Exhibit M

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BONNIE GILBERT, WENDY BRYAN, PATRICIA WHITE, DAVID GATZ, CRYSTAL HULLET, LORI GRADER, DARYL SWANSON, STEPHEN GABBARD, ALICIA DUNN, and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BIOPLUS SPECIALTY PHARMACY SERVICES, LLC,

Defendant.

Case No. 6:21-cv-02158-RBD-DCI

PLAINTIFFS' SECOND RENEWED UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs, individually and on behalf of the Proposed Settlement Class ("Settlement Class Members" or "Settlement Class"), respectfully move under Rule 23 of the Federal Rules of Civil Procedure, for preliminary approval of class action settlement and preliminary certification of the Settlement Class ("Motion"). The Settlement Agreement ("S.A.") is filed herewith as **Exhibit 1**. The Declaration of Terence R. Coates in Support of Preliminary Approval of Class Action Settlement ("Coates Decl.") is included as **Exhibit 2**. The Declaration of Kroll Settlement Administration ("Kroll Decl.") is included as **Exhibit 3**. Unless otherwise stated, all definitions are the same as in the Settlement Agreement.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiffs and the proposed Class they seek to represent have reached a nationwide class action settlement with Defendant, BioPlus Specialty Pharmacy Services, LLC ("Defendant" or "BioPlus"), for a $1,025,000 non-reversionary common fund, and an additional $1,175,000 in the form of a reversionary fund, to resolve claims arising from the Data Security Incident taking place between October and November 2021 that impacted approximately 350,000 of its current and former patients and customers (the "Data Security Incident"). *See generally* S.A.; *see also* Coates Decl., ¶¶ 6-10.

The Settlement provides significant relief to Settlement Class Members and is within the range of reasonableness necessary for this Court to grant preliminary approval of the class action settlement under Rule 23(e). The Court should preliminarily approve the Settlement, direct notice to all Settlement Class Members in the reasonable manner outlined below, set deadlines for exclusions, objections, and briefing on Plaintiffs' Motion for Final Approval and petition for attorneys' fees and expenses, and set a date for the Final Approval Hearing.

II. BACKGROUND

BioPlus is a national specialty pharmacy. Plaintiffs allege they are patients whose doctors and insurance providers shared their personally-identifying information ("PII") and protected health information ("PHI") with BioPlus so Plaintiffs could use BioPlus's services. BioPlus experienced a data

incident between October 25, 2021 and November 11, 2021 during which an unauthorized third party gained access to its network (the "Data Incident"). Plaintiffs allege their PII and PHI were exposed as a result. *See* ECF No. 60.

Plaintiffs allege that Defendant failed to adequately protect sensitive information about its patients and customers, including PII like names, dates of birth, addresses, and Social Security numbers, and PHI, including medical record numbers, current/former health plan member ID numbers, claims information, diagnosis and/or prescription medication information (collectively, "Private Information"). In total, BioPlus notified approximately 349,188 individuals who were impacted by the Data Incident, including 130,438 individuals whose Social Security numbers were impacted in the Data Incident. S.A. ¶¶ 1.7, 1.10.

A. History of Litigation

Plaintiff Gilbert initiated the first filed case against BioPlus on December 27, 2021. ECF No. 1. Thereafter, the Court consolidated this case with four other actions then-pending against BioPlus in this District. ECF No. 21. Plaintiffs' Consolidated Class Action Complaint was filed on March 28, 2022. ECF No. 27.

On March 3, 2023, the Court granted in part and denied in part BioPlus's motion to dismiss. ECF No. 59. In doing so, the Court permitted Plaintiffs' negligence, breach of implied contract, and declaratory judgement claims to proceed without amendment and granted Plaintiffs leave to amend their consumer statutory claims. *See id.* However, the Court dismissed Plaintiffs' claims for negligence per se, breach of fiduciary duty, and breach of express contract. *See id.*

Plaintiffs subsequently filed a Third Amended Consolidated Class Action Complaint ("Complaint" or "Compl.") on March 17, 2023. ECF No. 60. The Complaint asserted claims of (1) negligence, (2) breach of implied contract, (3) violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), and (4) declaratory judgment. On April 5, 2023, Defendant filed a motion seeking to dismiss Plaintiffs' claim under the FDUTPA. ECF No. 63. On April 26, 2023, the parties filed a notice of settlement, ECF No. 64, and on April 27, 2023, the Court administratively closed this action, terminating all pending motions. ECF No. 65.

B. Negotiations and Settlement

The parties first attempted mediation on August 23, 2022 under the supervision of Rodney A. Max from Upchurch Watson White & Max Mediation Group. ECF No. 46. However, the parties were unable to reach an agreement. *Id*. The parties returned to mediation on April 12, 2023. Coates Decl., ¶ 11. Following hours of hard bargaining on both sides, the parties reached the settlement in principle that is the subject of this motion for preliminary approval. *Id*.

C. Summary of Settlement Terms

The Settlement Class is defined as "all persons who were notified that their information may have been impacted in the Data Incident." S.A. ¶ 1.30. The Settlement Class specifically excludes: (i) BioPlus and its respective officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement; (iii) the Judge and/or magistrate assigned to evaluate the fairness of this settlement; and (iv) any other Person found to be guilty

under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads nolo contender to any such charge. *Id.*

BioPlus has agreed to create a non-reversionary common fund ("SSN Settlement Fund") in the amount of $1,025,000.00 to pay the claims of the approximately 130,438 Settlement Class Members who were notified of the Data Incident and who were notified that their Social Security numbers may have been impacted in the Data Incident ("SSN Class Members"). *Id.* ¶ 1.10. From the $1,025,000.00 SSN Settlement Fund, SSN Class Members will be able to claim (1) compensation of $25 per hour for up to three hours of time spent dealing with issues related to the Data Incident; (2) reimbursement of documented out of pocket expenses or losses up to $7,500; and (3) a pro rata distribution of funds remaining in the SSN Settlement Fund (which is projected to be approximately $50 per SSN Class Member). *Id.* ¶ 2.2. Before paying any cash benefits, the SSN Settlement Fund will first be reduced by up to one-third (subject to Court approval) for the payment of attorneys' fees. The SSN Settlement Fund will also be responsible for the payment of 37.35% of the litigation and settlement administration expenses. *See id.*

BioPlus has also agreed to create a reversionary settlement fund ("Non-SSN Settlement Fund") in the amount of $1,175,000 to settle claims of the approximately 218,750 Settlement Class Members who were notified their information may have been impacted in the Data Incident, and whose Social Security numbers were not impacted in the Data Incident ("Non-SSN Class

Members"). *Id.* ¶¶ 1.6-1.7. Similar to the SSN Settlement Fund, the Non-SSN Settlement Fund shall be reduced by up to one-third (1/3) of its total value. *Id.* The Non-SSN Settlement Fund shall also be responsible for payment of 62.65% of litigation and settlement administration expenses. *Id.* From the remaining funds, Non-SSN Settlement Class Members may claim (1) compensation of $25 per hour for up to two hours of time spent dealing with issues related to the Data Incident and (2) reimbursement of documented out of pocket expenses or losses up to $750. *Id.* ¶ 2.1.2. Following payment of attorneys' fees and expenses, settlement administration expenses, and claims made by Non-SSN Class Members, any funds remaining under the $1,175,000 cap will revert to Defendant. *See id.* ¶ 2.1.

D. Scope of the Release

Plaintiffs and Settlement Class Members who do not opt-out of the settlement agree to release BioPlus and all of its agents, parents, subsidiaries, and affiliates from any liability "relating to, concerning or arising out of the Data Incident and alleged theft of other personal information or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation." S.A. ¶ 1.24; *see also id.* ¶¶ 1.35, 7.1. This is a mutual release, with Defendant agreeing to release Plaintiffs and Settlement Class Members from claims related to this action as well. *Id.* ¶ 7.2.

E. The Notice and Administration Plans

The Parties have agreed to provide notification to Settlement Class Members in the forms attached as Exhibits B-1, B-2, and C to the Settlement Agreement. S.A.

¶¶ 9.1-10.1. Dissemination of the settlement notice shall be the responsibility of the Settlement Administrator, Kroll, which shall provide notice both directly to Settlement Class Members and online at the dedicated settlement website where Settlement Class Members obtain important settlement information. *See id.* The costs of Settlement Administration shall be borne by BioPlus, made exclusively from the Non-SSN Settlement Fund. S.A. ¶ 1.6.

F. Attorneys' Fees and Expenses

Plaintiffs have agreed to not request attorneys' fees in excess of $733,333.33, which represents one-third (1/3) of the combined maximum value of the Settlement Funds ($2,200,000). Coates Decl., ¶¶ 10, 16. Defendant has agreed that attorneys' fees, costs, expenses, and settlement administration fees, including without limitation the cost of Fed. R. Civ. P. 23 notice to the class and claims administration, will be paid from both Settlement Funds. *See* S.A. ¶¶ 2.1.3, 2.2.1. Plaintiffs will file a separate motion for approval of attorneys' fees, costs, expenses ahead of the Final Approval Hearing. Coates Decl., ¶ 16. Class Members will have an opportunity to review that motion and submit objections to the requested fees and expenses before the final approval hearing. *See id.* ¶ 18; S.A. ¶ 5.[1]

III. LEGAL STANDARD

Under Fed. R. Civ. P. 23(e), a class action may be settled only with court approval, which requires the court to find the settlement "fair, reasonable, and

[1] Defendant also reserves the right to oppose the total amount of fees requested from either Settlement Fund.

adequate." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021). Fed. R. Civ. P. 23(e) provides three steps for the approval of a proposed class action settlement: (1) the Court must preliminarily approve the proposed settlement; (2) members of the class must be given notice of the proposed settlement; and (3) a fairness hearing must be held, after which the court must determine whether the proposed settlement is fair, reasonable, and adequate. *See generally* Fed. R. Civ. P. 23(e).

First, the Court should conduct a preliminary review to determine whether the proposed class settlement "is within the range of possible approval." *Fresco v. Auto Data Direct, Inc.*, No. 03–61063–CIV, 2007 WL 2330895, at *4 (S.D. Fla. May 11, 2007) (internal citations omitted); *see also* MANUAL FOR COMPLEX LITIGATION (Third) § 30.41 (1995). This involves both preliminary certification of the class and an initial assessment of the proposed settlement. *Id.* Plaintiffs request that the Court preliminarily approve the proposed Settlement, the first step in approving a class action settlement under Fed. R. Civ. P. 23(e).

During preliminary approval proceedings, "the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval." Ann. Manual for Complex Litig. (Fourth) § 21.662 (2012). There is strong judicial and public policy favoring the voluntary resolution of complex class action litigation. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). Generally, a large amount of discretion is afforded to courts in approving class action settlements. *See In re Equifax*, 999 F.3d at 1273.

IV. ARGUMENT

A. All Plaintiffs and Class Members have Standing

On September 14, 2023, the Court requested clarification about whether Plaintiffs have standing. Order (ECF No. 69), at 7 ("In sum, since the named Plaintiffs do not mention standing, there is no legal basis to support such a finding and the Court requires supplemental briefing."). Standing exists when a plaintiff's sensitive personal information is allegedly accessed and exfiltrated in a data breach. *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 796367, at *4 (S.D. Fla. Mar. 15, 2022) (acknowledging that standing is satisfied when plaintiffs allege actual misuse or actual access to personal data); *see also Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 17477004, at *5 (S.D. Fla. Dec. 5, 2022) (acknowledging that for settlement purposes, "all named Plaintiffs have standing," even if they have not suffered "actual misuse"). There is no requirement that Article III standing be proved with evidentiary support at the settlement approval stage. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d at 1261 n.8.

Here, all Plaintiffs have standing because, like the Plaintiffs in *Desue*, their Private Information was allegedly impacted in the Data Breach when an unauthorized actor gained access to files containing information pertaining to BioPlus patients. S.A., 2. Following the Court's guidance in its September 14, 2023 Order, Plaintiffs and BioPlus agreed to amend the Settlement Agreement to update

the Class definition so that it only includes Plaintiffs and Class Members whose Private Information was impacted in the Data Incident. *Id.*

Because all Plaintiffs and Class Members had sensitive personal or health information impacted in the breach, they have all suffered alleged injuries akin to an invasion of privacy. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) ("Various intangible harms can also be concrete. Chief among them are injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts. Those include, for example, reputational harms, disclosure of private information, and intrusion upon seclusion.") (internal citation omitted). The application of this privacy theory to the data breach context was recently confirmed by the Second Circuit, which held that:

> Like the Supreme Court in *TransUnion*, we have no trouble concluding that Bohnak's alleged harm is sufficiently concrete to support her claims for damages. Similar to the publication of misleading information about some of the plaintiffs in *TransUnion*, the core injury here—exposure of Bohnak's private PII to unauthorized third parties—bears some relationship to a well-established common-law analog: public disclosure of private facts. Bohnak's position is thus similar to that of the 1,853 class members who had standing in *TransUnion* based on the publication of misleading information to third parties without regard to whether the third parties used the information to cause additional harm.

