

Exhibit E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHERYL COVINGTON,)
individually and on behalf of)
all others similarly situated,)

Plaintiff)

V.)

GIFTED NURSES, LLC d/b/a)
GIFTED HEALTHCARE)

Defendant)

Case No. 1:22-cv-04000-VMC

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Court: United States District Court for the Northern District of Georgia, Atlanta Division
Defendant: Gifted Nurses, LLC d/b/a Gifted Healthcare
Plaintiff/Class Representative: Cheryl Covington
Class Counsel: Cohen & Malad, LLP; Stranch, Jennings & Garvey, PLLC; and Turke & Strauss, LLP
Settlement Administrator: Kroll Administration

Data Incident: The incident from approximately August 25, 2021, to December 10, 2021, during which an unauthorized third party gained access to Defendant’s employee email account systems, potentially implicating personally identifiable information (“PII”) belonging to Plaintiff and members of the proposed Class.

Settlement Class: 13,770 individuals whose Personal Information was potentially compromised as a result of the Data Incident.

Class Certification Rules: Federal Rules of Civil Procedure 23(a) and (b)(3)
Settlement Approval Rule: Federal Rule of Civil Procedure 23(e)

Identity Theft Protection Services Attributes: 3 bureau credit monitoring for 3 years, to include identity theft insurance of no less than \$1,000,000
Ordinary Loss Payments: Ordinary Losses as defined herein, incurred, up to \$400 maximum per Class Member
Lost Time Payments: \$20 per hour up to 4 hours per Class Member
Extraordinary Loss Payments: Extraordinary Losses as defined herein, incurred, up to \$4,000 maximum per Class Member
Alternative Cash Payment Amount: \$50 per Class Member

Costs of Preparing the Class List: To be paid by Defendant, in addition to all other benefits

Costs of Notice and Administration: To be paid by Defendant, in addition to all other benefits

Attorneys’ Fees Amount: \$350,000.00 to be paid by Defendant, in addition to all other benefits

Unless otherwise ordered by the Court, the following dates and deadlines apply to this agreement. All dates and deadlines will be calculated in conformity with Federal Rule of Civil Procedure 6(a).

<i>Event</i>	<i>Date/Deadline</i>
Date of Execution	First date on which this agreement has been signed by all parties, as indicated on the signature page
Deadline to Move for Preliminary Approval	7 days after the Date of Execution
Date of Preliminary Approval	The day on which the Court enters the Preliminary Approval Order
Deadline to Provide the Class List	7 days after Preliminary Approval Order
Deadline to Send Notice	30 days after Preliminary Approval Order
Deadline to File Motion for Fees, Expenses, and Service Awards	15 days before Deadline to Object
Deadline to Object	30 days after Deadline to Send Notice
Deadline to Opt-Out	30 days after Deadline to Send Notice
Deadline to Report Opt-Outs	10 days after Deadline to Opt-Out
Deadline to Terminate for Opt-Outs	3 days after Deadline to Report Opt-Outs
Deadline to File Motion for Final Approval	No later than 14 days before the Date of the Final Approval Hearing
Date of the Final Approval Hearing	To be set by the Court (Parties to Request a date approximately 120 days after Preliminary Approval Order)
Date of Final Approval	The day on which the Court enters the Final Approval Order
Effective Date	The 31st day after the Final Approval Order has been entered, provided no objections are made and no appeal is filed by that date. Otherwise, the first day on which all appeals have been dismissed or all rights to appeal have been exhausted and the Final Approval Order has not been reversed.
Deadline to Pay Fees, Expenses, and Service Award	7 days after the Effective Date
Deadline to Submit Claims	180 days after Preliminary Approval Order
Deadline to Process Claims	30 days after receipt of the Claim Form by the Settlement Administrator
Deadline to Cure Claim	30 days after notice of the deficiency is provided by the Settlement Administrator

Deadline to Pay Valid Claims	30 days after determining the claim is valid
Date Settlement Checks Expire	120 days after issuance

1. Recitals.

On October 4, 2022, the Class Representative filed a Class Action Complaint against Defendant in the Court, alleging that Defendant was liable for the Data Incident under claims for: (Count I) negligence; (Count II) negligence *per se*; (Count III) breach of express/implied contractual duty; (Count IV) unjust enrichment; and (Count V) invasion of privacy.

