settlement Agreement null and void. In the event of a material modification by any court, and in the event the Settling Parties do not exercise their unilateral options to withdraw from this Settlement Agreement pursuant to this Paragraph, the Settling Parties shall meet and confer within 7 days of such ruling to attempt to reach an agreement as to how best to effectuate the court-ordered modification. For the avoidance of doubt, a "material modification" shall not include any reduction by the Court of the attorneys'

fees, costs, or expenses and/or Service Awards. De minimis or minor modifications to this Agreement or any of its exhibits may be made by the Settling Parties without Court approval.

- 11.4 Except as otherwise provided herein, in the event the Settlement is terminated, the Settling Parties to this Agreement, including Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement, and, except as otherwise expressly provided, the Settling Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. In addition, the Settling Parties agree that in the event the Settlement is terminated, any orders entered pursuant to the Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses.
- 11.5 In the event this Agreement is terminated pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of Paragraphs 4.11, 4.12, 11.5, and 11.6 herein) and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers (except as necessary to explain the timing of the procedural history of the Action), and the Settling Parties will return to their respective positions existing immediately before the execution of this Agreement.
- 11.6 Notwithstanding any provision of this Agreement to the contrary, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any of the Notice and Administrative Expenses, except that each Settling Party shall bear its own attorneys' fees, costs, and expenses.

## **12. NO ADMISSION OF WRONGDOING OR LIABILITY**

- 12.1 This Agreement, whether or not consummated, any communications and negotiations relating to this Agreement or the Settlement, and any proceedings taken pursuant to the Agreement:
- (a) shall not be offered or received against Defendants or Released Settling Parties as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Defendants with respect to the truth of any fact alleged by any Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has

been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of Defendants;

- (b) shall not be offered or received against Defendants or Released Settling Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Defendants;
- (c) shall not be offered or received against Defendants or Released Settling Parties as evidence of a presumption, concession or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against Defendants or Released Settling Parties, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Settling Parties may refer to it to effectuate the liability protection granted them hereunder;
- (d) shall not be construed against Defendants or Released Settling Parties as an admission or concession that the consideration to be given hereunder represents the relief that could be or would have been awarded after trial; and
- (e) shall not be construed as or received in evidence as an admission, concession or presumption against the Class Representatives or any Class Member that any of their claims are without merit, or that any defenses asserted by Defendants have any merit.

### 13. REPRESENTATIONS

- 13.1 Each Settling Party represents that: (i) such Settling Party has full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval; (ii) the execution and delivery of this Agreement by such Settling Party and the consummation by such Settling Party of the transactions contemplated by this Agreement have been duly authorized by such Settling Party; (iii) this Agreement constitutes a valid, binding, and enforceable agreement; and (iv) no consent or approval of any person or entity is necessary for such Settling Party to enter into this Agreement.

**14. NOTICE**

- 14.1 All notices to Class Counsel provided for in this Agreement shall be sent by email (to all email addresses set forth below) and by First-Class mail to all the following:

Andrew W. Ferich  
**AHDOOT & WOLFSON, PC**  
201 King of Prussia Road, Suite 650  
Radnor, PA 19087  
Tel: (310) 474-9111  
aferich@ahdootwolfson.com

Arturo Peña  
**STERLINGTON PLLC**  
530 Fifth Avenue, Suite 804  
New York, NY 10036  
Tel: (407) 259-0234  
arturo.pena@sterlingtonlaw.com

Tyler J. Bean  
**SIRI & GLIMSTAD LLP**  
745 5th Ave. Suite 500  
New York, NY 10151  
Tel: (929) 677-5144  
tbean@sirillp.com

- 14.2 All notices to Defendants or Defendants' Counsel provided for in this Agreement shall be sent by email and First-Class mail to the following:

David M. Ross  
Brian H. Myers  
**WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER LLP**  
1500 K Street, NW, Suite 330  
Washington, D.C. 20005  
Tel: (202) 626-7687  
david.ross@wilsonelser.com  
brian.myers@wilsonelser.com

- 14.3 All notices to the Settlement Administrator provided for in this Agreement shall be sent by email and First-Class mail to the Settlement Administrator

at the email address and dedicated post office box established by the Settlement Administrator, as identified on the Settlement Website.

- 14.4 The notice recipients and addresses designated in this Section may be changed by written notice.

## 15. MISCELLANEOUS PROVISIONS

- 15.1 Representation by Counsel. The Class Representatives and Defendants represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.
- 15.2 Best Efforts. The Settling Parties agree that they will make all reasonable efforts needed to reach the Effective Date and fulfill their obligations under this Agreement.
- 15.3 Contractual Agreement. The Settling Parties understand and agree that all terms of this Agreement, including the exhibits thereto, are contractual and are not a mere recital, and each signatory warrants that he, she, or it is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Settling Party that they or it represents.
- 15.4 Integration. This Agreement constitutes the entire agreement among the Settling Parties and no representations, warranties or inducements have been made to any Settling Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.
- 15.5 No Additional Persons with Financial Interest. Defendants shall not be liable for any additional attorneys' fees, costs, and expenses of any Class Member's counsel, including any potential objectors or counsel representing a Class Member, other than what is expressly provided for in this Agreement.
- 15.6 Drafting. The Settling Parties agree that no single Settling Party shall be deemed to have drafted this Agreement, or any portion thereof, for purposes of the invocation of the doctrine of *contra proferentem*. This Settlement Agreement is a collaborative effort of the Settling Parties and their attorneys that was negotiated on an arm's-length basis between Settling Parties of equal bargaining power. Accordingly, this Agreement shall be neutral, and no ambiguity shall be construed in favor of or against any of the Settling

Parties. The Settling Parties waive any otherwise applicable presumption(s) that uncertainties in a contract are interpreted against the party who caused the uncertainty to exist.

- 15.7 Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the persons who executed this Agreement or their successors-in-interest.
- 15.8 Waiver. The failure of a Settling Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Settling Party's rights or remedies or a waiver by such Settling Party of any default by another Settling Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Settling Party of any breach of this Agreement by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 15.9 Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Settling Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.
- 15.10 Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Settling Parties.
- 15.11 Survival. The Settling Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.
- 15.12 Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of New York, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.
- 15.13 Interpretation:
- (a) Definitions apply to the singular and plural forms of each term defined.
  - (b) Definitions apply to the masculine, feminine, and neuter genders of each term defined.
  - (c) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

- 15.14 No Precedential Value. The Settling Parties agree and acknowledge that this Agreement carries no precedential value.
- 15.15 Fair and Reasonable. The Settling Parties and their counsel believe this Agreement is a fair and reasonable compromise of the disputed claims, in the best interest of the Settling Parties, and have arrived at this Agreement as a result of arm's-length negotiations.
- 15.16 Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of this Court, and this Court shall retain jurisdiction over the Settlement and the Settling Parties for the purpose of enforcing the terms of this Agreement.
- 15.17 Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.
- 15.18 Exhibits. The exhibits to this Agreement and any exhibits thereto are an integral and material part of the Settlement. The exhibits to this Agreement are incorporated by reference and made part of the terms and conditions set forth herein.
- 15.19 Counterparts and Signatures. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Settling Parties to this Agreement shall exchange among themselves original signed counterparts. Digital signatures shall have the same force and effect as the original.
- 15.20 Facsimile and Electronic Mail. Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.
- 15.21 No Assignment. Each Settling Party represents and warrants that such Settling Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.
- 15.22 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. The Settling Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

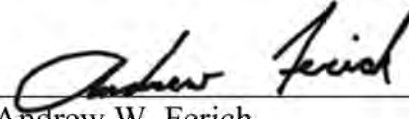
15.23 Dollar Amounts. All dollar amounts are in United States dollars, unless otherwise stated.