Bohnak v. Marsh & McLennan Cos., Inc., 79 F.4th 276, 285–86 (2d Cir. 2023) (internal citation omitted); *see also Peterson v. Aaron's, Inc.*, No. 1:14-CV-1919, 2017 WL 4390260, at *3 (N.D. Ga. Oct. 3, 2017) ("A violation of the right to privacy necessarily entails an injury.... [T]he victim suffers a harm as soon as their privacy

is violated. That remains true whether or not the tortfeasor does anything with the information collected ....”). This injury is consistent for all Class Members.

Moreover, in this case, the Court previously held that all Plaintiffs adequately stated a claim for breach of implied contract. ECF No. 59 at 7-8 (“BioPlus next argues there is no implied contract between Plaintiffs and BioPlus. But where a patient hands over personal information to a health services provider, courts have found that course of conduct sufficient to imply a contract even where a written one does not exist. Here, because Plaintiffs’ doctors and insurance companies supplied their PII to BioPlus so Plaintiffs could use BioPlus’s services, they have sufficiently alleged an implied contract.”) (internal and external citations omitted).

It is well established that the lost benefit of a bargain is sufficient to confer standing. *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, 603 F. Supp. 3d 1183, 1205 (S.D. Fla. 2022) (“[W]here plaintiffs allege that ‘there was an explicit or implicit contract for data security, that plaintiffs placed value on that data security, and that [d]efendants failed to meet their representations about data security,’ courts have consistently held these allegations sufficient to allege injuries in fact.”) (internal citation omitted); *see also Kostka v. Dickey’s Barbecue Rests., Inc.*, No. 3:20-CV-03424-K, 2022 WL 16821685, at *4 (N.D. Tex. Oct. 14, 2022) (“The Court finds that the Settling Plaintiffs have properly alleged Article III standing for all potential class members on the basis of their breach-of-an-implied-contract claim.”), *report & recommendation adopted*, 2022 WL 16821665 (N.D. Tex. Nov. 8, 2022). This injury applies to both SSN and Non-SSN Class Members.

B. Certification of the Settlement Class is Appropriate

The Supreme Court has recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). To certify a class, Plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). The four requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a). Plaintiffs seek certification under Rule 23(b)(3), which requires a showing that common questions of law or fact predominate over any individual issues and a showing that the class treatment is the superior method for efficiently handling the case. Fed. R. Civ. P. 23(b)(3). These requirements are met for settlement purposes.

1. Numerosity.

Numerosity requires "the class [be] so numerous that joinder of all members is impractical." Fed. R. Civ. P. 23(a)(1). The Eleventh Circuit holds that class sizes exceeding 40 are typically sufficient to satisfy this requirement. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986). Plaintiffs should make reasonable estimates with support as to the size of the proposed class. *Legg v. Spirit Airlines, Inc.*, 315 F.R.D. 383 (S.D. Fla. 2015). However, "a plaintiff need not show the precise number of members in the class." *Manno v. Healthcare Revenue Recovery Grp., LLC*, 289 F.R.D. 674, 684 (S.D. Fla. 2013). Here, the joinder of approximately 350,000 Settlement Class Members would certainly be impracticable, and thus, the numerosity element is satisfied. Moreover, the SSN

Class totaling 130,438 individuals and the Non-SSN Class totaling 218,759 are sufficiently numerous to satisfy the numerosity requirement on their own.

2. Commonality.

"The threshold for commonality under Rule 23(a)(2) is not high." *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. 654, 659 (S.D. Fla. 2011). Rule 23(a)(2) simply requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This requirement is satisfied where the plaintiffs assert claims that "depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). Courts in this Circuit have previously addressed this requirement in the context of cybersecurity incident class actions and found it satisfied. *See, e.g., Desue*, 2022 WL 17477004, at *4; *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *11 (N.D. Ga. Mar. 17, 2020).

Here, as in the cases cited above, the claims turn on whether Defendant's security environment was adequate to protect Settlement Class Members' Private Information. Resolution of that inquiry revolves around evidence that does not vary from Class Member to Class Member, and so can be fairly resolved—at least for purposes of settlement—for all Settlement Class Members at once. Indeed, the SSN Class Members and Non-SSN Class Members each had their Private Information impacted in the Data Incident.

3. Typicality.

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. The commonality and typicality analyses often overlap as they are both focused on "whether a sufficient nexus exists between the legal claims of the named class representatives and those of individual class members to warrant class certification." *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1278 (11th Cir. 2000). As in *Desue* and *Equifax*, Plaintiffs' claims are typical of other class members because they are based on the same legal theories and underlying events. *See In re Equifax*, 2020 WL 256132, at *12; *Desue*, 2022 WL 17477004, at *5. Here, there is a nexus between the Non-SSN Class Representative's claims and other Non-SSN Class Members' claims in that they each include the same Private Information that was impacted in the Data Breach. Similarly, the SSN Class Representatives' claims are typical of other SSN Class Members' claims in that they each include the same Private Information, including Social Security numbers, that was impacted in the Data Breach. All Class Members' claims involve Defendant's alleged failure to protect their sensitive personal or health information.

4. Adequacy of Representation.

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "To determine whether the adequacy requirement is met, we ask: '(1) whether any substantial conflicts of interest exist between the representatives and the class; and

(2) whether the representatives will adequately prosecute the action.'" *In re Equifax*, 999 F.3d at 1275 (citation omitted). Here, Plaintiffs have no conflicts with the Settlement Class and have actively participated in this case despite not receiving any special treatment. *See generally* S.A.; Coates Decl., ¶ 14. Class Representative Hullett is a Non-SSN Class Member and thereby is an adequate representative of the Non-SSN Class. S.A. ¶ 1.7. Representatives Gilbert, Bryan, White, Gatz, Grader, Swanson, Gabbard, and Dunn are SSN Class Members and are adequate representatives for the SSN Class. S.A. ¶ 1.10. Plaintiffs have also adequately prosecuted this action through Class Counsel, which is comprised of attorneys with significant experience litigating class and other complex cases, especially in the data privacy context. *See* Coates Decl., ¶ 15.

5. Certification under Rule 23(b)(3) is appropriate.

Plaintiffs seek to certify a Class under Rule 23(b)(3), which has two components: predominance and superiority. Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *In re Equifax*, 999 F.3d at 1275. When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district

court need not Inquire whether the case, if tried, would present intractable management problems, … for the proposal is that there be no trial.”).

a. Common questions of law and fact predominate.

In this case, the common factual and legal questions all cut to the issues at the heart of the litigation. This case is no different from *Desue*, in which the Southern District of Florida held that,

> Rule 23(b)(3)’s predominance requirement is satisfied because liability questions common to all Settlement Class Members substantially outweigh any possible issues that are individual to each Settlement Class Member. As an example, each Class Member's claims are based on the alleged failure of the Defendants to appropriately maintain the confidentiality of their PII, which they allege was caused by the same actions and inactions of Defendants. Other key, common factual and legal questions predominate in this matter, including whether Defendants’ data systems and security policies and practices were adequate and reasonable; the extent of Defendants’ knowledge regarding any potential vulnerabilities in its data systems; and whether Plaintiffs and the Class Members suffered losses because of Defendants’ actions.

Desue, 2022 WL 17477004, at *5. Indeed, the answers to the key questions in this case are not tangential or theoretical such that the litigation will not be advanced by certification. Rather, they go right to the center of the controversy, and the answers will be the same for each Settlement Class Member in that their private information was impacted in the Data Incident. All Non-SSN Class Members and SSN-Class Members had their respective private information impacted in the Data Incident. Common factual and legal questions predominate based on BioPlus’s alleged failure to safeguard all Class Members’ Private Information from unauthorized access during the Data Incident. As such, because the class-wide

determination of this issue will be the same for everyone and will determine whether any class member has a right of recovery, the predominance requirement is readily satisfied for purposes of this settlement.

b. Class Treatment is Superior.

The second prong of Rule 23(b)(3)—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy—is also readily satisfied for the purpose of this settlement. *See* Fed. R. Civ. P. 23(b)(3). A superiority analysis pursuant to rule 23(b)(3) involves an examination of "the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Sacred Heart Health Sys., Inc. v. Humana Mil. Healthcare Servs., Inc.*, 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). Florida courts have previously recognized the particular superiority of the class mechanism in the context of litigation stemming from a data breach. *See, e.g., Desue*, 2022 WL 17477004, at *5 (finding class treatment superior for settlement purposes).

The Settlement Agreement provides all Settlement Class Members with robust relief and contains well-defined administrative procedures to ensure due process. This includes the right of any Settlement Class Member to object to it or to request exclusion. S.A. ¶¶ 4-5. Moreover, adjudicating individual actions here is impracticable: the amount in dispute for individual class members is too small, the technical issues involved are too complex, and the required expert testimony and document review too costly. Thus, the Court may certify the Settlement Class for

settlement under Rule 23(b)(3).

C. Preliminary Approval of Settlement is Appropriate

After it has been determined that certification of the Settlement Class is appropriate, the Court must then determine whether the Settlement Agreement is worthy of preliminary approval of providing notice to the class. Courts in this Circuit have held that preliminary approval is appropriate "where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason." *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. at 661 (internal quotations omitted).

Other courts have looked to the *Bennett* factors to determine whether preliminary approval is appropriate. The *Bennett* factors include (1) the likelihood of success at trial; (2) the range of possible recoveries; (3) the point on or below the range of possible recoveries at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and degree of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The Settlement warrants preliminary approval under either approach.

1. The proposed Settlement was reached after serious, informed, and arm's-length negotiations.

First, arm's-length negotiations conducted by competent counsel constitute *prima facie* evidence of fair settlements. In this case, the Settlement was the result

of intensive, arm's-length negotiations over the course of several months between experienced attorneys with vast experience handling data breach class action cases. Coates Decl., ¶¶ 11-12, 15. There is no evidence that any collusion or illegality existed during settlement negotiations. *See id.* The Parties' Counsel support the Settlement as fair and reasonable, and all certify that it was reached at arm's-length. *See id.*

2. The proposed Settlement falls within the range of reasonableness and has no obvious deficiencies, and thus, warrants issuance of notice and a hearing on final approval of settlement.

Although Plaintiffs believe that the claims asserted in the Class Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the Settlement Class uncertain. The Settlement's fairness is underscored by consideration of the obstacles that the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. Despite the risks involved with further litigation, the Settlement Agreement provides outstanding benefits as Settlement Class Members have the ability to claim significant settlement benefits. Moreover, there are no grounds to doubt the fairness of the Settlement or other obvious deficiencies, such as unduly preferred treatment of Plaintiffs or excessive attorney compensation. Plaintiffs, like all Class Members, will receive benefits consistent with the Settlement Agreement. They will not seek payment of any incentive or service awards.

3. The *Bennett* factors support preliminary approval.

Although typically a consideration at the final approval stage, here, the *Bennett* factors still point towards preliminary approval. *First*, the benefits of settlement outweigh the risk of trial given the substantial relief that Settlement Class Members will be afforded.

Second and *Third*, the Settlement is within the range of possible recoveries and is fair, adequate, and reasonable. The second and third *Bennett* factors are often considered together. *See Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013). In determining whether a settlement is fair and reasonable, the court must also examine the range of possible damages that Plaintiffs could recover at trial and combine this with an analysis of Plaintiffs' likely success at trial to determine if the settlements fall within the range of fair recoveries. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 559 (N.D. Ga. 2007). Here, SSN Class Members have the ability to claim documented losses up to $7,500, and Non-SSN Class Members (given the less risk that they face) have the ability to claim documented losses up to $750. All Settlement Class Members are also entitled to compensation for time spent dealing with consequences of the Data Incident, and SSN Class Members are entitled to additional *pro rata* payments (projected to be approximately $50 each) from the Non-SSN Settlement Fund. S.A. ¶¶ 2.1-2.3; Coates Decl., ¶¶ 7-9. Accordingly, the Settlement is reasonable, especially considering that it avoids the potential contingencies of continued litigation, and the size of the breach, itself.

Fourth, continued litigation would be lengthy and expensive. Data breach litigation is often difficult and complex. A settlement is beneficial to all parties, including the Court. *See Woodward v. NOR–AM Chem. Co.*, No. Civ-94-0870, 1996 WL 1063670, at *21 (S.D. Ala. May 23, 1996) ("Complex litigation . . . 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'") (quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d at 493).

Fifth, there has not been an opposition to the Settlement. This factor is better considered after notice has been provided to Settlement Class Members and they are given the opportunity to object. *See Columbus Drywall*, 258 F.R.D. at 561. Thus, this factor need not be considered at this stage.

Sixth, despite resolving at an early stage, Plaintiffs have sufficient information to evaluate the merits and negotiate a fair, adequate and reasonable settlement. Courts have approved settlements at early stages of the litigation. *See, e.g., Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977) (affirming approval of settlement with little discovery); *see also Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (holding that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery is required to determine the fairness of the settlement). This case has been thoroughly investigated by counsel experienced in data breach litigation. Coates Decl., ¶¶ 11-12. Moreover, Class Counsel's informal exchange of discovery and mediation under the supervision of a mediator has ensured a fair, reasonable, and

adequate settlement worthy of preliminary approval. *See id.*

Accordingly, the Court should find that the proposed Settlement is fair, reasonable, and adequately protects the interests of the Settlement Class Members.