On November 10, 2022, Defendant filed a motion to dismiss; the Class Representative responded on December 22, 2022; and Defendant replied on January 5, 2023. On July 19, 2023, the Court granted in part and denied in part the motion to dismiss. The Court denied the motion to dismiss as to Counts I and II, granted the motion to dismiss as to Counts III and IV, with leave to amend, and granted the motion to dismiss with prejudice as to Count V. The Court ordered the Class Representative to file an amended complaint within 14 days.

On August 2, 2023, the Class Representative filed an Amended Class Action Complaint against Defendant in the Court, alleging that Defendant was liable for the Data Incident under claims for: (Count I) negligence; (Count II) negligence *per se*; (Count III) breach of implied contractual duty; (Count IV) breach of express contract; and (Count V) unjust enrichment.

On August 9, 2023, the parties participated in a mediation facilitated by mediator Bennett G. Picker, who has extensive experience mediating data breach class action settlements. At the mediation, the parties reached an agreement to resolve this litigation, subject to Court approval of the detailed terms of this final agreement.

2. Denial of Wrongdoing and Liability

Gifted Nursing denies each and all of the claims and contentions alleged against it in the Litigation and believes its defenses have merit. Gifted Nursing denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, Gifted Nursing has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement. Gifted Nursing also has considered the

uncertainty and risks inherent in any litigation. Gifted Nursing has, therefore, determined it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement.

3. Incorporation of Key Terms, Schedule, Recitals, and Exhibits.

This agreement expressly incorporates the preceding Key Terms Page, Schedule of Dates and Deadlines, Recitals, and the following exhibits, all of which are integral parts of this agreement:

Exhibit A – the “Summary Notice”

Exhibit B – the “Detailed Notice”

Exhibit C – the “Claim Form”

Exhibit D – the “Preliminary Approval Order”

Exhibit E – the “Final Approval Order”

4. Benefits to Class Members.

Defendant will provide the benefits listed in this section, which will be available, as applicable, to any person who does not submit a valid and timely request to be excluded as provided in the Detailed Notice (each such person, a “Class Member”). A Class Member may claim all of the benefits to which the Class Member has a valid claim, provided, however, that a Class Member will not receive any other benefit if the Class Member receives an Alternative Cash Payment. A Class Member may claim these benefits by submitting a completed Claim Form to the Settlement Administrator postmarked no later than the Deadline to Submit Claims or by submitting such a request by that deadline through the Settlement Website. All claims will be processed and validated as set forth in Section 4.

4.1. Defendant to Pay for Identity Theft Protection Services.

“Identity Theft Protection Services” means credit monitoring and identity theft protection services having the Identity Theft Protection Services Attributes listed on the Key Terms Page to provided by a vendor approved by Class Counsel. Defendant will pay to provide Identity Theft Protection Services to each Class Member

who submits a valid claim for Identity Theft Protection Services, at no cost to the Class Member.

4.2. Defendant to Pay Valid Claims for Lost Time.

“Lost Time” means time a Class Member spent dealing with the Data Incident, such as time spent freezing credit, checking statements, dealing with actual or suspected fraud, or other time spent by a Class Member that would not have been spent but for the Data Incident. Defendant will pay all valid claims for reimbursement for Lost Time in the amounts and limits set forth under Lost Time Payments on the Key Terms Page.