IN WITNESS WHEREOF, the Settling Parties have caused this Agreement to be duly executed by their duly authorized counsel:

[Remainder of page intentionally left blank; signatures appear on the following page]

Dated: January 16, 2026

**AHDOOT & WOLFSON, PC**



Andrew W. Ferich  
*Class Counsel*

Dated: January 26, 2026

**STERLINGTON PLLC**



Arturo Peña  
*Class Counsel*

Dated: January 26, 2026

**SIRI & GLIMSTAD LLP**



Tyler J. Bean  
*Class Counsel*

Dated: January 16, 2026



[Susan Szucs \(Jan 16, 2026 17:40:43 EST\)](#)  
Susan Szucs  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Anthony Parrizzi  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Terrence Ernest Gidney  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Christina Church  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Jimmie Hardaway, Jr.  
*Class Representative*

Dated: January \_\_, 2026

**AHDOOT & WOLFSON, PC**

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Andrew W. Ferich  
*Class Counsel*

Dated: January \_\_, 2026

**STERLINGTON PLLC**

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Arturo Peña  
*Class Counsel*

Dated: January \_\_, 2026

**SIRI & GLIMSTAD LLP**

---

Tyler J. Bean  
*Class Counsel*

Dated: January \_\_, 2026

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Susan Szucs  
*Class Representative*

Dated: January 22, 2026

*Anthony G. Parrizzi*

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Anthony Parrizzi  
*Class Representative*

Dated: January \_\_, 2026

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Terrence Ernest Gidney  
*Class Representative*

Dated: January \_\_, 2026

---

Christina Church  
*Class Representative*

Dated: January \_\_, 2026

---

Jimmie Hardaway, Jr.  
*Class Representative*

Dated: January \_\_, 2026

**AHDOOT & WOLFSON, PC**

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Andrew W. Ferich  
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Dated: January \_\_, 2026

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*Class Counsel*

Dated: January \_\_, 2026

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Susan Szucs  
*Class Representative*

Dated: January \_\_, 2026

---

Anthony Parrizzi  
*Class Representative*

Dated: January 22, 2026

*Terrence Ernest Gidney*

---

Terrence Ernest Gidney  
*Class Representative*

Dated: January \_\_, 2026

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Christina Church  
*Class Representative*

Dated: January \_\_, 2026

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Jimmie Hardaway, Jr.  
*Class Representative*

Dated: January \_\_, 2026

**AHDOOT & WOLFSON, PC**

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Andrew W. Ferich  
*Class Counsel*

Dated: January \_\_, 2026

**STERLINGTON PLLC**

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Arturo Peña  
*Class Counsel*

Dated: January \_\_, 2026

**SIRI & GLIMSTAD LLP**

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Tyler J. Bean  
*Class Counsel*

Dated: January \_\_, 2026

---

Susan Szucs  
*Class Representative*

Dated: January \_\_, 2026

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Anthony Parrizzi  
*Class Representative*

Dated: January \_\_, 2026

---

Terrence Ernest Gidney  
*Class Representative*

Dated: January **16** 2026



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Christina Church  
*Class Representative*

Dated: January \_\_, 2026

---

Jimmie Hardaway, Jr.  
*Class Representative*

Dated: January \_\_, 2026

**AHDOOT & WOLFSON, PC**

---

Andrew W. Ferich  
*Class Counsel*

Dated: January \_\_, 2026

**STERLINGTON PLLC**

---

Arturo Peña  
*Class Counsel*

Dated: January \_\_, 2026

**SIRI & GLIMSTAD LLP**

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Tyler J. Bean  
*Class Counsel*

Dated: January \_\_, 2026

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Susan Szucs  
*Class Representative*

Dated: January \_\_, 2026

---

Anthony Parrizzi  
*Class Representative*

Dated: January \_\_, 2026

---

Terrence Ernest Gidney  
*Class Representative*


Dated: January \_\_, 2026

---

Christina Church  
*Class Representative*

Dated: January 16, 2026

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Jimmie Hardaway, Jr.  
*Class Representative*

23  
Dated: January \_\_, 2026

*Sharon Siegle*

\_\_\_\_\_  
Sharon Siegle  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Paul Pascucci  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
James Marciszewski  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Shannon Allgrim  
*Class Representative*

**WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER LLP**

Dated: January \_\_, 2026

\_\_\_\_\_  
David M. Ross  
*Defendants' Counsel*


Dated: January \_\_, 2026

\_\_\_\_\_  
Brian H. Myers  
*Defendants' Counsel*

Dated: January 16, 2026

\_\_\_\_\_  
Sharon Siegle  
*Class Representative*

Dated: January \_\_, 2026

  
\_\_\_\_\_  
Paul Pascucci (Jan 16, 2026 14:47:12 EST)  
Paul Pascucci  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
James Marciszewski  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Shannon Allgrim  
*Class Representative*

**WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER LLP**

Dated: January \_\_, 2026

\_\_\_\_\_  
David M. Ross  
*Defendants' Counsel*

Dated: January \_\_, 2026

\_\_\_\_\_  
Brian H. Myers  
*Defendants' Counsel*

Dated: January \_\_, 2026

\_\_\_\_\_  
Sharon Siegle  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Paul Pascucci  
*Class Representative*

Dated: January 16, 2026

*James Marciszewski*  
James Marciszewski (Jan 16, 2026 11:49:06 EST)  
\_\_\_\_\_  
James Marciszewski  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Shannon Allgrim  
*Class Representative*

**WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER LLP**

Dated: January \_\_, 2026

\_\_\_\_\_  
David M. Ross  
*Defendants' Counsel*

Dated: January \_\_, 2026

\_\_\_\_\_  
Brian H. Myers  
*Defendants' Counsel*

Dated: January \_\_, 2026

\_\_\_\_\_  
Sharon Siegle  
*Class Representative*

Dated: January \_\_, 2026

\_\_\_\_\_  
Paul Pascucci  
*Class Representative*

Dated: January \_\_, 2026


\_\_\_\_\_  
James Marciszewski  
*Class Representative*

Dated: January 16, 2026


  
Shannon Rose Allgrim (Jan 16, 2026 17:47:13 EST)  
\_\_\_\_\_  
Shannon Allgrim  
*Class Representative*

**WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER LLP**

Dated: January 21, 2026

  
\_\_\_\_\_  
David M. Ross  
*Defendants' Counsel*

Dated: January 20, 2026

  
\_\_\_\_\_  
Brian H. Myers  
*Defendants' Counsel*

**EXCELSIOR ORTHOPAEDICS, LLP**

Dated: January 20, 2026

  
Defendant

**BUFFALO SURGERY CENTER,  
LLC**

Dated: January 20, 2026

  
Defendant

# **EXHIBIT A**

Must be postmarked or submitted online NO LATER THAN [DATE]

Excelsior Incident SETTLEMENT ADMINISTRATOR P.O. BOX XXXX PORTLAND, OR XXXXX-XXXX www.XXXXXXXXXX.com

EXCELSIOR INCIDENT CLAIM FORM

Szucs, et al. v. Excelsior Orthopaedics, LLP, et al., Case No. 812753/2024, Supreme Court of New York, County of Erie

GENERAL INFORMATION

You are included in the Settlement Class if you are a resident of the United States and your Personal Information was potentially accessible as the result of the Incident that occurred on or about June 24, 2024, and you may submit a Claim.

The easiest way to submit a Claim is using the tear-off Claim Form provided to you, or online at www.XXXXXXXXXX.com. Alternatively, you can print out, complete, and mail this entire Claim Form (with any required documentation) to the mailing address above. Claims must be submitted online or mailed by [DATE]. If you would prefer to submit by mail, please use the address at the top of this form.

SETTLEMENT BENEFITS – WHAT YOU MAY GET

As a Settlement Class Member, you may be eligible for the following Settlement Benefit options:

- 1. Documented Loss Payment: You may submit a Claim Form and provide reasonable documentation for losses related to the Incident for up to \$5,000 per Settlement Class Member. Supporting documentation is required. OR 2. Cash Fund Payment: Instead of a Documented Loss Payment, without providing documentation, you may submit a Claim Form to receive a pro rata (a legal term meaning equal share) cash payment.

If the total amount of approved Documented Loss Payments exceed the Net Settlement Fund as described in the Settlement Agreement, there will be no Cash Fund Payments and the Documented Loss Payments will be subject to a pro rata (a legal term meaning equal share) decrease.

AND

- 3. Credit Monitoring: Without submitting a Claim Form, you will receive an activation code for two years of free, three credit bureau Credit Monitoring located on your settlement Notice. The Credit Monitoring code can be activated after final settlement approval.

After final approval, go to www.XXXXXX.com or call toll-free XXX-XXX-XXXX for instructions on how to activate your Credit Monitoring code.

\* \* \*

Please note: the Settlement Administrator may contact you to request additional documents to process your Claim.

For more information and complete instructions visit www.XXXXXXXXXX.com

Please note that Settlement Benefits will be distributed, and the Credit Monitoring code activation will be available, after the Settlement is approved by the Court and becomes final.

1. NAME (REQUIRED):

First Name

MI

Last Name

[Grid for First Name]

[Grid for MI]

[Grid for Last Name]

2. MAILING ADDRESS (REQUIRED):

Street Address

[Grid for Street Address]

Apt. No.

[Grid for Apt. No.]

City

State

ZIP Code

[Grid for City]

[Grid for State]

[Grid for ZIP Code]

3. PHONE NUMBER:

[Grid for Phone Number]

4. EMAIL ADDRESS:

[Grid for Email Address]

5. UNIQUE ID:

[Grid for Unique ID]

6. CASH PAYMENT METHOD (SELECT ONLY ONE)

Physical Check

Electronic Payment (You must provide a valid email address)

**Credit Monitoring Services**

*You may be eligible to receive free Credit Monitoring services.*

All Settlement Class Members will receive an activation code located on their settlement notice for two years of three credit bureau Credit Monitoring services. You do not need to submit a Claim Form for Credit Monitoring. Please keep your settlement notice and check the Settlement Website from time to time to learn when the Settlement receives final Court approval. After final Court approval, you will be able to activate your free Credit Monitoring services.

**Documented Loss Payment**

If you lost or spent money related to the Incident and have not been reimbursed for that loss/expense, you can receive reimbursement for up to \$5,000 total. Eligible losses include those incurred after June 24, 2024, and up to the date of filing your Claim.

**It is important for you to send reasonable documentation that show what happened and how much you lost or spent so that you can be reimbursed.**

**If you do not submit reasonable documentation supporting a loss, or if your Claim Form is invalid as determined by the Settlement Administrator, and you do not cure your Claim Form, your Claim Form will be processed as a Cash Fund Payment.**

To look up more details about how the Payments work, visit [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call toll-free 1-XXX-XXX-XXXX. Please also review the Long Form Notice on the Settlement Website, which provides examples of what documents you need to attach and the types of expenses that can be claimed. *By filling out the boxes below, you are certifying that the money you spent doesn't relate to other data incidents or breaches.*

<b>Expense Type and Examples of Documents</b>	<b>Amount and Date</b>	<b>Description of Expense or Money Spent and Supporting Documents</b> (Identify what you are attaching, and why it's related to the Incident)
Professional fees incurred to address identity theft or fraud, such as falsified tax returns and account fraud.  <i>Examples: Receipts, notices, or account statements reflecting payment for a credit freeze or unfreezing.</i>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> Date: <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM                  DD                  YYYY	<hr/> <hr/> <hr/> <hr/>
Unreimbursed fraud losses or charges resulting from identity theft or fraud (provide detailed description) fairly traceable to the Incident.  <i>Examples: Account statement with unauthorized charges circled; bank fees, and fees for credit reports, credit freezes, credit monitoring, or other identity theft insurance products purchased</i>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> Date: <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM                  DD                  YYYY	<hr/> <hr/> <hr/> <hr/>
Other miscellaneous expenses such as notary, fax, postage, copying, mileage, and/or long-distance telephone charges related to the Incident.  <i>Examples: Phone bills, receipts, detailed list of addresses you traveled (i.e. police station, IRS office), reason why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled</i>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> Date: <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM                  DD                  YYYY	<hr/> <hr/> <hr/> <hr/>

Questions? Go to [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call 1-XXX-XXX-XXXX

**Cash Fund Payment**

Instead of a Documented Loss Payment, without providing documentation, you may elect to receive a *pro rata* (a legal term meaning equal share) Cash Fund Payment.

If the total amount of approved Documented Loss Payments exceed the Net Settlement Fund, there will be no Cash Fund Payments.

**By checking this box, I affirm I want to receive a Cash Fund Payment.**

I affirm under the laws of the United States that the information I have supplied in this Claim Form and any copies of documents that I am sending to support my Claim are true and correct to the best of my knowledge.

I understand that I may be asked to provide more information by the Settlement Administrator before my Claim is complete.