D. The Court Should Appoint the Proposed Class Representatives, Class Counsel, and Settlement Administrator

Plaintiffs seek to be appointed as Class Representatives for the Class. As discussed above, Plaintiffs have cooperated with counsel, provided informal discovery, and assisted in the preparation of the numerous complaints filed in this action. Moreover, Plaintiffs are committed to continuing to vigorously prosecute this case, including overseeing the Notice Plan, and defending the Settlement Agreement against any objectors, all the way through final approval. Because Plaintiffs are adequate, the Court should appoint them as class representatives. Second, for the reasons previously discussed with respect to adequacy of representation, the Court should designate John A. Yanchunis of Morgan & Morgan Complex Litigation Group; Terence R. Coates and Dylan J. Gould of Markovits, Stock & DeMarco, LLC; Nicholas A. Migliaccio of Migliaccio & Rathod, LLP; Joseph M. Lyon of The Lyon Firm, LLC; Gary E. Mason of Mason LLP; J. Gerard Stranch, IV, of Stranch, Jennings & Garvey, PLLC; and M. Anderson Berry and Gregory Haroutunian of Clayeo C. Arnold, APC, as Class Counsel.

Finally, the parties have agreed that Kroll shall act as Settlement Administrator. Kroll and its principals have a long history of successful settlement administrations in class actions. Kroll Decl., ¶ 2.

E. The Proposed Form and Manner of Notice to the Class is Reasonable and Should be Approved

Under Rule 23(e), the Court should "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement must be the "best notice practicable." Fed. R. Civ. P. 23(c)(2)(B). "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The best practicable notice is that which "is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Notice Plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Parties negotiated the form of the Notice with the aid of a professional notice provider, Kroll. The Notice will be disseminated to all persons who fall within the definition of the Settlement Class and whose names and addresses can be identified with reasonable effort from Defendant's records, and through databases tracking nationwide addresses and address changes. In addition, Kroll will administer the Settlement Website containing relevant information about the Settlement. Kroll Decl., ¶ 12.

Moreover, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." The proposed Notice Plan satisfies

the requirements of Rule 23(h)(1), as it notifies Settlement Class Members that Class Counsel will apply to the Court for attorneys' fees of no more than $733,333.33, which represents one-third (1/3) of the combined maximum value of the Settlement Funds ($2,200,000), plus reimbursement of litigation expenses up to $15,000. Coates Decl., ¶ 10. The Notice Plan complies with Fed. R. Civ. P. 23 and due process because, among other things, it informs Settlement Class Members of: (1) the nature of the action; (2) the essential terms of the Settlement, including the definition of the Class, the claims asserted, and the benefits offered; (3) the binding effect of a judgment if the Settlement Class Member does not request exclusion; (4) the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that Settlement Class Members may make an appearance through counsel; (5) information regarding the payment of proposed Class Counsel fees and expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Accordingly, the Notice Plan and Notices are designed to be the best practicable under the circumstances, apprises Settlement Class Members of the pendency of the action, and gives them an opportunity to object or exclude themselves from the Settlement. *See Agnone v. Camden Cnty.*, No. 2:14-cv-00024-LGW-BKE, 2019 WL 1368634, at *9 (S.D. Ga. Mar. 26, 2019) (class notice mailed directly to settlement class members was the best practicable and satisfied due process). Thus, the Notice Plan should be approved. Fed. R. Civ. P. 23(c)(2)(A).

F. The Court Should Approve a Schedule Leading Up to the Final Approval Hearing

Plaintiffs request that the Court set a schedule, leading up to a Final Approval Hearing, that would include, *inter alia*, deadlines for notice to Settlement Class Members, for Settlement Class Members to object to the Settlement, to opt out of the Settlement, and to make claims under the Settlement; and deadlines for the filing of papers in support of final approval, and in support of attorneys' fees and expenses.[2] At the Final Approval Hearing, the Court should hear all evidence and argument necessary to make its final evaluation of the Settlement. *See* Fed. R. Civ. P. 23(e)(2). Proponents of the Settlement may offer argument in support of final approval. Additionally, Settlement Class Members who properly object to the Settlement may be heard at this hearing. The Court should determine through the Final Approval Hearing whether the Settlement will be approved.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court enter an Order Granting Plaintiffs' Motion for Preliminary Approval.

LOCAL RULE 3.01(g) CERTIFICATION

Plaintiffs have met and conferred with Defendant, which does not oppose the relief requested in this Motion.

[2] A proposed timeline is attached to the Settlement Agreement as Exhibit D.

<u>/s/ Ryan D. Maxey</u>
Ryan D. Maxey
MAXEY LAW FIRM, P.A.
107 N. 11th St. #402
Tampa, FL 33602
(813) 448-1125
ryan@maxeyfirm.com

John A. Yanchunis
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Tel.: (813) 223-5505
jyanchunis@ForThePeople.com

Terence R. Coates (pro hac vice)
Dylan J. Gould (pro hac vice)
MARKOVITS, STOCK
& DEMARCO, LLC
119 East Court Street, Suite 530
Cincinnati, Ohio 45202
Tel.: (513) 651-3700
tcoates@msdlegal.com
dgould@msdlegal.com

M. Anderson Berry
Gregory Haroutunian
CLAYEO C. ARNOLD,
A PROFESSIONAL
CORPORATION
865 Howe Avenue
Sacramento, CA 95825
Telephone: (916) 239-4778
aberry@justice4you.com
gharoutunian@justice4you.com

Nicholas A. Migliaccio
MIGLIACCIO & RATHOD LLP
412 H Street, N.E.
Washington, D.C. 20002
Tel: (202) 470-3520
nmigliaccio@classlawdc.com

Joseph M. Lyon
THE LYON FIRM, LLC
2754 Erie Avenue
Cincinnati, Ohio 45208
Tel.: (513) 381-2333
jlyon@thelyonfirm.com

Gary E. Mason
MASON LLP
5301 Wisconsin Avenue, NW. Suite 305
Washington, DC 20016
Phone: (202) 429-2290
gmason@masonllp.com

Certificate of Service

I hereby certify that on January 5, 2024, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ *Terence R. Coates*
Terence R. Coates

EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BONNIE GILBERT, WENDY BRYAN, PATRICIA WHITE, DAVID GATZ, CRYSTAL HULLET, LORI GRADER, DARYL SWANSON, STEPHEN GABBARD, ALICIA DUNN, and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BIOPLUS SPECIALTY PHARMACY SERVICES, LLC,

Defendant.

Case No. 6:21-cv-02158-RBD-DCI

Second Amended Settlement Agreement and Release

This Amended Settlement Agreement and Release ("Settlement Agreement"), dated September 28, 2023, is made and entered into by and among the following Settling Parties (defined below), by and through the parties' counsel of record: (i) Defendant BioPlus Specialty Pharmacy Services, LLC ("BioPlus"); and (ii) Plaintiffs Bonnie Gilbert, Wendy Bryan, Patricia White, David Gatz, Crystal Hullet, Lori Grader, Daryl Swanson, Stephen Gabbard, and Alicia Dunn, both individually and on behalf of the Class (collectively, "Plaintiffs"), in the case of *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC*, 6:21-cv-02158-RBD-DCI (M.D. Fla). BioPlus and Plaintiffs are each referred to as a "Party" and are collectively referred to herein as the "Parties." The Settlement Agreement (defined below) is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever

resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions thereof.

I. THE LITIGATION

Between October 25, 2021 and November 11, 2021, an unauthorized actor gained access to files containing information pertaining to approximately 349,188 of BioPlus's patients (the "Data Incident"). BioPlus promptly issued notice of the Data Incident in December 2021. On December 27, 2021, Plaintiff Bonnie Gilbert filed a putative class action lawsuit against BioPlus Specialty Pharmacy Services, LLC, relating to the Data Incident alleging claims of negligence and negligence per se. (the "Litigation"). In March 2023, Plaintiffs Wendy Bryan, Patricia White, David Gatz, Crystal Hullet, Lori Grader, Daryl Swanson, Stephen Gabbard, and Alicia Dunn joined with Plaintiff Gilbert and filed their Third Amended Complaint ("TAC" or "Complaint") in the Litigation, alleging claims of negligence, breach of implied contract, and violation of Florida's Deceptive and Unfair Trade Practices Act (Fla. Stat. § 501.201, et seq.), and for declaratory judgment.

On August 23, 2022, the Parties participated in a full-day virtual mediation before Rodney A. Max of Upchurch Watson White & Max. The Parties were unable to come to a settlement agreement.

Following the August 23, 2022 mediation, the Parties engaged in discovery, including exchanging discovery requests and responses and producing documents.

During this time, the Parties continued to discuss settlement and the Court issued its ruling on BioPlus's motion to dismiss dismissing Plaintiffs' negligence per se, breach of fiduciary duty, breach of express contract, and attorneys' fees claims, dismissing without prejudice, Plaintiffs' violations of consumer statutes claims with prejudice, and allowing to proceed Plaintiffs' negligence, breach of implied contract, and declaratory judgment claims (Doc. 59). With the Court's guidance on the motion dismiss, on April 12, 2023, the Parties reconvened mediation before Mr. Max, and reached a settlement in principle, the salient terms of which were memorialized in a term sheet signed by the Parties' counsel on April 25, 2023. The full terms of the parties' settlement are set forth in this Amended Settlement Agreement and attached exhibits.

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

II. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLING

Plaintiffs believe the claims asserted in the Litigation, as set forth in the Complaint, have merit. Plaintiffs and Class Counsel (defined below) recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against BioPlus through continued motion practice, trial,

and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

III. DENIAL OF WRONGDOING AND LIABILITY

BioPlus denies each and all of the claims and contentions alleged against it in the Litigation. BioPlus denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, BioPlus has concluded that further 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 Settlement Agreement. BioPlus has considered the uncertainty and risks inherent in any litigation. BioPlus has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. SETTLEMENT TERMS & DEFINITIONS

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class, Class

Counsel, and BioPlus that, subject to the approval of the Court, the Litigation, and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties and the Settlement Class, except those members of the Settlement Class who timely opt-out of the Settlement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

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

1.1 "**Action**" or "**Litigation**" means *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC*, No. 6:21-cv-02158-RBD-DCI, Middle District Court of Florida.

1.2 "**Agreement**" or "**Settlement Agreement**" means this agreement, exhibits, and the settlement embodied herein.

1.3 "**Claim**" means a claim for Settlement benefits made under the terms of this Settlement Agreement.

1.4 "**Claims Deadline**" means the postmark and/or online submission deadline for Valid Claims submitted pursuant to ¶¶ 2.1 and 2.2.

1.5 "**Claim Forms**" means the claim forms to be used by Settlement Class Members to submit a Claim, either through the mail or online through the Settlement Website, substantially in the form as shown in Exhibits A-1 and A-2 attached hereto.

1.6 "**Claims-Made Benefits**" or "**Non-SSN Settlement Fund**" means the Settlement benefits (as described below) available to the Claims-Made Settlement Class Members. The Claims-Made Benefits will be funded by BioPlus in an amount not to exceed $1,175,000, inclusive of (i) all Valid Claims for Settlement benefits made under ¶ 2.1; (ii) 62.65% of the Notice and Settlement Administration Costs (defined below) incurred in the administration of both Claims-Made and Common Fund Benefits, including all taxes owed by the Claims-Made Benefits and Common Fund; and (iii) any attorneys' fees not to exceed 1/3 of the Non-SSN Settlement Fund, and 62.65% of the total costs and expenses incurred by Class Counsel, as approved by the Court.

1.7 "**Claims-Made Settlement Class Members**" or "Non-SSN Class Members" means the approximately 218,750 Settlement Class Members whose personal information was impacted in the Data Incident, and whose Social Security numbers were not impacted in the Data Incident. The Claims-Made Settlement Class Members are eligible to submit a claim under the Claims-Made Benefits. Class Representative Crystal Hullett is a Non-SSN Class Member. Non-SSN Class Members comprise approximately 62.65% of the 349,188 total Class Members.

1.8 "**Class Counsel**" means John A. Yanchunis of Morgan & Morgan; Terence R. Coates and Dylan J. Gould of Markovits, Stock & DeMarco, LLC; Nicholas A. Migliaccio of Migliaccio & Rathod, LLP; Joseph M. Lyon of The Lyon Firm, LLC; J. Gerard Stranch, IV, of Stranch, Jennings & Garvey, PLLC; Gary E. Mason of Mason LLP; and M. Anderson Berry and Gregory Haroutunian of Clayeo C. Arnold, A Professional Corporation.

1.9 "**Common Fund**" or "**SSN Settlement Fund**" means a non-reversionary common fund to be funded by BioPlus in the amount of $1,025,000, which will be allocated as follows (i) 37.35% of the Notice and Settlement Administration Costs (defined below) incurred in the administration of both Claims-Made and Common Fund Benefits, including all taxes owed by the Claims-Made Benefits and Common Fund; (ii) any attorneys' fees not to exceed 1/3 of the SSN Settlement Fund, and 37.35% of the total costs and expenses incurred by Class Counsel, as approved by the Court; (iii) all Valid Claims for Settlement benefits made under ¶ 2.2.