4.3. Defendant to Pay Valid Claims for Ordinary Losses.

“Ordinary Losses” means the following out-of-pocket expenses incurred by a Class Member and fairly traceable to the Data Incident: (i) bank fees, , cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), miscellaneous qualified expenses subject to explanation, such as postage, notary, copying, mileage, and/or gasoline for local travel; and (ii) fees for credit reports, credit monitoring, and/or other identity theft insurance product purchased between the date of the Data Incident and the Deadline to Submit Claims. Defendant will pay all valid claims for reimbursement of Ordinary Losses in the amounts and limits set forth under Ordinary Loss Payments on the Key Terms Page.

4.4. Defendant to Pay Valid Claims for Extraordinary Losses.

“Extraordinary Losses” means unreimbursed costs or expenditures (other than Ordinary Losses) incurred by a Class Member and fairly traceable to the Data Incident and supported by Reasonable Documentation for attempting to remedy or remedying issues that are more likely than not a result of the Data Breach. An Extraordinary 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 Data Breach. Extraordinary Losses include, without limitation, the unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of information compromised in the Data Incident and including accountant’s fees related to any credit freezes. Defendant

will pay all valid claims for reimbursement of Extraordinary Losses in the amounts and limits set forth under Extraordinary Loss Payments on the Key Terms Page.

4.5. Alternative Cash Payment.

“Alternative Cash Payment” means a payment to be made in lieu of receiving any other benefits of this agreement. Defendant will pay all valid claims for an Alternative Cash Payment in the amounts and limits set forth under Alternative Cash Payment Amount on the Key Terms Page. To receive this Alternative Cash Payment, Settlement Class Members must submit a valid claim form, but no documentation is required to make a claim.

4.6. Equitable Relief.

- 1. Complete implementation of mandatory MFA for all accounts across all divisions**
- 2. Implement 1Password for password management**
- 3. Audit all Active Directory accounts to remove inactive computers and accounts**
- 4. Reduce default scope of sharing for Microsoft 365 links to require Gifted authentication**
- 5. Upgrade security policies to restrict logins within North America via geo-restrictions with real-time reporting**
- 6. Implement Perch MDR with centralized cloud SEIM**

Defendant will pay all the costs of these practice changes in addition to all other benefits.

5. Claims Processing and Provision of Settlement Benefits.

5.1. Settlement Administrator’s Duties and Discretion in Processing Claims.

The Settlement Administrator will be responsible for collecting and processing all Claim Forms, whether submitted by mail or through the Settlement Website. The Settlement Administrator may consult with Class Counsel and Defendant’s Counsel in making determinations as to any claim, but the Settlement Administrator has the sole discretion to determine, in good faith and under the terms of

this Settlement Agreement, whether any claim is timely, whether any claim is complete or deficient, and whether any claim is valid, including whether documentation is sufficient to support any claim. If the Settlement Administrator identifies a deficiency in the information provided for any claim, the Settlement Administrator must follow the procedures in Section 4.3 to allow the Class Member a chance to cure the deficiency.

5.2. Reasonable Documentation

Reasonable Documentation refers to documentation supporting a claim for Extraordinary Losses or Ordinary Losses, including but not limited to credit card statements, bank statements, invoices, telephone records, and receipts. Extraordinary Loss or Ordinary Loss claims cannot be established solely by a personal certification; a Class Member must provide documentation supporting the loss as described herein.

5.3. Determining the Validity of Claims.

In order for any claim to be valid, the following requirements must be met (all three of these requirements, collectively the “Basic Claim Requirements”): (i) the claim must be submitted by a Class Member or the Class Member’s authorized legal representative; (ii) the information required to process the claim must have been completed; and (iii) the original claim must have been submitted on or before the Deadline to Submit Claims.

The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisite have been met in order to award payments of Lost Time, but may consult with both Class Counsel and Defendant’s.