[Signature box]

Signature

Date: 

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MM DD YYYY

[Print Name box]

Print Name

# **EXHIBIT B**

**If your Personal Information was potentially accessible as a result of the Incident involving Excelsior Orthopaedics, LLP and Buffalo Surgery Center, LLC, discovered on or about June 24, 2024, you may be entitled to Benefits from a Settlement.**

*A Court authorized this Notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit (the “Action”) against Excelsior Orthopaedics, LLP (“Excelsior”) and Buffalo Surgery Center, LLC (“BSC”) (together, “Defendants”) regarding a network incident (“Incident”) during which cybercriminals gained unauthorized access to Defendants’ network systems, discovered on or about June 24, 2024, and resulting in the unauthorized access to certain files that may have contained Settlement Class Members’ Personal Information. The Personal Information involved includes, but is not limited to names, Social Security numbers, driver’s license numbers, state identification numbers, passport numbers, dates of birth, biometric information, diagnosis, financial account information, health insurance information, health information, and prescription information.
- **Your decision to remain in the Settlement Class or to exclude yourself will not affect your rights or your ability to participate in any future settlement with any non-settling defendant.**
- The Settlement Class includes: all living natural persons who are residents of the United States whose Personal Information was potentially accessible as a result of the Incident, including all persons who received notice of the Incident.
- If you are a Settlement Class Member, you can submit a Claim Form for the following Settlement Benefits:  
**Documented Loss Payment:** You may submit a Claim Form and provide reasonable documentation for losses related to the Incident for up to \$5,000 per Settlement Class Member;  
**OR**  
**Cash Fund Payment:** Instead of a Documented Loss Payment, without providing documentation, you may submit a Claim Form to receive a *pro rata* (a legal term meaning equal share) cash payment;  
**AND**  
**Credit Monitoring:** Without submitting a Claim Form, you will receive an activation code for two years of free, three bureau Credit Monitoring. The Credit Monitoring activation code is located on your settlement notice, and can be activated after final settlement approval.  
 If the total amount of approved Documented Loss Payments exceed the Net Settlement Fund, there will be no Cash Fund Payments and the Documented Loss Payments will be subject to a *pro rata* (a legal term meaning equal share) decrease.  
**Equitable Relief:** Defendants are implementing additional security measures following the Incident.

**This Notice may affect your rights. Please read it carefully.**

Your Legal Rights & Options		Deadline
<b>Submit a Claim Form</b>	To receive a cash payment (Documented Loss Payment or Cash Fund Payment), you must submit a timely and valid Claim Form. You do not need to submit a Claim Form to receive Credit Monitoring.	Submitted or Postmarked by: <b>MONTH DD, 20YY</b>
<b>Exclude Yourself</b>	Get no Settlement Benefits. Keep your right to file your own lawsuit against the Released Settling Parties about the Released Claims released by the Settlement in this Action.	Postmarked by: <b>MONTH DD, 20YY</b>
<b>Object to the Settlement</b>	Stay in the Settlement, but tell the Court why you do not agree with the Settlement. You will still be bound by the Settlement if the Court approves it.	Filed by: <b>MONTH DD, 20YY</b>
<b>Do Nothing</b>	Get no cash payment. Receive Credit Monitoring activation code. Give up your legal rights.	

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court must decide whether to approve the Settlement, Class Counsel’s Fee Award and Costs, and

**Questions? Go to [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

Service Awards. No Settlement Benefits will be provided unless the Court finally approves the Settlement.

## BASIC INFORMATION

### 1. Why is this Notice being provided?

A Court authorized this Notice because you have the right to know about the settlement of this Action and about all your rights and options before the Court decides whether to grant final approval to the Settlement. This Notice explains the Action, the Settlement, your legal rights, what Settlement Benefits are available, who is eligible for the Settlement Benefits, and how to get them.

The Honorable Catherine Nugent Panepinto of the Supreme Court of the State of New York, Erie County is overseeing this Action. The Action is known as *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Index No. 812753/2024. The individuals who filed this Action are called the “Plaintiffs” and/or “Class Representatives” and the companies sued, Excelsior Orthopaedics, LLP, Buffalo Surgery Center, LLC, are called the “Defendants.”

### 2. What is this lawsuit about?

The Plaintiffs filed this Action against Defendants on behalf of themselves and all others similarly situated regarding a network incident (“Incident”) during which cybercriminals gained unauthorized access to Defendants’ network systems, discovered on or about June 24, 2024, and resulting in the unauthorized access to certain files that may have contained Settlement Class Members’ Personal Information. The Personal Information involved includes, but is not limited to names, Social Security numbers, driver’s license numbers, state identification numbers, passport numbers, dates of birth, biometric information, diagnosis, financial account information, health insurance information, health information, and prescription information.

Excelsior and BSC have reached a \$2,400,000 settlement in the Action.

Defendants deny the legal claims and deny any wrongdoing or liability. The Court has not made any determination of any wrongdoing by Defendants, or that any law has been violated. Instead, the Plaintiffs and Defendants have agreed to a Settlement to avoid the risk, cost, and time of continuing the Action.

### 3. Why is there a Settlement?

The Plaintiffs and Defendants do not agree about the legal claims made in this Action. The Action has not gone to trial, and the Court has not decided in favor of the Plaintiffs or Defendants. Instead, the Plaintiffs and Defendants have agreed to settle the Action. The Class Representatives, Defendants, and their lawyers believe the Settlement is best for the Settlement Class because of the Settlement Benefits available and the risks and uncertainty associated with continuing the Action.

### 4. Why is this lawsuit a class action?

In a class action, one or more people (called class representatives) sue on behalf of all people who they allege have similar legal claims. Together, after a court grants certification, all these people are called a class or class members. One court resolves the issues for all class members, except for those class members who timely exclude themselves (opt-out) from the class.

Questions? Go to [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call 1-XXX-XXX-XXXX

## WHO IS INCLUDED IN THE SETTLEMENT?

### 5. How do I know if I am included in the Settlement?

You are included in the Settlement Class if you are a living natural person who is a resident of the United States and your Personal Information was potentially accessible as a result of the Incident, including those who received notice of the Incident.

### 6. Are there exceptions to being included in the Settlement?

Yes. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Defendants and their officers and directors; (3) AMKAI, LLC d/b/a Surgical Information Systems and its officers and directors; (4) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (5) the successors or assigns of any such excluded natural person.

### 7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class Member, you may go to [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call toll-free 1-XXX-XXX-XXXX.

## THE SETTLEMENT BENEFITS

### 8. What does this Settlement provide?

If you are a Settlement Class Member, you can submit a Claim Form for the following Settlement Benefits:

#### **Documented Loss Payment**

You may submit a Claim Form and provide reasonable documentation for losses related to the Incident for up to \$5,000 per Settlement Class Member.

Examples of expenses incurred as a result of the Incident include (without limitation) bank fees, long distance phone charges, cell phone charges (only charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel and fees for credit reports, credit monitoring, or other identity theft insurance products purchased.

Examples of reasonable documentation include (but are not limited to): telephone records, correspondence including emails, or receipts.