1.10 "**Common-Fund Settlement Class Members**" or "SSN Class Member" means the approximately 130,438 Settlement Class Members whose personal information, including Social Security numbers, was impacted in the Data Incident. Common-Fund Settlement Class Members are eligible to submit a claim under the Common Fund. Class Representatives Bonnie Gilbert, Wendy Bryan,

Patricia White, David Gatz, Lori Grader, Daryl Swanson, Stephen Gabbard, and Alicia Dunn are SSN Class Members. SSN Class Members comprise approximately 37.35% of the total 349,188 Class Members.

1.11 “**Court**” means the United States District Court for the Middle District of Florida.

1.12 “**Dispute Resolution**” means the process for resolving disputed Claims as set forth in this Settlement Agreement.

1.13 “**Effective Date**” means the first date by which all of the events and conditions specified in ¶ 1.14 herein have occurred and been met.

1.14 “**Final**” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined below); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

1.15 “**Judgment**” means a judgment rendered by the Court.

1.16 "**Long Form Notice**" means the long form notice of settlement posted on the Settlement Website, substantially in the form as shown in Exhibit C attached hereto.

1.17 "**BioPlus's Counsel**" means Baker & Hostetler LLP.

1.18 "**Notice Date**" means 45 days following entry of the Preliminary Approval Order. The Notice Date shall be used for purposes of calculating the Claims Deadline, Opt-Out Date and Objection Date deadlines, and all other deadlines that flow from the Notice Date.

1.19 "**Notice and Settlement Administration Cost**" means all costs incurred or charged by the Settlement Administrator in connection with providing Notice to Settlement Class Members and costs of administering the Common Fund and Claims-Made Settlement benefits.

1.20 "**Objection Date**" means the date by which the Settlement Class Members must mail to Class Counsel and BioPlus's Counsel, or in the alternative, file with the Court their objection to the Settlement Agreement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.21 "**Opt-Out Date**" means the date by which the Settlement Class Members must mail their requests to be excluded from the Settlement Class for that

request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

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

1.23 "**Preliminary Approval Order**" means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties' have proposed a timeline to incorporate into the Preliminary Approval Order as Exhibit D.

1.24 "**Released Claims**" shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States as defined below; violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* and all similar state consumer-protection statutes; violations of the California Consumer Protection Act

of 2018, Cal. Civ. Code § 1798, *et seq*. and all similar state privacy-protection statutes; violations of the California Customer Records Act, Cal. Civ. Code § 1798.84, *et seq*. and all similar notification statutes in effect in any states in the United States; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any member of the Settlement Class against any of the Released Parties based on, relating to, concerning or arising out of the Data Incident and alleged theft of other personal information or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released

Parties to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of the Settlement Class Members who have timely excluded themselves from the Settlement Class.

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

1.26 "**Released Parties**" means BioPlus and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers.

1.27 "**Reminder Notice**" means the reminder notice that the Settlement Administrator will send to Class Members for whom there is a valid email address 60 days after the Notice Date.

1.28 "**Settlement Administration**" means the processing of Notice and the processing and payment of Claims received from Settlement Class Members by the Settlement Administrator.

1.29 "**Settlement Administrator**" means Kroll Settlement Administration, LLC ("Kroll"), a company experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation.

1.30 "**Settlement Class**" means all persons whose personal information was impacted in the Data Incident. The Settlement Class specifically excludes: (i) BioPlus and its respective officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge and/or magistrate assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contender* to any such charge.

1.31 "**Settlement Class Member(s)**" means all Persons meeting the definition of the Settlement Class.

1.32 "**Settlement Website**" means a website, the URL for which to be mutually selected by the Settling Parties, that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and

related information, as well as provide the Settlement Class Members with the ability to submit a Claim online.

1.33 "**Settling Parties**" means, collectively, BioPlus and Plaintiffs, individually and on behalf of the Settlement Class, and all Released Parties.

1.34 "**Short Form Notices**" means the short form notices of the proposed class action settlement, substantially in the form as shown in Exhibits B-1 and B-2 attached hereto. The Short Form Notice will direct recipients to the Settlement Website and inform Settlement Class Members of, among other things, the Claims Deadline, the Opt-Out and Objection Deadlines, and the date of the Final Fairness.

1.35 "**Unknown Claims**" means any of the Released Claims that Plaintiffs do not know or suspect to exist in their favor at the time of the release of the Released Parties that, if known by them, might have affected their settlement with, and release of, the Released Parties, or might have affected their decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have waived the provisions, rights, and benefits conferred by California Civil Code § 1542, (or any similar comparable, or equivalent provision of any federal, state or foreign law, or principle of common law which is similar, comparable, or equivalent to California Civil 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.

Plaintiffs may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.36 "**Valid Claims**" means Claims in an amount approved by the Settlement Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

2. Settlement Structure

2.1 Claims-Made Benefits

2.1.1 Claims-Made Settlement Class Members shall have the opportunity to submit a Claim for Claims-Made Settlement Benefits on or before the Claims Deadline. The benefits available to Claims-Made Settlement Class

Members, as described below, shall include (1) Lost-Time Claims; and (2) Out-of-Pocket Expense Claims.

a) Lost-Time Claims: Claims-Made Settlement Class Members may submit a Claim for up to two (2) hours of time spent related to the Data Incident at $25 per hour if the Settlement Class Member (1) attests that any claimed lost time was spent related to and arising out of the Data Incident, and (2) provides a brief general description of how the claimed lost time was spent. No documentation need be submitted in connection with Lost-Time Claims.

b) Out-of-Pocket Expense Claims: Claims-Made Settlement Class Members may submit a Claim for reimbursement of documented out-of-pocket losses reasonably and fairly traceable to the Data Incident. Out-of-Pocket-Expense Claims will include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after October 25, 2021 that the claimant attests under penalty

of perjury were caused or otherwise incurred as a result of the Data Incident, through the date of claim submission; and miscellaneous expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges. Claims-Made Settlement Class Members with Out-of-Pocket-Expense Claims must submit documentation and attestation supporting their claims. This may include receipts or other documentation, not "self-prepared" by the claimant, that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation. Out-of-Pocket Expense Claims must include an attestation that the monetary losses are fairly traceable to the Data Incident and were not incurred due to some other event or reason.

2.1.2 Claims-Made Settlement Class Members' claims for Lost Time and/or Out-of-Pocket Losses are subject to an individual cap of $750 per claimant.

2.1.3. Use of Claims-Made Benefits: The Claims-Made Benefits shall be used to pay for (i) 62.65% of Notice and Settlement Administration Costs incurred in the administration of both Claims-Made Benefits and Common Fund, including all taxes owed by the Claims-Made Benefits and Common Fund; (ii) attorneys' fees not to exceed 1/3 of the Non-SSN Settlement Fund, and 62.65% of the reasonable costs and expenses incurred by Class Counsel, as approved by the Court; and (iii) any Claims-Made Benefits to Claims-Made Settlement Class Members, pursuant to the terms and conditions of this Agreement. In no event shall the total costs of Claims-Made Benefits exceed $1,175,000.

2.2 Common-Fund Benefits

2.2.1 The Common-Fund Settlement Class Members shall have the opportunity to submit a Claim for Common-Fund Benefits on or before the Claims Deadline. The Common-Fund Benefits, as described below, shall include (1) Pro-Rata Cash Payments; or (2) Lost-Time Claims and (3) Out-of-Pocket Expense Claims. These benefits shall be paid from the $1,025,000 non-reversionary Common Fund after the deduction of (i) 37.35% of Notice and Settlement Administration Costs incurred in the administration of both Claims-Made Benefits and Common Fund, including all taxes owed by the Claims-Made Benefits and Common Fund; (ii) attorneys' fees not to exceed 1/3 of the SSN Settlement Fund, and 37.35% of the reasonable costs and expenses incurred by Class Counsel, as approved by the Court.

a) $50 Pro-Rata Cash Payment: Common-Fund Settlement Class Members may submit a Claim for a $50 cash payment. The Settlement Administrator will make *pro rata* settlement payments, which may increase or decrease the $50 Cash Payment, subject to the Common Fund cap (described below).

b) Lost-Time Claims: Common-Fund Settlement Class Members may submit a Claim for up to three (3) hours of time spent remedying issues related to the Data Incident at $25 per hour if the Settlement Class Member (1) attests that any claimed lost time was spent related to and arising out of the Data Incident, and (2) provides a brief general description of how the claimed lost time was spent. No documentation need be submitted in connection with Lost-Time Claims.

c) Out-of-Pocket Expense Claims: Common-Fund Settlement Class Members may submit a Claim for reimbursement of documented out-of-pocket losses reasonably and fairly traceable to the Data Incident. Out-of-Pocket-Expense Claims will include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs

associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after October 25, 2021 that the claimant attests under penalty of perjury were caused or otherwise incurred as a result of the Data Incident, through the date of claim submission; and miscellaneous expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges. Common-Fund Settlement Class Members with Out-of-Pocket-Expense Claims must submit documentation and attestation supporting their claims. This may include receipts or other documentation, not "self-prepared" by the claimant, that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation. Out-of-Pocket Expense Claims must include an attestation that the monetary losses are fairly traceable to the Data Incident and were not incurred due to some other event or reason.

2.2.2 Common-Fund Settlement Class Members may stack any benefits available to them under the settlement.

2.2.3 Common-Fund Settlement Class Members' claims for Lost Time and/or Out-of-Pocket Losses are subject to an individual cap of $7,500 per claimant. The amount of Pro Rata Cash Payments does not count toward this cap.

2.3 Claims Deadline: Settlement Class Members seeking reimbursement under ¶¶ 2.1 or 2.2 must complete and submit a Claim Form to the Settlement Administrator, postmarked or submitted online on or before the 90th day after the Notice Date. The notice to the Settlement Class will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief and is being made under penalty of perjury. Notarization shall not be required.

2.4 Dispute Resolution

2.4.1 The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the Claimant is a Settlement Class Member; (2) the Claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the Out-of-Pocket Expenses Claims described above; and (3) the information submitted could lead a reasonable person to conclude that more likely

than not the Claimant has suffered the claimed losses as a result of the Data Incident (collectively, "Facially Valid"). The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Expenses reflect valid Out-of-Pocket Expenses actually incurred that are fairly traceable to the Data Incident but may consult with Class Counsel and BioPlus's Counsel in making individual determinations. Out-of-Pocket Expenses will be presumed "fairly traceable" if: (1) the timing of the losses occurred on or after October 25, 2021; and (2) the personal information used to commit identity theft or fraud consisted of the same type of personal information that was provided to BioPlus prior to the Data Incident. 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. Out-of-Pocket Expenses are not eligible for reimbursement to the extent a Settlement Class Member has already been reimbursed for the same expense by any other source, including any compensation provided in connection with the credit monitoring product previously offered by BioPlus.

2.4.2 To the extent the Settlement Administrator determines a claim for Out-of-Pocket Expenses or Lost Time is deficient in whole or in part, within a reasonable time of making such a determination, but no later than 14 days after the Claims Deadline, the Settlement Administrator is authorized to contact the

Settlement Class Member via telephone or e-mail in an attempt to informally resolve the deficiency prior to sending a formal deficiency notice. If the deficiency is not resolved in this manner, the Settlement Administrator shall formally notify the Settlement Class Member of the deficiencies and give the Settlement Class Member 21 days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the Claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail.

2.4.3 If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within 10 days of the determination that the deficiencies have not been cured. The Settlement Administrator may consult with counsel for both Parties prior to making such determinations. The notice shall inform the Settlement Class Member of his or her right to dispute in writing the deficiency determination and of his or her right to request an appeal of this determination within 30 days of the deficiency determination.

2.4.4 If a Settlement Class Member disputes in writing a determination and requests an appeal, the Settlement Administrator shall provide Class Counsel and BioPlus's Counsel a copy of the Settlement Class Member's dispute and his or her Claim Form along with all documentation or other information submitted by the

Settlement Class Member. Class Counsel and BioPlus's Counsel shall confer regarding the claim submission, and their agreement on approval or denial of the Settlement Class Member's claim, in whole or in part, will be final.

2.5 Medicare/Medicaid Reporting: To enable reporting to the Centers for Medicare & Medicaid Services, any Settlement Class Member that is a Medicare beneficiary who sought services from a health care professional for emotional distress arising out of the Data Incident and may receive payment of over $750 under this Settlement will be required to provide additional information, including their full name, gender, date of birth, and Social Security Number (last five digits at a minimum) or full Medicare Beneficiary Number to be eligible for payment.

3. Notice and Settlement Administration Expenses

3.1 All Notice and Settlement Administration Costs, including, without limitation, the fees and expenses of the Settlement Administrator, shall be paid by BioPlus directly to the Settlement Administrator. Such costs shall be allocated so that 37.35% of the costs will come from the SSN Settlement Fund and 62.65% of the costs will come from the Non-SSN Settlement Fund.