Class Members may submit a claim for a Settlement Payment of up to \$400 for reimbursement in the form of Ordinary Losses. To receive an Ordinary Loss Payment, a Class Member must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (1) a valid Claim Form electing to receive the Ordinary Loss Payment benefit; (2) a statement regarding any actual and unreimbursed Extraordinary Loss made under penalty of perjury ; and (3) Reasonable Documentation that demonstrates the Ordinary Loss to be reimbursed pursuant to the terms of Settlement. If a Class Member does not submit Reasonable

Documentation supporting an Ordinary Loss Payment Claim, or if a Class Member's claim for an Ordinary Loss Payment is rejected by the Settlement Administrator for any reason and the Class Member fails to cure their claim, the claim will be rejected and the Class Member's claim will be placed in the Alternative Cash Payment category. The Settlement Administrator is authorized to contact any Settlement Class Member to seek clarification regarding a submitted claim prior to making a determination as to its validity. In the event of any ambiguities in the Claim Form, the Settlement Administrator must contact the Settlement Class Member prior to determination as to its validity.

Class Members may submit a claim for a Settlement Payment of up to \$4,000 (Four-Thousand Dollars) for reimbursement in the form of an Extraordinary Loss. To receive an Extraordinary Loss payment, a Class Member must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (1) a valid Claim Form electing to receive the Extraordinary Loss Payment benefit; (2) an attestation regarding any actual and unreimbursed Extraordinary Loss made under penalty of perjury; and (3) Reasonable Documentation that demonstrates the Extraordinary Loss to be reimbursed pursuant to the terms of Settlement. If a Class Member does not submit Reasonable Documentation supporting an Extraordinary Loss Payment Claim, or if a Class Member's claim for an Extraordinary Loss Payment is rejected by the Settlement Administrator for any reason and the Class Member fails to cure their claim, the claim will be rejected and the Class Member's claim will be placed in the Alternative Cash Payment category. The Settlement Administrator is authorized to contact any Settlement Class Member to seek clarification regarding a submitted claim prior to making a determination as to its validity. In the event of any ambiguities in the Claim Form, the Settlement Administrator must contact the Settlement Class Member prior to determination as to its validity.

A claim for an Alternative Cash Payment. The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Claim Form must clearly indicate that the Settlement Class Member is electing to claim the Alternative Cash Payment in lieu of any other benefits made available under this settlement agreement. The Settlement Administrator is

authorized to contact any Settlement Class Member to seek clarification regarding a submitted claim prior to making a determination as to its validity. In the event of any ambiguities in the Claim Form, the Settlement Administrator must contact the Settlement Class Member prior to determination as to its validity and, specifically, to determine whether the Settlement Cash Member wishes to file a claim for an Alternative Cash Payment, or any other benefits made available under this Settlement Agreement.

No later than the Deadline to Process Claims, the Settlement Administrator must process Claim Forms to determine whether the claim is, in whole or in part, valid, invalid, or deficient.

5.4. Processing Deficient Claims and Opportunity to Cure.

If the Settlement Administrator determines that any Claim Form that has been submitted is deficient or that additional documentation or information is necessary to determine the validity of the claim, the Settlement Administrator shall promptly provide the person submitting the Claim Form with notice of the deficiency and request that the person provide the information or documentation necessary to process the Claim Form and to determine the validity of the claim. Failure of the person to provide the requested information Deadline to Cure Claims may result in denial of the claim, or part of it, by the Settlement Administrator.

5.5. Payment of Valid Claims.

No later than the Deadline to Pay Valid Claims, the Settlement Administrator must pay the valid claim (by check or by other payment means agreed to by the parties) and/or arrange for the provision of Identity Theft Protection Services, as appropriate for the claim. Defendant will be responsible for providing the Settlement Administrator with all payments necessary to provide the benefits deemed valid by the Settlement Administrator within the Deadline to Pay Valid Claims.

The Settlement Administrator shall report to Class Counsel and Defendant on a periodic basis regarding the status of valid, invalid, and deficient claims.