If you do not submit reasonable documentation supporting a loss, or if your Claim Form is invalid as determined by the Settlement Administrator, and you do not cure your Claim Form, your Claim Form will be processed as a Cash Fund Payment.

#### **Cash Fund Payment**

Instead of a Documented Loss Payment, without providing documentation, you may submit a Claim Form to receive a pro rata (a legal term meaning equal share) cash payment.

**Questions? Go to [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

If the total amount of approved Documented Loss Payments exceeds the Net Settlement Fund, there will be no Cash Fund Payments and the Documented Loss Payments will be subject to a *pro rata* (a legal term meaning equal share) decrease.

### **Credit Monitoring**

Without submitting a Claim Form, you will receive an activation code for two years of free, three bureau Credit Monitoring services. Credit Monitoring activation codes are located on your settlement notice. Please keep your notice, as you will only be able to activate the free Credit Monitoring after final settlement approval.

After final approval, go to [www.XXXXXX.com](http://www.XXXXXX.com) or call toll-free XXX-XXX-XXXX for instructions on how to activate your Credit Monitoring code.

Any residual funds remaining in the Net Settlement Fund after distribution of the Settlement Benefits will be issued to the Non-Profit Residual Recipient, Electronic Frontier Foundation, a 501(c)(3) non-profit third-party recipient.

### **Equitable Relief**

Defendants have spent an estimated \$600,000.00 to implement certain changes to their information security practices following the Incident, which is separate and apart from the \$2.4 million Settlement Fund.

## **9. What am I giving up to receive Settlement Benefits or stay in the Settlement Class?**

Unless you submit a Request for Exclusion (opt-out), you will remain in the Settlement Class. If the Settlement is approved and becomes final, all Court orders and any judgments will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against the Released Settling Parties about the Released Claims in this Action. The specific rights you are giving up are called “Released Claims.”

**Your decision to remain in the Settlement Class or to exclude yourself will not affect your rights or your ability to participate in any future settlement with any non-settling defendant.**

## **10. What are the Released Claims?**

Section 5 of the Settlement Agreement describes the Release, Released Claims, and Released Settling Parties, in necessary legal terminology, so please read this section carefully. The Settlement Agreement is available at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com). For questions regarding the Release, Released Claims, or Released Settling Parties and what the language in the Settlement Agreement means, you can also contact Class Counsel listed below for free, or you can talk to your own lawyer at your own expense.

## **HOW TO GET BENEFITS FROM THE SETTLEMENT**

### **11. How do I submit a Claim Form?**

You must submit a timely and valid Claim Form to receive a cash payment as described above. Your Claim Form must be submitted online at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com) by **MONTH DD, 2026**, or mailed to the Settlement Administrator at the address on the Claim Form, **postmarked by Month**

**Questions? Go to [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

**DD, 2026.** Claim Forms are also available at [www.XXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXX.com) or by calling **1-XXX-XXX-XXXX** or by writing to:

*Excelsior Incident*  
Settlement Administrator  
PO Box XXXX  
Portland, OR 972XX-XXXX

You do not need to submit a Claim Form to receive your free Credit Monitoring services. The Credit Monitoring activation code is located on your settlement notice.

**12. What happens if my contact information changes after I submit a Claim Form?**

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by writing to:

*Excelsior Incident*  
Settlement Administrator  
PO Box XXXX  
Portland, OR 972XX-XXXX

**13. When will I receive my Settlement Benefits?**

Settlement Benefits will be provided after the Settlement is approved by the Court and becomes final. You must file a timely and valid Claim Form to receive a cash payment. To enroll in Credit Monitoring, after final approval, go to [www.XXXXX.com](http://www.XXXXX.com) or call toll-free **XXX-XXX-XXXX** for instructions on how to activate your Credit Monitoring code. The Credit Monitoring activation code is located on your settlement notice.

It may take time for the Settlement to be approved and become final. Please be patient and check [www.XXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXX.com) for updates.

**EXCLUDE YOURSELF OR OPT-OUT OF THE SETTLEMENT**

If you are a member of the Settlement Class and want to keep any right you may have to sue or continue to sue the Released Settling Parties on your own about the legal claims in this Action or the Released Claims, then you must take steps to get out of the Settlement through the submission of a Request for Exclusion. This is called excluding yourself from—or “opting-out” of—the Settlement.

**14. How do I opt-out of the Settlement?**

To exclude yourself from the Settlement, you must mail a written Request for Exclusion, which includes the following:

- 1) Case name - *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Supreme Court of the State of New York, Erie County, Case No. 812753/2024;
- 2) Your name, address, telephone number;
- 3) Your personal physical signature; and
- 4) A statement that you want to be excluded from the Settlement Class, such as “I hereby request to be excluded from the Settlement Class in *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*”

**Questions? Go to [www.XXXXXXXXX.com](http://www.XXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

The exclusion request must be **mailed** to the Settlement Administrator at the following address, and be **postmarked** by **MONTH DD, 2026**:

*Excelsior Incident*  
Settlement Administrator  
PO Box XXXX  
Portland, OR 972XX-XXXX

**You cannot opt-out (exclude yourself) by telephone or by email.**

“Mass” or “class” Requests for Exclusion filed by third parties on behalf of a “mass” or “class” of Settlement Class Members or multiple Settlement Class Members where the opt-out has not been signed by each and every individual Settlement Class Member will not be allowed.

**Your decision to remain in the Settlement Class or to exclude yourself will not affect your rights or your ability to participate in any future settlement with any non-settling defendant.**

#### **15. If I opt-out can I still get anything from the Settlement?**

No. If you opt-out, you will not be able to receive Settlement Benefits, and you will not be bound by the Settlement or any judgments in this Action. You can only get Settlement Benefits if you stay in the Settlement. You must submit a timely and valid Claim Form to receive a cash payment. You do not need to submit a Claim Form to receive your free Credit Monitoring services but you must remain in the Settlement Class.

**Your decision to remain in the Settlement Class or to exclude yourself will not affect your rights or your ability to participate in any future settlement with any non-settling defendant.**

#### **16. If I do not opt-out, can I sue the Defendants for the same thing later?**

No. Unless you opt-out, you give up any right to sue any of the Released Settling Parties for the legal claims this Settlement resolves and Releases, and you will be bound by all the terms of the Settlement, proceedings, orders, and judgments in the Action. You must opt-out of this Action to start or continue your own lawsuit or be part of any other lawsuit against the Released Settling Parties about the Released Claims in this Settlement.

**Your decision to remain in the Settlement Class or to exclude yourself will not affect your rights or your ability to participate in any future settlement with any non-settling defendant.**

## **OBJECTING TO THE SETTLEMENT**

#### **17. How do I tell the Court I do not like the Settlement?**

If you are a Settlement Class Member, you can tell the Court you do not agree with all or any part of Settlement, Settlement Benefits, Service Awards, and/or Class Counsel’s Fee Award and Costs.