4. Opt-Out Procedures

4.1 Each Settlement Class Member wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the

designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest the Settlement Class Member's intent to opt-out of the Settlement Class. To be effective, written notice must be postmarked no later than 60 days after the Notice Date.

4.2 All Persons who submit valid and timely notices of their intent to opt-out of the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 In the event that within 10 days after the Opt-Out Date as approved by the Court, there have been more than 500 timely and valid Opt-Outs submitted, BioPlus may, by notifying Settlement Class Counsel and the Court in writing within 30 days after the Opt-Out Date, void this Settlement Agreement. If BioPlus voids the Settlement Agreement pursuant to this paragraph, BioPlus shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Class Counsel.

5. Objection Procedure

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name and address; (ii) the case name and docket number: *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC*, No. 6:21-cv-02158-RBD-DCI; (iii) a written statement of all grounds for the objection, including whether the objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vi) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than 60 days from the Notice Date, to Class Counsel, Terence R. Coates, Markovits, Stock & DeMarco, LLC, 119 East Court Street, Suite 530, Cincinnati, Ohio 45202; and counsel for BioPlus, Christopher A. Wiech at Baker Hostetler, 1170 Peachtree Street, N.E., Suite 2400, Atlanta, Georgia 30309. The objector or his or her counsel may also file their Objection with the Court through the Court's ECF system, with service on Class Counsel and BioPlus's counsel, to be made through the ECF

system. For all objections mailed to Class Counsel and BioPlus's Counsel, Class Counsel will file them with the Court as an exhibit to Plaintiffs' motion for final approval.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

6. Settlement Class Certification

6.1 The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement

Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

7. Releases

7.1 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

7.2 Upon the Effective Date, BioPlus shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Representative Plaintiffs, each and all of the Settlement Class Members, Class Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion,

settlement, or resolution of the Litigation, except for enforcement of the Settlement Agreement. Any other claims or defenses BioPlus may have against such Persons including, without limitation, any claims based upon or arising out of any contractual, employment, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation are specifically preserved and shall not be affected by the preceding sentence.

7.3 Notwithstanding any term herein, neither BioPlus nor its Released Parties shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Representative Plaintiffs, each and all of the Settlement Class Members, and Class Counsel.

8. Class Counsel's Attorneys' Fees, Costs, and Expenses

8.1 The Parties have agreed that, as part of the Settlement, the Court shall determine the amount of any award of attorneys' fees and costs.

8.2 Class Counsel shall submit a motion to the Court requesting attorneys' fees and costs no later than 14 days before the Objection and Opt-Out Deadlines.

8.3 BioPlus shall retain any and all rights to oppose any such filed motion(s) on any and all available grounds related to the amount of attorneys' fees and costs.

8.4 Any attorneys' fees and costs awarded by the Court shall be due and payable within 30 days after the Effective Date. Any attorneys' fees or costs awarded by the Court shall be paid by BioPlus per the terms of this Agreement.

9. Preliminary Approval Order and Publishing of Notice of Final Fairness Hearing

9.1 Contemporaneously with Plaintiffs' Motion for Preliminary Approval, Class Counsel and BioPlus's Counsel shall jointly submit this Settlement Agreement to the Court, and Class Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order, including the timeline provided in Exhibit D in both terms and cost, requesting, *inter alia:*

a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 6.1;

b) preliminary approval of the Settlement Agreement as set forth herein;

c) appointment of Class Counsel as Settlement Class Counsel;

d) appointment of Plaintiffs as Class Representatives;

e) approval of the Short Form Notices to be mailed to Settlement Class Members in a form substantially similar to the one attached as Exhibits B-1 and B-2 to this Settlement Agreement;

f) approval of the Long Form Notice to be posted on the Settlement Website in a form substantially similar to the one attached as Exhibit C to this Settlement Agreement, which, together with the Short Form Notices, shall include a fair summary of the Parties' respective litigation positions, statements that the settlement and Notice are legitimate and that the Settlement Class Members are entitled to benefits under the settlement, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, instructions for the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;

g) approval of the Claim Forms to be used by Settlement Class Members to make a claim in a form substantially similar to the one attached as Exhibits A-1 and A-2 to this Settlement Agreement; and,

h) appointment of Kroll as the Settlement Administrator.

9.2. The Short Form Notices, Long Form Notice, and Claim Forms have been reviewed and approved by the Settlement Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the Court for approval.

Immaterial revisions to these documents may also be made prior to dissemination of Notice.

10. Settlement Administration and Class Notice

10.1 Notice shall be provided to Settlement Class Members by the Settlement Administrator as follows:

a) *Class Member Information*: No later than 14 days after entry of the Preliminary Approval Order, BioPlus shall provide the Settlement Administrator with the name and last known physical address of each Settlement Class Member (collectively, "Class Member Information") that BioPlus possesses.

b) The Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement or provide all data and information in its possession to the Settling Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

c) *Settlement Website*: Prior to the dissemination of the Notice, the Settlement Administrator shall establish the Settlement Website that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information ("Settlement Website"). The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Short Form Notices; (ii) the Long Form Notice; (iii) the Claim Forms; (iv) the Preliminary Approval Order; (v) this Settlement Agreement; and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Settlement Class Members with the ability to complete and submit the Claim Form electronically. The Settlement Website shall remain active for at least 180 days after the Effective Date.

d) *Short Form Notices:* Within 45 days after the entry of the Preliminary Approval Order ("Notice Date"), and subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator will provide Notice to the Settlement Class via mail to the postal address or, where possible, email to the email address in BioPlus's

possession. Before any mailing under this paragraph occurs, the Settlement Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service ("USPS") National Change of Address database to update any change of address on file with the USPS;

e) In the event that a Short Form Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Form Notice to the forwarding address within a reasonable period of time after receiving the returned Short Form Notice;

f) In the event that subsequent to the first mailing of a Short Form Notice, and at least 14 days prior to the Opt-Out Date and Objection Date, a Short Form Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, i.e., the envelope is marked "Return to Sender" and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of

the particular Settlement Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the Short Form Notice within seven days of receiving such information. This shall be the final requirement for mailing;

g) Publishing, on or before the Notice Date, the Claim Forms, Long Form Notice and this Settlement Agreement on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;

h) A toll-free help line with an IVR system and a live call-back option shall be made available to provide Settlement Class Members with additional information about the settlement. The Settlement Administrator also will provide copies of the Long Form Notice and paper Claim Form, as well as this Settlement Agreement, upon request; and

i) Contemporaneously with seeking Final Approval of the Settlement, Class Counsel and BioPlus shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

j) Sixty (60) days after the Notice Date, the Settlement Administrator shall send a Reminder Notice to Class Members for whom it has a valid email address.

10.2 The Settlement Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶¶ 2.1 and 2.2. The Settlement Administrator shall provide Class Counsel and BioPlus reports as to both claims and distribution and Class Counsel and BioPlus have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator's determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the Dispute Resolution process set forth in ¶ 2.4. All claims agreed to be paid in full by BioPlus shall be deemed valid.

10.3 Payment of Valid Claims, whether via mailed check or electronic distribution, shall be made within 30 days of the Effective Date.

10.4 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

10.5 No Person shall have any claim against the Settlement Administrator, BioPlus, Class Counsel, Plaintiffs, and/or BioPlus's Counsel based on distributions of benefits to Settlement Class Members.

10.6 *Establishment of Common Fund*. Within 30 days of the Final Approval Order, BioPlus shall deposit the sum of $1,025,000 into an account established and administered by the Settlement Administrator.

10.7 Non-Reversionary. The Common Fund is non-reversionary. As of the Effective Date, all rights of BioPlus in or to the Common Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph 11.2.

10.8 Qualified Settlement Fund. The Parties agree that the Common 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 shall invest the Settlement Fund exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or (b) secured by instruments backed by the full faith and credit of the United States Government. BioPlus and BioPlus's Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to investment

decisions executed by the Settlement Administrator. All risks related to the investment of the Common Fund shall be borne solely by the Common Fund and its Escrow Agent. Further, 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 Common Fund and paying from the Common Fund any taxes and tax-related expenses owed with respect to the Common Fund. The Parties agree that the Common Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Common Fund as a qualified settlement fund from the earliest date possible. The Settlement Administrator shall provide an accounting of any and all funds in the Common Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

10.9 Custody of Common Fund. The Common 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 Common Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Common Fund in the event this Settlement Agreement is terminated in accordance with Paragraph 11.2.

10.10 Use of the Common Fund. As further described in this Agreement, the Common Fund shall be used by the Settlement Administrator to pay for the

following: (i) taxes and tax-related expenses, (ii) Valid Claim(s) by Common-Fund Settlement Class Members for Out-of-Pocket Losses; (iii) Valid Claim(s) by Common-Fund Settlement Class Members for Lost Time; and (iv) Valid Claims by Common-Fund Settlement Class Members for Cash Payment. Following payment of all of the above expenses, any amount remaining in the Common Fund shall be distributed to the SSN Class Members, if feasible, or else paid to the Non-Profit Residual Recipient in accordance with Paragraph 10.12. No amounts may be withdrawn from the Common Fund unless expressly authorized by this Agreement or approved by the Court.

10.11 Taxes and Representations. Taxes and tax-related expenses relating to the Common Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Common Fund without prior order of the Court. Further, the Common Fund shall indemnify and hold harmless the Parties, their counsel, and their insurers and reinsurers for taxes and tax-related expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Common Fund. Each Class Representative and Settlement Class Member shall be solely responsible

for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Common Fund pursuant to this Agreement.

10.12 "Non-Profit Residual Recipient" means the 501(c)(3) entity jointly agreed upon by the Parties and approved by the Court. The Parties will jointly propose a potentially suitable Non-Profit Residual Recipient if necessary.

11. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

11.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

a) the Court has entered the Preliminary Approval Order and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 9.1;

b) BioPlus has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.3;

c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and

d) the Judgment has become Final, as defined in ¶ 1.14.

11.2 If all conditions specified in ¶ 11.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 11.4 unless Class Counsel and BioPlus's Counsel mutually agree in writing to proceed with the Settlement Agreement.

11.3 Within seven days after the Opt-Out Date, the Settlement Administrator shall furnish to Class Counsel and to BioPlus's Counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

11.4 In the event that the Settlement Agreement or the releases set forth in ¶¶ 7.1, 7.2, and 7.3 above are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc.* Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs and expenses shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, BioPlus shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class above and shall not, at any time, seek

recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

12. Miscellaneous Provisions

12.1 The Settling Parties (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

12.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

12.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Parties may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata,* collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

12.5 This Agreement contains the entire understanding between BioPlus and Plaintiffs regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings

between BioPlus and Plaintiffs in connection with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs.

12.6 Class Counsel, on behalf of the Settlement Class, is expressly authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

12.7 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

12.8 The Settlement 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. A complete set of original executed counterparts shall be filed with the Court.

12.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

12.10 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit

to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

12.11 As used herein, "he" means "he, she, or it;" "his" means "his, hers, or its," and "him" means "him, her, or it."

12.12 All dollar amounts are in United States dollars (USD).

12.13 Cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive settlement benefits. All settlement checks shall be void 90 days after issuance and shall bear the language: "This check must be cashed within 90 days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until 180 days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and BioPlus shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶¶ 2.1 or 2.2 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than 180 days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

12.14 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

Dated: January 5, 2024

/s/ *Christopher A. Wiech*
Christopher A. Wiech
Chelsea M. Lamb
BAKER & HOSTETLER LLP
1170 Peachtree Street, Suite 2400
Atlanta, Georgia 30309-7676
Tel.: 404.459.0050
Fax: 404.459.5734
cwiech@bakerlaw.com
clamb@bakerlaw.com

Julie Singer Brady
BAKER & HOSTETLER LLP
200 South Orange Avenue
Suite 2300
Orlando, Florida 32801
Tel.: 407.649.4000
Fax: 407.841.0168
jsingerbrady@bakerlaw.com

Counsel for Defendant

/s/ *Ryan D. Maxey*
Ryan D. Maxey
MAXEY LAW FIRM, P.A.
107 N. 11th St. #402
Tampa, FL 33602
(813) 448-1125
ryan@maxeyfirm.com

John A. Yanchunis
MORGAN & MORGAN COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Tel.: (813) 223-5505
jyanchunis@ForThePeople.com

Terence R. Coates
Dylan J. Gould
MARKOVITS, STOCK & DEMARCO, LLC
119 East Court Street, Suite 530
Cincinnati, Ohio 45202
Tel.: (513) 651-3700
tcoates@msdlegal.com
dgould@msdlegal.com

Nicholas A. Migliaccio
MIGLIACCIO & RATHOD LLP
412 H Street, N.E.
Washington, D.C. 20002
Tel: (202) 470-3520
nmigliaccio@classlawdc.com

Joseph M. Lyon
THE LYON FIRM, LLC
2754 Erie Avenue
Cincinnati, Ohio 45208
Tel.: (513) 381-2333
jlyon@thelyonfirm.com

J. Gerard Stranch, IV
STRANCH, JENNINGS & GARVEY, PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee 37203
Tel.: (615) 254-8801
gstranch@stranchlaw.com

Gary E. Mason
MASON LLP
5301 Wisconsin Avenue, NW. Suite 305
Washington, DC 20016
Phone: (202) 429-2290
gmason@masonllp.com

M. Anderson Berry
Gregory Haroutunian
CLAYEO C. ARNOLD, A PROFESSIONAL CORP.
865 Howe Avenue
Sacramento, CA 95825
Telephone: (916) 777-7777
Facsimile: (916) 924-1829
aberry@justice4you.com
gharoutunian@justice4you.com

Counsel for Plaintiffs and the Settlement Class

EXHIBIT A-1

Your claim must be submitted online or postmarked by: MONTH DD, 2023	BIOPLUS SETTLEMENT CLAIM FORM *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI* United States District Court for the Middle District of Florida	BIOPLUS-A-1

USE THIS FORM
ONLY IF YOU ARE A SSN CLASS MEMBER

GENERAL INSTRUCTIONS

If you received Notice of this Settlement, the Settlement Administrator has identified you as a SSN Class Member whose personally identifiable information and/or protected health information, including your Social Security number, was impacted in the Data Incident experienced by BioPlus in 2021 (the "Data Incident"). You may submit a claim for Settlement benefits, outlined below.