6. Releases.

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 in accordance with this Agreement 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 Parties and agree to refrain from instituting, directing or maintaining any lawsuit, contested matter, adversary proceeding, or miscellaneous proceeding against each of the Released Parties that relates to the Data Incident. This Settlement releases claims against only the Released Parties. This Settlement does not release, and it is not the intention of the Parties to this Settlement to release, any claims against any third party. Nor does this Release apply to any Class Member who timely excludes himself or herself from the Settlement.

The 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 Party expressly assumes that risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein. Process for Court Approval of Settlement.

7. Process for Court Approval.

This entire agreement is contingent on the parties obtaining Court approval of the agreement.

7.1. Preliminary Approval.

No later than the Deadline to Move for Preliminary Approval, the Class Representative must move the Court to enter the

Preliminary Approval Order. Defendant will not oppose the motion, including not opposing class certification for purposes of settlement.

7.2. Preparation of the Class List.

No later than the Deadline to Provide the Class List, Defendant must provide the Settlement Administrator with information sufficient for the Settlement Administrator to mail or email each member of the Settlement Class the Summary Notice. Before sending notice, the Settlement Administrator must update the addresses provided using the United States Postal Service's National Change of Address service.

7.3. Notice to Members of the Settlement Class.

No later than the Deadline to Send Notice, the Settlement Administrator must do all of the following:

- (a) Establish at a URL agreed to by Class Counsel and Defendant's Counsel (the "Settlement Website") and post the Detailed Notice to the Settlement Website**
- (b) Establish a toll-free number and an e-mail address at which members of the Settlement Class may obtain information or contact the Settlement Administrator**
- (c) E-mail the Summary Notice to all persons on the Class List for whom an email address is provided**
- (d) Mail the Summary Notice by United States mail to all other persons on the Class List to whom the Settlement Administrator does not send an email.**

If any emailed Summary Notice is returned as undeliverable, the Settlement Administrator must promptly cause the Summary Notice to be mailed to that member of the Settlement Class. If any mailed Summary Notice is returned as undeliverable with a forwarding address then the Settlement Administrator must promptly cause the Summary Notice to be forwarded by mail to the listed forwarding address. If any mailed Summary Notice is returned as undeliverable without a forwarding address then the Settlement Administrator must attempt to locate the correct address through a reasonable

search and must promptly forward the Summary Notice to the address obtained from the search.

The Costs of Notice and Administration will be paid as set forth on the Key Terms Page.

7.4. Right of Members of the Settlement Class to Opt-Out.

Any member of the Settlement Class may choose to be excluded from the Settlement Class by complying with the requirements to opt-out set forth in the Detailed Notice. Any person who submits a valid and timely request to opt-out will be excluded from the settlement and will not be bound by any of its terms, including the release. Any member of the Settlement Class who does not submit a valid and timely opt-out will be bound by the Settlement. No later than the Deadline to Report Opt-Outs, the Settlement Administrator must report all opt-outs it has received to Class Counsel and counsel for Defendant.

7.5. Right of Class Members to Object.

Any Class Member may object to the Settlement by complying with the requirements to submit an objection set forth in the Detailed Notice.

7.6. Final Approval.

At the final approval hearing, the Class Representative and Defendant must move the Court to enter the Final Approval Order.

7.7. Effective Date.

This agreement will become effective and binding on the Effective Date.

8. Attorneys' Fees, Expenses, and Service Award

No later than the Deadline to File Motion for Final Approval and Fees and Notice of Opt-Outs, Class Counsel shall file a motion with the Court for consideration at the Final Approval hearing seeking to be paid attorneys' fees of up to the Attorneys' Fees Amount listed on the Key Terms Page, plus expenses, plus a service award of up to the Service Award Amount listed on the Key Terms Page, to be paid from the Settlement Fund. Defendant agrees to take no position on requests that are no greater than these amounts.