To object, you must file your timely written objection with the Court as provided below by **MONTH DD, 2026** (the “Objection Deadline”), and send by U.S. mail to Class Counsel, Defendants’ Counsel, and the Settlement Administrator postmarked by **MONTH DD, 2026**, stating you object to the Settlement in *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Case No. 812753/2024.

**Questions? Go to [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

To file an objection, you cannot exclude yourself from the Settlement Class. Your objection must include all of the following information:

- 1) The case name and number - *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Case No. 812753/2024;
- 2) Your full name, current mailing address, and telephone number;
- 3) A statement that you believe yourself to be a member of the Settlement Class;
- 4) Proof that you are a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Incident);
- 5) Identify the specific factual and legal grounds for the objection;
- 6) Identify whether your objection is to the Settlement in part or in whole;
- 7) State whether the objection applies only to you as the objector, a subset of the Settlement Class, or the entire Settlement Class;
- 8) Identify all lawyers representing you as the objector, if any;
- 9) Include a list, including case name, court, and docket number, of all other cases in which you and/or your lawyer have filed an objection to any proposed class action settlement in the past 5 years;
- 10) Include all documents or writings that you desire the Court to consider;
- 11) A statement regarding whether you (or your lawyer) intend to appear at the Final Approval Hearing; and
- 12) Your signature as the objector or your duly authorized lawyer or representative's signature.

To object, you must file your timely written objection with the Court by the Objection Deadline, **MONTH DD, 2026**, and send it by U.S. mail to Class Counsel, Defendants' Counsel, and the Settlement Administrator postmarked by **MONTH DD, 2026**, at the following addresses:

COURT	CLASS COUNSEL	DEFENDANTS' COUNSEL	SETTLEMENT ADMINISTRATOR
Erie County Chief Clerk's Office 25 Delaware Avenue Buffalo, NY 14202	Andrew Ferich Ahdoot & Wolfson, PC 201 King of Prussia Road Suite 650 Radnor, PA 19087  Arturo Peña Sterlington PLLC 530 5th Avenue Suite 804 New York, NY 10036  Tyler J. Bean Siri & Glimstad LLP 745 5th Avenue Suite 500 New York, NY 10151	David M. Ross Brian H. Myers Wilson Elser LLP 1500 K Street, NW Suite 330 Washington, D.C. 20005	Excelsior Incident Settlement Administrator PO Box xxxx Portland, OR 972xx-xxxx

**18. What is the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Opting-out is telling the Court that you do not want to be part of the Settlement Class. If you opt-out, you cannot object because you are no longer part of the Settlement.

## THE LAWYERS REPRESENTING YOU

### 19. Do I have a lawyer in the lawsuit?

Yes. The Court has appointed Andrew W. Ferich of Ahdoot & Wolfson, PC, Arturo Peña of Sterlington PLLC, and Tyler J. Bean of Siri & Glimstad LLP as Class Counsel to represent you and the Settlement Class for the purposes of this Settlement. You may hire your own lawyer at your own cost if you want someone other than Class Counsel to represent you in this Action.

### 20. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award the attorneys' fees of up to one-third (1/3) of the Settlement Fund, plus reimbursement of litigation expenses and costs. Class Counsel will also ask the Court to approve Service Awards for the Class Representatives of up to \$2,500 each for their efforts. If awarded by the Court, the attorneys' fees and costs, and the Service Awards will be paid from the Settlement Fund. The Court may award less than these amounts.

## THE FINAL APPROVAL HEARING

The Court will hold a "Final Approval Hearing" to decide whether to approve the Settlement and attorneys' fees and costs, and Service Awards. You may attend and you may ask to speak if you file an objection by the deadline, but you do not have to.

### 21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on **MONTH DD, 20YY, at XX:XX a.m./p.m.** before the Honorable Catherine Nugent Panepinto at the Erie County Court Building, 25 Delaware Ave, Buffalo, NY 14202. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve the Settlement, attorneys' fees and costs, and Service Awards.

**Note:** The date and time of the Final Approval Hearing are subject to change without further notice to the Settlement Class. The Court may also decide to hold the hearing via video conference or by telephone. You should check the Settlement Website [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) to confirm the date and time of the Final Approval Hearing have not changed.

### 22. Do I have to attend the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to attend the Final Approval Hearing to speak about it. As long as you file your written objection by the deadline, the Court will consider it.

**23. May I speak at the Final Approval Hearing?**

If there are objections that were filed by the deadline, the Court will consider them. If you file a timely objection, and you (or your lawyer) ask to speak at the hearing, the Court may hear objections at the hearing.

**GET MORE INFORMATION**

**24. How do I get more information about the Settlement?**

This Notice summarizes the Settlement. Complete details about the Settlement are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com). You may get additional information at [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com), by calling toll-free [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX), or by writing to:

*Excelsior Incident*  
Settlement Administrator  
PO Box XXXX  
Portland, OR 972XX-XXXX

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE  
REGARDING THIS NOTICE.**

**Questions? Go to [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or call [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX)**

# **EXHIBIT C**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE**

SUSAN SZUCS, ANTHONY PARRIZZI,  
TERRENCE ERNEST GIDNEY, CHRISTINA  
CHURCH, JIMMIE HARDAWAY, JR., SHARON  
SIEGLE, PAUL PASCUCCI, JAMES  
MARCISZEWSKI, and SHANNON ALLGRIM,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

EXCELSIOR ORTHOPAEDICS, LLP, and  
BUFFALO SURGERY CENTER, LLP,

Defendants.

Index No. 812753/2024

CLASS ACTION

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL**

This matter came before the Court on Plaintiffs Susan Szucs, Anthony Parrizzi, Terrence Ernest Gidney, Christina Church, Jimmie Hardaway, Jr., Sharon Siegle, Paul Pascucci, James Marciszewski, and Shannon Allgrim's ("Plaintiffs" or "Class Representatives") Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement. Plaintiffs, individually and on behalf of the proposed Settlement Class, and Defendants Excelsior Orthopaedics, LLP and Buffalo Surgery Center, LLP ("Defendants"), have entered into a Settlement Agreement (the "Settlement Agreement").

Having reviewed the motion, the Settlement Agreement,<sup>1</sup> and all exhibits attached thereto, and the record in this case, and for good cause shown:

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to NY CPLR Ch. 8, Art. 9, §§ 901(a)(1)-(5) and 902, the Court conditionally certifies the Settlement Class in this matter defined as follows:

all living natural persons who are residents of the United States whose Personal Information was potentially accessible as a result of the Incident, including all persons who received notice of the Incident.

Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Defendants and their officers and directors; (3) AMKAI, LLC d/b/a Surgical Information Systems and its officers and directors; (4) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (5) the successors or assigns of any such excluded natural person.

The Court conditionally finds, for settlement purposes only, that: (1) the Settlement Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual class members; (3) the claims or defenses of the Class Representatives are typical of the claims or defenses of the Settlement Class; (4) the Class Representatives will fairly and adequately protect the interests of the Settlement Class; (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

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<sup>1</sup> Unless otherwise indicated, capitalized terms used in this Preliminary Approval Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) have the same meaning as in the Settlement Agreement.