The easiest way to submit a claim is online at www.XXXX.com, or you can complete and mail this Claim Form to the mailing address below.

Settlement Administrator Admin
mailing address

To receive any of these benefits, you must submit the Claim Form below by <<DATE>>.

You may submit a claim for the following benefits:

1) **Pro-Rata Cash Payment**: SSN Class Members may submit a Claim for a cash payment of $50.
   a) The Settlement Administrator will make pro rata settlement payments, which may increase or decrease the $50 Cash Payment, subject to the total amount of the Common Fund ($1,025,000).
   b) SSN Class Members who select this $50 Cash Payment may combine this benefit with a valid claim for Expense Reimbursement below.

   -AND-

2) **Expense Reimbursement**:

   a) Documented Out-of-Pocket Expenses: You may submit a claim for reimbursement for certain documented out-of-pocket expenses, not to exceed $7,500 per SSN Class Member, that were incurred as a result of the Data Incident. You must attest that the Documented Out-of-Pocket Expenses are fairly traceable to the Data Incident and not incurred due to some other event or reason.

   b) Time Spent Dealing With the Data Incident: You have the right to make a claim for up to three (3) hours of lost time, at $25/hour, for time spent dealing with the Data Incident. This amount is subject to the $7,500 per member cap.

Your claim must be submitted online or postmarked by: MONTH DD, 2023

BIOPLUS SETTLEMENT CLAIM FORM

Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI
United States District Court for the Middle District of Florida

BIOPLUS-A-1

Please read the claim form carefully and answer all questions. Failure to provide the required information could result in a denial of your claim.

Please note: the Settlement Administrator may contact you to request additional documentation to process your claim. For more information and complete instructions, please visit **[Settlement website].** **Questions? Go to URL or call 1-XXX-XXX-XXXX.**

Settlement benefits will be distributed only after the Settlement is approved by the Court.

I. CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this form.

First Name **Last Name**

Street Address

City **State** **Zip Code**

Email Address (optional) **Telephone Number**

II. PRO RATA CASH PAYMENT

☐ Check this box if you elect to receive a cash payment of $50.

This amount may increase or decrease on a pro rata basis, depending upon the number of claims filed and approved.

Your claim must be submitted online or postmarked by: MONTH DD, 2023

BIOPLUS SETTLEMENT CLAIM FORM

Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI
United States District Court for the Middle District of Florida

BIOPLUS-A-1

IIII. REIMBURSEMENT FOR LOST TIME

All SSN Class Members who have spent time dealing with the Data Incident may claim up to three (3) hours for lost time at a rate of $25.00 per hour. Any payment for lost time is included in the $7,500 cap per SSN Class Member (no documentation is required).

Hours claimed (up to 3 hours – check one box) □ 1 Hour □ 2 Hours □ 3 Hours

◯ I attest and affirm to the best of my knowledge and belief that any claimed lost time was spent related to the Data Incident and not incurred due to some other event or reason.

***In order to receive this payment, you <u>must</u> briefly describe what you did and how the claimed lost time was spent related to the Data Incident.* Please use the space below to describe your lost time related to the Data Incident.**

____

____

____

IV. REIMBURSEMENT FOR DOCUMENTED OUT-OF-POCKET EXPENSES

SSN Class Members may submit a claim for reimbursement of the following **documented** out-of-pocket expenses, not to exceed $7,500 per SSN Class Member, that were incurred as a result of the Data Incident:

Cost Type (Fill all that apply)	**Approximate Date of Loss**	**Amount of Loss**
◯ Out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel.	(mm/dd/yy) __ __ / __ __ / __ __	$ __ __ __ __ __ . __ __

Questions? Go to URL or call 1-XXX-XXX-XXXX.

Your claim must be submitted online or **postmarked by**: MONTH DD, 2023	**BIOPLUS SETTLEMENT CLAIM FORM** *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI* United States District Court for the Middle District of Florida	**BIOPLUS-A-1**

Examples of Supporting Third Party Documentation: *Telephone bills, cell phone bills, gas receipts, postage receipts, bank account statements reflecting out-of-pocket expenses. Please note that these examples of reimbursable documented out-of-pocket losses are not meant to be exhaustive, but exemplary. You may make claims for any documented out-of-pocket losses that you believe are fairly traceable to the Data Incident and not incurred due to some other event or reason.*

Cost Type	Approximate Date of Loss	Amount of Loss (Fill all that apply)
○ Fees for credit reports, credit monitoring, or other identity theft insurance products purchased after October 25, 2021 that you attest under penalty of perjury were caused or otherwise incurred as a result of the Data Incident.	(mm/dd/yy) __ / __ / __	$ _____ . __

Examples of Supporting Documentation: *Receipts or account statements reflecting purchases made for Credit Monitoring or Identity Theft Insurance Services.*

Cost Type	Approximate Date of Loss	Amount of Loss
○ Reimbursement for proven monetary loss, professional fees including attorneys' fees, accountants' fees, and fees for credit repair services incurred as a result of the Data Incident.	(mm/dd/yy) __ / __ / __	$ _____ . __

Examples of Supporting Documentation: *Invoices or statements reflecting payments made for professional fees/services.*

YOU MUST SUBMIT DOCUMENTATION OF YOUR OUT-OF-POCKET EXPENSES

○ I attest and affirm to the best of my knowledge and belief that any claimed expenses were incurred as a result of the Data Incident and not incurred due to some other event or reason.

V. PAYMENT SELECTION

Please select **one** of the following payment options, which will be used should you be eligible to receive a settlement payment:

☐ **PayPal** - Enter your PayPal email address: ______________________________________

Your claim must be submitted online or postmarked by: MONTH DD, 2023

BIOPLUS SETTLEMENT CLAIM FORM

Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI
United States District Court for the Middle District of Florida

BIOPLUS-A-1

☐ **Venmo -** Enter the mobile number associated with your Venmo account: __ __ __-__ __ __-__ __ __ __

☐ **Zelle -** Enter the mobile number or email address associated with your Zelle account:

Mobile Number: __ __ __-__ __ __-__ __ __ __ or Email Address: ______________________________

☐ **Virtual Prepaid Card -** Enter your email address: ______________________________

☐ **Physical Check -** Payment will be mailed to the address provided above.

VI. MEDICARE BENEFICIARY

Were you a Medicare beneficiary during the time period of October 25, 2021 to the present? (check one)

☐ Yes ☐ No

If you are a Medicare beneficiary receiving more than $750 under this settlement, the Settlement Administrator may need to contact you for additional information related to Medicare reporting requirements.

VII. ATTESTATION & SIGNATURE

I swear and affirm under the laws of my state that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

______________________ ______________________ ______________________
Signature Printed Name Date

Your claim must be submitted online or postmarked by: MONTH DD, 2023

BIOPLUS SETTLEMENT CLAIM FORM

Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI
United States District Court for the Middle District of Florida

BIOPLUS-A-2

USE THIS FORM
ONLY IF YOU ARE A NON-SSN CLASS MEMBER

GENERAL INSTRUCTIONS

If you received Notice of this Settlement, the Settlement Administrator has identified you as a Non-SSN Class Member whose personally identifiable information and/or protected health information was impacted the Data Incident experienced by BioPlus in 2021 ("Data Incident"). Your Social Security number was not involved in the Data Incident.

The easiest way to submit a claim is online at www.XXXX.com, or you can complete and mail this Claim Form to the mailing address below.

Settlement Administrator
Admin mailing address

To receive any of these benefits, you must submit the Claim Form below by <<DATE>>.

You may submit a claim for the following benefits:

1) Expense Reimbursement: You may be eligible for reimbursement for certain documented out-of-pocket expenses, not to exceed $750 per Non-SSN Class Member, that were incurred as a result of the Data Incident. You must attest that your monetary losses are fairly traceable to the Data Incident and not incurred due to some other event or reason.

2) Time Spent Dealing With the Data Incident: You may be eligible to make a claim for up to two (2) hours of lost time, at $25/hour, for time spent dealing with the effects of the Data Incident. This amount is subject to the $750 per member cap.

Please read the claim form carefully and answer all questions. Failure to provide the required information could result in a denial of your claim.

Please note: the Settlement Administrator may contact you to request additional documentation to process your claim. For more information and complete instructions, please visit **[Settlement website].**

Settlement benefits will be distributed only after the Settlement is approved by the Court.

I. CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this form.

Your claim must be submitted online or postmarked by: MONTH DD, 2023

BIOPLUS SETTLEMENT CLAIM FORM

Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI
United States District Court for the Middle District of Florida

BIOPLUS-A-2

First Name | **Last Name**

Street Address

City | **State** | **Zip Code**

Email Address (optional) | **Telephone Number**

II. PROOF OF CLASS MEMBERSHIP

☐ Check this box to certify that you were notified of the Data Incident and/or Settlement.

Enter the Notice ID Number provided on your Postcard Notice. Your Notice ID is located on the front of the postcard notice that was sent to Settlement Class Members via U.S. Mail. If you lost or do not know your Notice ID, you may contact the Settlement Administrator at **[insert email address]**

Notice ID Number

III. REIMBURSEMENT FOR LOST TIME

All Non-SSN Class Members who have spent time dealing with the Data Incident may claim up to two (2) hours for lost time at a rate of $25.00 per hour. Any payment for lost time is included in the $750 cap per Non-SSN Class Member (no documentation is required).

Hours claimed (up to 2 hours – check one box) ☐ 1 Hour ☐ 2 Hours

◯ I attest and affirm to the best of my knowledge and belief that any claimed lost time was spent related to the Data Incident and not incurred due to some other event or reason.

***In order to receive this payment, you must briefly describe what you did and how the claimed lost time was spent related to the Data Incident.* Please use the space below to describe your lost time related to the Data Incident.**

____

____

Your claim must be submitted online or postmarked by: MONTH DD, 2023

BIOPLUS SETTLEMENT CLAIM FORM

Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI
United States District Court for the Middle District of Florida

BIOPLUS-A-2

____

____

IV. REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES

All Non-SSN Class Members may submit a claim for reimbursement of the following **documented** out-of-pocket expenses, not to exceed $750 per Non-SSN Class Member, that were incurred as a result of the Data Incident:

Cost Type (Fill all that apply)	**Approximate Date of Loss**	**Amount of Loss**
○ Out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel.	__ __ / __ __ / __ __ (mm/dd/yy)	$ __ __ __ __ __ . __ __
Examples of Supporting Third Party Documentation: *Telephone bills, cell phone bills, gas receipts, postage receipts, bank account statements reflecting out-of-pocket expenses. Please note that these examples of reimbursable documented out-of-pocket losses are not meant to be exhaustive, but exemplary. You may make claims for any documented out-of-pocket losses that you believe are reasonably related and fairly traceable to the Data Incident and not incurred due to some other event or reason.*		
○ Fees for credit reports, credit monitoring, or other identity theft insurance products purchased after October 25, 2021 that you attest under penalty of perjury were caused or otherwise incurred as a result of the Data Incident.	__ __ / __ __ / __ __ (mm/dd/yy)	$ __ __ __ __ __ . __ __
Examples of Supporting Documentation: *Receipts or account statements reflecting purchases made for Credit Monitoring or Identity Theft Insurance Services.*		
○ Reimbursement for proven monetary loss, professional fees including attorneys' fees, accountants' fees, and fees for credit repair services incurred as a result of the Data Incident.	__ __ / __ __ / __ __ (mm/dd/yy)	$ __ __ __ __ __ . __ __

Your claim must be submitted online or postmarked by: MONTH DD, 2023	**BIOPLUS SETTLEMENT CLAIM FORM** *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC, Case No. 6:21-cv-02158-RBD-DCI* United States District Court for the Middle District of Florida	**BIOPLUS-A-2**

Cost Type (Fill all that apply)	**Approximate Date of Loss**	**Amount of Loss**

Examples of Supporting Documentation: *Invoices or statements reflecting payments made for professional fees/services.*

YOU MUST SUBMIT DOCUMENTATION OF YOUR OUT-OF-POCKET EXPENSES

☐ I attest and affirm to the best of my knowledge and belief that any claimed expenses were incurred as a result of the Data Incident and not incurred due to some other event or reason.