No later than the Deadline to Pay Fees, Expenses, and Service Award, Class Counsel and the Class Representative shall be paid the amounts awarded by the Court for fees, expenses, and service awards, from the sources listed on the Key Terms Page.

9. No Admission of Liability/Agreement Not Binding Absent Approval.

Defendant is entering into this agreement solely to compromise and settle the lawsuit and to avoid the expense and uncertainty of continued litigation. This agreement and any documents related to it shall not be construed as any admission of liability or any type of wrongdoing or misconduct or of any fact whatsoever, and Defendant expressly denies any wrongdoing, misconduct, or liability in the lawsuit.

If this agreement fails to become effective, or is voided, for any reason, then: (i) no act, statement, or filing in furtherance of this agreement may be used to support or oppose the certification of any class in the lawsuit; (ii) all the parties to this agreement shall be returned to the same position in the lawsuit that they were in on the day before the Date of Execution; and (iii) Defendant shall be entitled to object to certification of any class in this lawsuit.

10. Additional Terms

10.1. Agreement to Effectuate This Settlement

The Class Representative, Class Counsel, Defendant, and Defendant's counsel agree to undertake their best efforts to effectuate this Settlement Agreement, including: (i) all steps that may be appropriate or necessary to secure the Court's preliminary and final approvals and entry of the Preliminary Approval Order and the Final Approval Order; and (ii) all steps that may be appropriate or necessary to oppose any challenges to or appeals from the Court's orders approving this agreement.

10.2. Integration Clause

This agreement, and all exhibits to it, constitute the entire agreement between the parties and can be modified only in writing. This agreement, and all exhibits to it, constitute the entire agreement between the parties, and supersede any prior understandings, agreements, or representations by or between the parties, written or

oral, to the extent they relate in any way to the subject matter of this agreement. The agreement is an integrated agreement, and no promise, inducement, or agreement separate from this agreement has been made to the parties. The terms of this agreement, and all exhibits to it, are binding upon and inure to the benefit of each of the parties and their respective successors, heirs, and assigns.

10.3. Execution in Counterparts and by Electronic Signature

This agreement may be executed in counterparts, and each counterpart, when executed, shall be deemed to be an original. Parties may sign by electronic signature, such as DocuSign.

10.4. No Construction Against the Drafter

Each party has participated in negotiating and drafting this agreement through counsel, so if an ambiguity or question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party. Further, each party represents that they have each read this agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Settlement Agreement.

10.5. Choice of Law, Forum, and Stipulation to Jurisdiction

This agreement, and all exhibits to it, shall be governed by the laws of the State in which the Court is located, and the parties to this Settlement Agreement stipulate that the Court has personal jurisdiction over them for purposes of administering, interpreting, and enforcing this agreement. All proceedings relating to the administration, interpretation, and enforcement of this agreement and related documents must be brought in the Court.

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11. Signatures

Each party is signing as of the date indicated next to that party's signature.

Dated: _____ Gifted Nurses, LLC d/b/a Gifted Healthcare

By: _____

Its: _____

Dated: _____ Counsel for Gifted Nurses, LLC d/b/a Gifted Healthcare

By: _____

Jill H. Fertel, Esquire
Cipriani & Werner PC

Dated: 02 / 22 / 2024 _____
Class Representative


Cheryl Covington
Class Counsel

Dated: _____ By: _____



Lynn A. Toops
Cohen & Malad, LLP

[Remainder of this page intentionally left blank]

11. Signatures

Each party is signing as of the date indicated next to that party's signature.

Dated: February 23, 2024

By: 
DAVID J. DART

Its: CHIEF FINANCIAL OFFICER

Dated: February 23, 2024

By: /s/ Jill H. Fertel
Jill H. Fertel, Esquire
Cipriani & Werner PC

Dated: _____

Cheryl Covington
Class Counsel

Dated: _____

By: _____
Lynn A. Toops
Cohen & Malad, LLP

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