2. **Settlement Class Representatives and Settlement Class Counsel.** Susan Szucs, Anthony Parrizzi, Terrence Ernest Gidney, Christina Church, Jimmie Hardaway, Jr., Sharon Siegle, Paul Pascucci, James Marciszewski, and Shannon Allgrim are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and, therefore, typical of the Settlement Class and that they will be adequate Class Representatives. The Court finds that the following counsel is experienced and adequate counsel and is hereby provisionally designated as Settlement Class Counsel: Andrew W. Ferich of Ahdoot & Wolfson, PC, Arturo Peña of Sterlington PLLC, and Tyler J. Bean of Siri & Glimstad LLP.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class to warrant providing Notice of the Settlement to the Settlement Class and, accordingly, is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this Court.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_\_\_, 202\_, at \_\_\_\_\_ o'clock [a.m./p.m.] in the Supreme Court of the State of New York, Erie County, 25 Delaware Avenue, Buffalo, New York 14202, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to NY CPLR Ch. 8, Art. 9, §§ 901(a)(1)-(5); (b) the Settlement and Settlement Agreement should be finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class pursuant to NY CPLR Ch. 8, Art. 9, § 908; (c) the Action should

be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members (except those who have made timely and valid requests for exclusion from the Settlement) should be bound by the releases set forth in the Settlement Agreement; and (e) Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards should be approved.

6. **Settlement Administrator.** The Court appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator, with responsibility for the Notice Plan and administration of claims and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. All costs associated with the Notice Plan shall be paid from the Settlement Fund. Defendants shall disclose the necessary names and mailing addresses to the Settlement Administrator for purposes of the Notice Plan and administration of claims and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. The Settlement Administrator shall maintain any names and mailing addresses obtained from Defendants in the course of the Settlement Class notification and claims administration process securely and confidentially and shall use such information solely for purposes of effecting Settlement Class Notice and claims administration under the Settlement Agreement.

7. **Notice.** The proposed Notice Plan set forth in the Settlement Agreement, including the Claim Form, Summary Notice, and Long Form Notice, which are attached to the Settlement Agreement as **Exhibits A, B, and D**, respectively, satisfy the requirements of NY CPLR Ch. 8, Art. 9, §§ 904 and 908 and constitute reasonable notice of the Action and Settlement and are hereby approved. Non-material modifications to these exhibits may be made without further order of the Court. The Settlement Administrator and Defendants are directed to carry out the Notice Plan in conformance with the Settlement Agreement.

Within 35 days from the date of this Order (the “Notice Date”), the Settlement Administrator and Defendants shall initiate the Notice Plan, which shall be completed in the manner set forth in the Settlement Agreement.

8. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving Notice to the Settlement Class as described in Paragraph 7 of this Preliminary Approval Order and the Settlement Agreement (including the exhibits thereto) constitutes reasonable Notice of the commencement of the Action to the Settlement Class pursuant to NY CPLR Ch. 8, Art. 9, §§ 904 and 908. Specifically, the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members. Moreover, the Notice is clear and straightforward: it apprises Settlement Class Members of the pendency of the Action; describes the essential terms of the Settlement; defines the Settlement Class; clearly describes the options available to the Settlement Class and the deadlines for taking action; explains procedures for making claims, objections, or requesting exclusion; provides information that will enable Settlement Class Members to calculate their individual recovery; discloses the Plaintiffs’ requested attorneys’ fees, costs, and expenses, and Class Representatives’ requested Service Awards; describes the date, time, and place of the Final Approval Hearing; and prominently displays the address of proposed Settlement Class Counsel. Finally, direct mailing, combined with publishing on the Settlement Website, is designed to be the best reasonable notice of the commencement of the Action to reach the Settlement Class Members under the circumstances. The Court concludes that the Notice Plan meets all applicable requirements of law pursuant to NY CPLR Ch. 8, Art. 9, §§ 904 and 908.

9. **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 from the Notice Date (the “Opt-Out Period”). The written notification must include all the information set forth in Paragraph 7.8 of the Settlement Agreement, as follows:

- (i) state the name, address and telephone number of the Class Member seeking exclusion;
- (ii) be physically signed by the person(s) seeking exclusion; and
- (iii) contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Supreme Court of the State of New York, Erie County, Case No. 812753/2024.”

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may move to file under seal with the Court, no later than **five Days after the last day of the Opt-Out Period**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Approval Order is entered, any Settlement Class Member who has not submitted a timely, valid written Request for 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, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely Requests for Exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

10. **Objections and Appearances.** A Settlement Class Member who complies with the requirements of this Paragraph may object to the Settlement and to Plaintiffs' Motion for Fee Award and Costs, and Service Awards for the Class Representatives.

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: (1) filed with the Clerk of Court by the Objection Deadline as set forth in the Settlement Agreement, and (2) mailed or hand-delivered concurrently upon (a) Settlement Class Counsel, (b) Defendants' Counsel, and (c) the Settlement Administrator, at the addresses listed in the Notice, and postmarked by no later than the Objection Deadline set forth in the Settlement Agreement, and 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 7.9 of the Settlement Agreement, which is as follows:

- (a) identify the case name and number;
- (b) state the Settlement Class Member's full name, current mailing address, and telephone number;
- (c) contain a statement by the Settlement Class Member that he or she believes himself to be a member of the Settlement Class;
- (d) include proof that the Settlement Class Member is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Incident);
- (e) identify the specific factual and legal grounds for the objection;
- (f) identify whether the objection is an objection to the Settlement in part or in whole;
- (g) state whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class;

- (h) identify all counsel representing the objector, if any;
- (i) include a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past 5 years;
- (j) include all documents or writings that the objector desires the Court to consider;
- (k) contain a statement regarding whether the objector (or counsel of his or her choosing) intends to appear at the Final Approval Hearing; and
- (l) contain the signature of the objector or the objector's duly authorized attorney or representative.

Any Settlement Class Member who fails to comply with the provisions in this Paragraph 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 Preliminary Approval Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the Release in the Settlement Agreement, if the Final Approval Order is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, or Plaintiffs' Fee Award and Costs, and/or Service Award requests for Class Representatives.

If the Final Approval Order 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, and Plaintiffs' Attorneys' Fee Award and Costs, and/or Service Award requests for Class Representatives.

11. **Claims Process and Allocation Plan.** Settlement Class Counsel and Defendants have created a process for assessing and determining 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 plan for distribution of the Settlement consideration described in the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

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. If the Final Approval Order 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.

12. **Termination of Settlement.** This Preliminary Approval 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 Preliminary Approval Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if a Final Approval Order 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 Defendants of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representatives 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 Action or in any other lawsuit.

14. **Stay of Proceedings and Enjoining Further Actions.** Except as necessary to effectuate this Preliminary Approval Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order, or until such further order of this Court. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Settlement Class Members from commencing or prosecuting any and all of the Released Claims against the Released Settling Parties.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Settlement Administrator.