V. PAYMENT SELECTION

Please select **one** of the following payment options, which will be used should you be eligible to receive a settlement payment:

☐ **PayPal** - Enter your PayPal email address: ______________________________

☐ **Venmo -** Enter the mobile number associated with your Venmo account: __ __ __-__ __ __-__ __ __ __

☐ **Zelle -** Enter the mobile number or email address associated with your Zelle account:

Mobile Number: __ __ __-__ __ __-__ __ __ __ or Email Address: ______________________________

☐ **Virtual Prepaid Card -** Enter your email address: ______________________________

☐ **Physical Check -** Payment will be mailed to the address provided above.

VI. ATTESTATION & SIGNATURE

I swear and affirm under the laws of my state that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

______________________	______________________	______________________
Signature	Printed Name	Date

EXHIBIT B-1

A proposed Settlement has been reached in a class action lawsuit known as *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC*, Case No. 6:21-cv-02158-RBD-DCI, filed in the United States District Court for the Middle District of Florida

A settlement has been reached in a class action lawsuit against BioPlus Specialty Pharmacy Services, LLC arising out of a 2021 cybersecurity incident involving BioPlus (the "Data Incident"). Plaintiffs allege that the Data Incident resulted in unauthorized access by a third party to data stored on BioPlus's network, which they allege included the personally identifiable information ("PII") and protected health information ("PHI") of BioPlus's current and former patients. BioPlus disagrees with Plaintiffs' claims and denies any wrongdoing.

You are receiving this notice because you may be a SSN Class Member. You are a SSN Class Member if you were notified that your PII/PHI, including Social Security Number, may have been impacted in the Data Incident.

Under the terms of the Settlement, you may submit a Claim for the following benefits:

- **Cash Payment:** $50 cash payment, adjusted up or down depending upon the number of claims approved;
- **Documented Out-of-Pocket Loss Expense Reimbursement**: Reimbursement for up to $7,500 for documented out-of-pocket expenses, AND
- **Lost Time Reimbursement**: Reimbursement for up to three (3) hours of lost time spent dealing with the Data Incident (at $25 per hour).

SSN Class Members, like yourself, are able to submit a Claim for the settlement benefits described above from the non-reversionary $1,025,000 SSN Settlement Fund. There are also Class Members who did not have their Social Security Numbers impacted in the Data Incident. They have the ability to submit a Claim against a separate $1,175,000 reversionary settlement fund *i.e*., the Non-SSN Settlement Fund. There are roughly 218,750 Non-SSN Class Members and 130,438 SSN Class Members. Class Counsel's attorneys' fees not to exceed $733,333.33 or 1/3 of the combined total of the Non-SSN Settlement Fund and SSN Settlement Fund ($2,200,000) will be deducted from the Settlement Funds. The fees deducted from an individual fund shall not exceed one-third (1/3) of that fund. Class Counsel's litigation expenses not to exceed $15,000, and the costs of Settlement Administration, subject to Court approval, will also be deducted from the Settlement Funds. The SSN Settlement Fund will be used to pay for 37.35% of the approved litigation and Settlement Administration expenses. The easiest way to submit a claim is online at www.XXXXX.com using your unique Notice ID found on the front of this postcard. To be eligible, you must complete and submit a Valid Claim Form, postmarked or submitted online by [INSERT DATE].

You can exclude yourself or object to the settlement, including Class Counsel's request for attorneys' fees and expenses, on or before [INSERT DATE]. If you do not exclude yourself from the Settlement, you will remain in the class and give up the right to sue BioPlus, BioPlus's Related Entities, or the Released Parties for the Released Claims in the Settlement. **A summary of your rights under the Settlement and instructions regarding how to submit a Claim, exclude yourself, or object to the Settlement are available at** www.XXXXXX.com.

The Court will hold the Final Fairness Hearing at [INSERT] to consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's request for an award of attorneys' fees of up to $733,333.33 plus case expenses. Defendant reserves the right to object to Class Counsel's request for fees and expenses. The Court will also determine whether the Settlement should be approved. You may attend the hearing, at your own expense, but you do not have to.

Class Counsel are John Yanchunis and Ryan Maxey of Morgan & Morgan; Terence R. Coates and Dylan J. Gould of Markovits, Stock & DeMarco; M. Anderson Berry and Gregory Haroutunian of the Arnold Law Firm; Joseph M. Lyon of The Lyon Firm; Gerard Stranch of Stranch, Jennings & Garvey; Nicholas Migliaccio of Migliaccio Rathod; and Gary E. Mason of Mason LLP.

This is only a summary. For additional information, including a copy of the Settlement Agreement, Long Form Notice, Claim Form, Class Counsel's Application for Attorneys' Fees and Expenses, and other documents, visit [INSERT WEBSITE] or call [INSERT PHONE #].

EXHIBIT B-2

A proposed Settlement has been reached in a class action lawsuit known as *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC*, Case No. 6:21-cv-02158-RBD-DCI, filed in the United States District Court for the Middle District of Florida

A settlement has been reached in a class action lawsuit against BioPlus Specialty Pharmacy Services, LLC arising out of a 2021 cybersecurity incident involving BioPlus (the "Data Incident"). Plaintiffs allege that the Data Incident resulted in unauthorized access by a third party to data stored on BioPlus's network, which allegedly included the personally identifiable information ("PII") and protected health information ("PHI") of BioPlus's current and former patients. BioPlus disagrees with Plaintiffs' claims and denies any wrongdoing.

You are receiving this notice because you may be a Non-SSN Class Member. You are a Non-SSN Class Member if you were notified that your PII/PHI, **not including** your Social Security number, may have been impacted in the Data Incident.

Under the terms of the Settlement, you may submit a Claim for the following benefits:

- **Documented Out-of-Pocket Loss Expense Reimbursement**: Reimbursement for up to $750 for documented out-of-pocket expenses.
- **Lost Time Reimbursement**: Reimbursement for up to two (2) hours of lost time spent dealing with the Data Incident (at $25 per hour).

Non-SSN Class Members, like yourself, are able to submit a Claim for the settlement benefits described above from a $1,175,000 Non-SSN Settlement Fund. There are also Class Members who had their Social Security numbers impacted in the Data Incident. They have the ability to submit a Claim against a separate $1,025,000 non-reversionary settlement fund *i.e*., the SSN Settlement Fund. There are roughly 218,750 Non-SSN Class Members and 130,438 SSN Class Members. Class Counsel's attorneys' fees not to exceed $733,333.33 or 1/3 of the combined total of the Non-SSN Settlement Fund and SSN Settlement Fund ($2,200,000) will be deducted from the Settlement Funds before the payment of any cash benefits described above. The fees deducted from an individual fund shall not exceed one-third (1/3) of that fund. Class Counsel's litigation expenses not to exceed $15,000, and the costs of Settlement Administration, subject to Court approval, will also be deducted from the Settlement Funds. The Non-SSN Settlement Fund will be used to pay for 62.65% of the approved litigation and Settlement Administration expenses. Following the deduction of fees and expenses from the Non-SSN Settlement Fund described above, the Non-SSN Settlement Fund shall be used to pay Non-SSN Settlement Class Members' valid Claims for up to $750 for Documented Out-of-Pocket Expenses and Lost Time, as identified above. The easiest way to submit a Claim is online at www.XXXXX.com using your unique Notice ID found on the front of this postcard. To be eligible, you must complete and submit a Valid Claim Form, postmarked or submitted online by [INSERT DATE].

You can exclude yourself or object to the settlement, including Class Counsel's request for attorneys' fees and expenses, on or before [INSERT DATE]. If you do not exclude yourself from the Settlement, you will remain in the class and give up the right to sue BioPlus, BioPlus' Related Entities, or the Released Parties for the Released Claims in the Settlement. **A summary of your rights under the Settlement and instructions regarding how to submit a Claim, exclude yourself, or object to the Settlement are available at** www.XXXXXX.com.

The Court will hold the Final Fairness Hearing at [INSERT] to consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's request for an award of total attorneys' fees of up to $733,333.33 plus case expenses. Defendant reserves the right to object to Class Counsel's request for fees and expenses. Any award for attorneys' fees and expenses for Class Counsel will be paid out of the funds as described above. The Court will also determine whether the Settlement should be approved. You may attend the hearing, at your own expense, but you do not have to.

Class Counsel are John A. Yanchunis and Ryan D. Maxey of Morgan & Morgan; Terence R. Coates and Dylan J. Gould of Markovits, Stock & DeMarco; M. Anderson Berry and Gregory Haroutunian of the Arnold Law Firm; Joseph M. Lyon of The Lyon Firm; Gerard Stranch of Stranch, Jennings & Garvey; Nicholas Migliaccio of Migliaccio Rathod; and Gary E. Mason of Mason LLP.

This is only a summary. For additional information, including a copy of the Settlement Agreement, Long Form Notice, Claim Form, Class Counsel's Application for Attorneys' Fees and Expenses, and other documents, visit [INSERT WEBSITE] or call [INSERT PHONE #].

EXHIBIT C

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

If You Were Notified Of A Data Incident Involving BioPlus Specialty Pharmacy Services, LLC In 2021, You May Be Eligible For Benefits From A Class Action Settlement.

This is not a solicitation from a lawyer, junk mail, or an advertisement. A court authorized this Notice.

- A proposed Settlement has been reached in a class action lawsuit, titled *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC*, 6:21-cv-02158-RBD-DCI ("Lawsuit"), filed in the United States District Court for the Middle District of Florida.
- This Lawsuit arises out of a cybersecurity incident involving BioPlus that occurred between October 25, 2021 and November 11, 2021 (the "Data Incident"). Plaintiffs allege that the Data Incident resulted in unauthorized access by a third party to data stored on BioPlus's network, and that this included the personally identifiable information ("PII") and protected health information ("PHI") of BioPlus's current and former patients. BioPlus disagrees with Plaintiffs' claims and denies any wrongdoing.
- The Settlement Class consists of two groups – those who were notified that their Social Security numbers were potentially accessed in the Data Incident ("SSN Class Members"), and those who were notified that their Social Security numbers were not involved in the Data Incident ("Non-SSN Class Members"). The available Settlement benefits depend upon which group you are in.
- **SSN Class Members** may submit a claim for the following benefits from the Settlement: (1) $50 cash payment, adjusted up or down depending upon the number of claims approved, *and* (2) reimbursement for up to $7,500 for (a) documented out-of-pocket expenses, and (b) up to three (3) hours of lost time spent dealing with the Data Incident (at $25 per hour). You must submit a Claim Form to receive these benefits.
- **Non-SSN Class Members** may submit a claim for reimbursement for up to $750 for (a) documented out-of-pocket expenses and (b) reimbursement for up to two (2) hours of lost time spent dealing with the Data Incident (at $25 per hour). You must submit a Claim Form to receive these benefits.
- You are included in this Settlement as a Settlement Class Member if you were notified that your PII/PHI may have been impacted in the Data Incident.
- Your legal rights are affected regardless of whether you do or do not act. Read this Notice carefully.
- The Court in charge of this case must still decide whether to approve the Settlement, including Class Counsel's request for attorneys' fees and expense reimbursement. No Settlement benefits will be provided until the Court approves the Settlement and it becomes final.

YOUR LEGAL RIGHTS & OPTIONS IN THIS SETTLEMENT	
Submit a Claim Form	**You must submit a valid Claim Form to receive Settlement benefits.** Claim Forms must be submitted online by [INSERT DATE] or, if mailed, postmarked no later than [INSERT DATE].
Do Nothing	If you do nothing, you remain in the Settlement. You give up your rights to sue and you will not get any money.
Exclude Yourself	**Get out of the Settlement. Get no money. Keep your rights.** This is the only option that allows you to keep your right to sue about the claims in this Lawsuit. You will not receive any Settlement benefits from the Settlement. Your request to exclude yourself must be postmarked no later than [INSERT DATE].
File an Objection	Stay in the Settlement but tell the Court why you think the Settlement or Class Counsel's request for attorneys' fees should not be approved. Objections must be postmarked no later than [INSERT DATE]. You will still be bound by the Settlement if the Court approves it.
Go to a Hearing	You can ask to speak in Court about the fairness of the Settlement, at your own expense. *See* Question 18 for more details. The Final Fairness Hearing is scheduled for [INSERT DATE].

WHAT THIS NOTICE CONTAINS

Basic Information.. Pages 4-5

1. How do I know if I am affected by the Lawsuit and Settlement?
2. What is this case about?
3. Why is there a Settlement?
4. Why is this a class action?
5. How do I know if I am included in the Settlement?

The Settlement Benefits.. Pages 5-7

6. What does this Settlement provide?
7. How to submit a Claim?
8. What am I giving up as part of the Settlement?
9. Will the Class Representatives receive compensation?