16. **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 Preliminary Approval Order include, but are not limited to:

<u><b>EVENT</b></u>	<u><b>DATE</b></u>
Preliminary Approval Order	_____
Notice Date	35 days after Preliminary Approval: _____
Deadline for Plaintiffs to File Motion for Attorneys' Fee Award and Costs, and Service Awards	14 days prior to Objection Deadline: _____
Deadline for Settlement Class Members to Object to Settlement	60 days after Notice Date: _____
Deadline for Settlement Class Members to Opt-Out of Settlement	60 days after Notice Date: _____
Deadline for Plaintiffs to File Motion for Final Approval of Settlement	14 days after Objection Deadline: _____
Deadline for Class Members to Submit Claim Forms (Electronically or Postmarked by Mail)	90 days after Notice Date: _____
<b><u>Final Approval Hearing</u></b>	_____ [No earlier than 130 days after entry of the Preliminary Approval Order]

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2026.

Hon. \_\_\_\_\_

# **EXHIBIT D**

**FILED: ERIE COUNTY CLERK**

Excelsior Incident  
NYSCEF DOC NO. 104  
Settlement Administrator  
PO Box XXXX  
Portland, OR 972XX-XXXX

8/27/2024  
05:23 PM

FIRST-CLASS MAIL  
01/30/2026  
U.S. POSTAGE  
PAID  
Portland, OR  
PERMIT NO. xxxx

Court-Approved Legal Notice

*Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.,*  
Case No. 812753/2024, Supreme Court of New  
York, County of Erie

**If your Personal Information was potentially accessible as a result of the Incident involving Excelsior Orthopaedics, LLP and Buffalo Surgery Center, LLC, discovered on or about June 24, 2024, you may be entitled to Benefits from a Settlement.**

*A Court has authorized this notice.  
This is not a solicitation from a lawyer.*

**This notice is a summary.** Learn more at  
www.XXXXX.com, or by calling toll free 1-  
XXX-XXX-XXX.

<<MAIL ID>>  
<<NAME 1>>  
<<NAME 2>>  
<<ADDRESS LINE 1>>  
<<ADDRESS LINE 2>>  
<<ADDRESS LINE 3>>  
<<ADDRESS LINE 4>>  
<<ADDRESS LINE 5>>  
<<CITY, STATE ZIP>>  
<<COUNTRY>>

A Settlement has been reached in a class action lawsuit (the "Action") against Excelsior Orthopaedics, LLP (Excelsior) and Buffalo Surgery Center, LLC ("BSC") (together, Defendants) regarding a network incident ("Incident") during which cybercriminals gained unauthorized access to Defendants' network systems, discovered on or about June 24, 2024, and resulting in the unauthorized access to certain files that may have contained Settlement Class Members' Personal Information. **Your decision to remain in the Settlement Class or to exclude yourself will not affect your rights or your ability to participate in any future settlement with any non-settling defendant.**

**Who is Included? Records show you are a Settlement Class Member**, defined as: all living natural persons who are residents of the United States whose Personal Information was potentially accessible as a result of the Incident, including all persons who received notice of the Incident.

**What does the Settlement Provide?** As a Settlement Class Member, you can submit a Claim Form online or by mail postmarked by **Month XX, 2026**, for the following Settlement Benefits:

**Documented Loss Payment:** You may submit a Claim Form and provide reasonable documentation for losses related to the Incident for up to \$5,000 per Settlement Class Member; **OR**

**Cash Fund Payment:** Instead of a Documented Loss Payment, without providing documentation, you may submit a Claim Form to receive a *pro rata* (a legal term meaning equal share) cash payment; **AND**

**Credit Monitoring:** Without submitting a Claim Form, you are receiving below an activation code for two years of free, three credit bureau Credit Monitoring. After final approval, go to [www.XXXXX.com](http://www.XXXXX.com) or call toll-free XXX-XXX-XXXX for instructions on how to activate your credit monitoring code.

ACTIVATION CODE: <<XXXXXXXXXXXX>>

If the total amount of approved Documented Loss Payments exceed the Net Settlement Fund, there will be no Cash Fund Payments and the Documented Loss Payments will be subject to a *pro rata* (a legal term meaning equal share) decrease.

**Equitable Relief:** Defendants have spent an estimated \$600,000.00 to implement certain changes to their information security practices following the Incident, which is separate and apart from the \$2.4 million Settlement Fund.

**Other Options.** If you do not want to be legally bound by the Settlement, you must submit an opt-out request postmarked by **Month XX, 2026 ("Opt-Out Period")**. If you do not opt-out, you will give up the right to sue and will release the Released Settling Parties from the claims in this Settlement. If you do not opt out, you may object to the Settlement and/or attorneys' fees, costs, and/or Service Awards by **Month XX, 2026 ("Objection Deadline")**. The Long Form Notice on the Settlement Website explains how to opt-out or object. If you do nothing, you will get no cash payment, and you will be bound by the Settlement and any judgments and orders. The Court will hold a Final Approval Hearing on **Month XX, 2026**, to consider whether to approve the Settlement, Class Counsel's attorneys' fees of up to 1/3 of the Settlement Fund and costs, Service Awards, and any objections. You or your lawyer may attend

and ask to appear at the hearing if you object, but you are not required to do so.

NYSCEF DOC. NO. 104

RECEIVED NYSCEF: 01/30/2026

**CLAIM FORM**

**Claims must be postmarked or submitted online by Month Day, 20YY.**

\*First Name:

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\*MI:

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\*Last Name:

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\*Address:

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\*City:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

\*State:

--	--

\*ZIP Code:

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**Documented Loss Payment:** You may submit a Claim Form and provide reasonable documentation for losses related to the Incident for up to \$5,000 per Settlement Class Member. To file a Claim Form for a Documented Loss Payment, you must visit the Settlement Website and follow the instructions on the Claim Form. You can also download a paper Claim Form and file by mail.

**Cash Fund Payment:** Instead of a Documented Loss Payment, without providing documentation, you may submit a Claim Form to receive a *pro rata* (a legal term meaning equal share) cash payment.

By checking this box, I affirm I want to receive the Cash Fund Payment.

If the total amount of approved Documented Loss Payments exceeds the Net Settlement Fund, there will be no Cash Fund Payments and the Documented Loss Payments will be subject to a *pro rata* (a legal term meaning equal share) decrease.

**Credit Monitoring** - Your activation code for two years of free, three bureau Credit Monitoring is located on the informational portion of this notice (you do not need to submit a Claim Form to get your activation code).

**By signing my name, I swear and affirm I am completing this Claim Form to the best of my personal knowledge.**

Signature: 

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Date: 

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**FILED: ERIE COUNTY CLERK 01/30/2026 05:23 PM**

NYSCEF DOC. NO. 104

RECEIVED NYSCEF: 01/30/2026

PRE-PAID

POSTAGE

Excelsior Incident  
Settlement Administrator  
PO Box XXXX  
Portland, OR 97xxx-xxxx