Exclude Yourself .... Page 8

10. How do I exclude myself from the Settlement?
11. If I do not exclude myself, can I sue Defendant or the Released Parties later?
12. What happens if I do nothing at all?

The Lawyers Representing You .... Page 8-9

13. Do I have a lawyer in the case?
14. How will the lawyers be paid?

Objecting to the Settlement.. Page 9-10

15. How do I tell the Court that I do not like the Settlement?
16. What is the difference between objecting and asking to be excluded?

The Final Fairness Hearing.. Page 10-11

17. When and where will the Court decide whether to approve the Settlement?
18. Do I have to come to the hearing?
19. May I speak at the hearing?

Do Nothing.. Page 11

20. What happens if I do nothing?

Get More Information .... Page 11

21. How do I get more information about the Settlement?

BASIC INFORMATION

1. How do I know if I am affected by the Lawsuit and Settlement?

You are a Settlement Class Member if you were notified that your personal information may have been impacted by the Data Incident.

The Settlement Class specifically excludes: (i) BioPlus and its respective officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge and/or magistrate assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contender* to any such charge.

This Notice explains the nature of the lawsuit and claims being settled, your legal rights, and the benefits to the Settlement Class.

2. What is this case about?

This case is known as *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC*, No. 6:21-cv-02158-RBD-DCI, filed in the United States District Court for the Middle District of Florida. The judge is the Honorable Roy Dalton, Jr. The persons who sued are called the "Plaintiffs" and the company they sued, BioPlus Specialty Pharmacy Services, LLC, is known as the "Defendant" in this case. BioPlus will be called "Defendant" in this Notice.

Plaintiffs filed a lawsuit against Defendant, individually, and on behalf of anyone whose PII or PHI was potentially impacted as a result of the Data Incident. This lawsuit arises from a cybersecurity incident occurring between October 25, 2021 and November 11, 2021. On November 11, 2021, BioPlus, a specialty pharmacy, detected suspicious activity on its IT network; it immediately responded by isolating and securing its systems. BioPlus investigated the incident and determined that a criminal actor had gained access to its network, possibly including access to files containing certain patient information.

Plaintiffs allege that as a result of the Data Incident, the cybercriminals gained access to Plaintiffs' and the Settlement Class Members' PII and PHI, which may have included patient names, addresses, dates of birth, Social Security numbers, medical record numbers, current/former member ID numbers, claims information, diagnoses and/or prescription information.

After BioPlus investigated the Data Incident, those persons whose PII and PHI may have been impacted by the Data Incident were notified on or about December 10, 2021. Subsequently, this lawsuit and others ultimately consolidated with this lawsuit were filed asserting claims against Defendant relating to the Data Incident.

Defendant denies any wrongdoing or liability, and no court or other entity has made any judgment or other determination of any wrongdoing, or that any law has been violated. Defendant denies these and all other claims made in the Litigation. By entering into the Settlement, Defendant is not admitting any wrongdoing.

3. Why is there a Settlement?

By agreeing to settle, both sides avoid the cost, disruption, and distraction of further litigation. The Class Representatives, Defendant, and their attorneys believe the proposed Settlement is fair, reasonable, and adequate and, thus, in the best interests for Settlement Class Members. The Court did not decide in favor of the Plaintiffs or Defendant. Full details about the proposed Settlement are found in the Settlement Agreement available at [INSERT].

4. Why is this a class action?

In a class action, one or more people called a "Class Representative" sue on behalf of all people who have similar claims. All of these people together are the "Settlement Class" or "Settlement Class Members."

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

You are included in the Settlement if you were notified of the Data Incident. This Settlement is not open to the general public. If you are not sure whether you are included as a Settlement Class Member, or have any other questions about the Settlement, visit [INSERT], call toll free [INSERT], or write to [INSERT].

THE SETTLEMENT BENEFITS

6. What does this Settlement provide?

This Settlement includes two separate groups. The Settlement provides for up to $1,175,000 in benefits for the Non-SSN Class Members, and a $1,025,000 non-reversionary common fund for the SSN Class Members. The total potential value of this Settlement is capped at $2,200,000.

The proposed Settlement will provide the following benefits to Settlement Class Members:

SSN Settlement Fund: The SSN Class Members may submit a Claim for SSN Settlement Fund benefits on or before the Claims Deadline. These benefits include:

> $50 Pro-Rata Cash Payment: SSN Class Members may submit a Claim for a $50 cash payment. The Settlement Administrator will make pro rata settlement payments, which may increase or decrease the $50 Cash Payment, subject to the total amount of the SSN Settlement Fund.
>
> Lost-Time Claims: SSN Class Members may submit a Claim for up to three (3) hours of time spent remedying issues related to the Data Incident at $25 per hour if the Settlement Class Member (1) attests that any claimed lost time was spent related to and arising out of the Data Incident, and (2) provides a brief general description of how the claimed lost time was spent. No documentation need be submitted in connection with Lost-Time Claims. Claims for Lost-Time are included in the $7,500 individual cap on out-of-pocket expense reimbursement.

Out-of-Pocket Expense Claims: Common-Fund Settlement Class Members may submit a Claim for reimbursement of up to $7,500 in documented out-of-pocket losses reasonably and fairly traceable to the Data Incident. Out-of-Pocket-Expense Claims can include, without limitation, (i) unreimbursed losses relating to fraud or identity theft; (ii) professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; (iii) costs associated with freezing or unfreezing credit with any credit reporting agency; (iv) credit monitoring costs that were incurred on or after October 25, 2021 that the claimant attests under penalty of perjury were caused or otherwise incurred as a result of the Data Incident, through the date of claim submission; (v) and miscellaneous expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges.

SSN Class Members with Out-of-Pocket-Expense Claims must submit documentation and attestation supporting their claims. This may include receipts or other documentation, not "self-prepared" by the claimant, that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation.

Out-of-Pocket Expense Claims must include an attestation that the monetary losses were caused or otherwise incurred as a result of the Data Incident and were not incurred due to some other event or reason.

Non-SSN Settlement Fund: Non-SSN Class Members may submit a Claim on or before the Claims Deadline for benefits from the Non-SSN Settlement Fund. These Benefits include:

Lost-Time Claims: Non-SSN Class Members may submit a Claim for up to two (2) hours of time spent related to the Data Incident at $25 per hour if the Settlement Class Member (1) attests that any claimed lost time was spent related to and arising out of the Data Incident, and (2) provides a brief general description of how the claimed lost time was spent. No documentation need be submitted in connection with Lost-Time Claims. Claims for Lost-Time are included in the $750 individual cap on out-of-pocket expense reimbursement.

Out-of-Pocket Expense Claims: Non-SSN Class Members may submit a Claim for reimbursement of up to $750 in documented out-of-pocket losses reasonably and fairly traceable to the Data Incident. Out-of-Pocket-Expense Claims can include, without limitation, (i) unreimbursed losses relating to fraud or identity theft; (ii) professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; (iii) costs associated with freezing or unfreezing credit with any credit reporting agency; (iv) credit monitoring costs that were incurred on or after October 25, 2021 that the claimant attests under penalty of perjury were caused or otherwise incurred as a result of the Data Incident, through the date of claim submission; and (v) miscellaneous expenses such as notary, data

charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges.

Non-SSN Class Members with Out-of-Pocket-Expense Claims must submit documentation and attestation supporting their claims. This may include receipts or other documentation, not "self-prepared" by the claimant, that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation.

Out-of-Pocket Expense Claims must include an attestation that the monetary losses were caused or otherwise incurred as a result of the Data Incident and were not incurred due to some other event or reason.

7. How to submit a claim?

All claims will be reviewed by the Settlement Administrator to determine whether the Claim is a Valid claim. You must file a Claim Form to get Settlement benefits from the proposed Settlement. Claim Forms must be submitted online by [INSERT DATE] or postmarked no later than [INSERT DATE]. You can download a Claim Form at [INSERT] or you can call the Settlement Administrator at [INSERT] for a Claim Form.

8. What am I giving up as part of the Settlement?

If you stay in the Settlement, you will be eligible to receive benefits, but you will not be able to sue BioPlus, its Related Entities, and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers (collectively, the "Released Parties") regarding the claims in this case.

The Settlement Agreement, which includes all provisions about settled claims, and releases, including Released Claims and Released Parties, is available at [INSERT WEBSITE].

The only way to keep the right to sue is to exclude yourself (*see* Question 10), otherwise you will be included in the Settlement Class, and, if the Settlement is approved, you give up the right to sue for the claims in this case.

9. Will the Class Representatives receive additional compensation?

No, the Class Representatives do not seek compensation in excess of what they are entitled to under the Settlement as regular members of the Settlement Class.

EXCLUDE YOURSELF

10. How do I exclude myself from the Settlement?

If you do not want to be included in the Settlement, you must send a timely written request for exclusion to the Post Office Box established by the Settlement Administrator, stating your full name, address, and telephone number. Your request must clearly manifest your intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement.

Your written request for exclusion must be postmarked no later than **[INSERT]** to:

[INSERT MAILING ADDRESS]

Instructions on how to submit a request for exclusion are available at [INSERT WEBSITE] or from the Claims Administrator by calling **[INSERT PHONE #]**.

If you exclude yourself, you will not be able to receive any Settlement benefits from the Settlement, and you cannot object to the Settlement or Class Counsel's request for attorneys' fees and expenses at the Final Approval Hearing. You will not be legally bound by anything that happens in the Lawsuit, and you will keep your right to sue Defendant on your own for the claims that this Settlement resolves.

11. If I do not exclude myself, can I sue Defendant or the Released Parties later?

No. If you do not exclude yourself from the Settlement, and the Settlement is approved by the Court, you forever give up the right to sue the Released Parties (listed in Question 8) for the Released Claims, as set forth in the Settlement Agreement.

12. What happens if I do nothing at all?

If you do nothing, you will be bound by the Settlement if the Court approves it, you will not get any Settlement benefits from the Settlement, you will not be able to start or proceed with a lawsuit, or be part of any other lawsuit against the Defendant or the Released Parties (listed in Question 8) about the Released Claims in this case at any time.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in the case?

Yes. The Court has appointed John A. Yanchunis and Ryan D. Maxey of Morgan & Morgan; Terence R. Coates and Dylan J. Gould of Markovits, Stock & DeMarco, LLC; Nicholas A. Migliaccio and Jason S. Rathod of Migliaccio & Rathod, LLP; Joseph M. Lyon of The Lyon Firm, LLC; J. Gerard Stranch, IV, of Stranch, Jennings & Garvey, PLLC; Gary E. Mason of Mason LLP,

and M. Anderson Berry and Gregory Haroutunian of Clayeo C. Arnold, A Professional Corporation (collectively called "Class Counsel") to represent the interests of all Settlement Class Members in this case. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed one third (or $733,333.33) of the combined total of the Non-SSN Settlement Fund and the SSN Settlement Fund ($2,200,000.00), and for out-of-pocket case expenses in addition to this amount. BioPlus reserves all rights to oppose the requested attorneys' fees and expenses, including reserving its right to file an opposition to Plaintiffs' motion for attorneys' fees and expenses. A copy of Class Counsel's Motion for Attorneys' Fees and Expenses be posted on the Settlement Website, [INSERT WEBSITE], before the deadline to object to the Settlement.

Any award for attorneys' fees from a particular Settlement Fund shall not exceed one-third (1/3) of that fund. Furthermore, any award of expenses for Class Counsel will be paid out of the Settlement Funds in proportion to the number of Class Members who are eligible for each fund. Because Non-SSN Class Members represent 62.65% of the total Class Members, the Non-SSN Settlement Fund will be responsible for paying 62.65% of litigation and settlement administration expenses. Similarly, because the SSN Class Members represent 37.35% of the total Class Members, the SSN Settlement Fund shall be responsible for paying 37.35% of litigation and settlement administration expenses. The Court will make the final decisions as to the amounts to be paid to Class Counsel and may award less than the amount requested by Class Counsel.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I do not like the Settlement?

If you want to tell the Court that you do not agree with the proposed Settlement or some part of it, you must file an objection with the Court telling it why you do not think the Settlement should be approved.

Objections must be submitted in writing and include all the following information:

a) the objector's full name and address;
b) the case name and docket number: *Gilbert et al. v. BioPlus Specialty Pharmacy Services, LLC*, No. 6:21-cv-02158-RBD-DCI;
c) a written statement of all grounds for the objection, including whether the objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, accompanied by any legal support for the objection the objector believes applicable;
d) the identity of any and all counsel representing the objector in connection with the objection (if none, please state this);

e) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and

f) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection.

To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than [INSERT DATE], to Class Counsel and BioPlus's Counsel at the addresses below:

CLASS COUNSEL	DEFENSE COUNSEL
Terence R. Coates **Markovits, Stock & DeMarco, LLC** 119 E. Court Street, Suite 530 Cincinnati, OH 45202	Christopher A. Wiech Chelsea M. Lamb **BAKER & HOSTETLER LLP** 1170 Peachtree Street, Suite 4200 Atlanta, GA 30309

You may also file your objection with the Court through the Court's ECF system, with service on Class Counsel and BioPlus's Counsel to be made through the ECF system.

If you do not submit your objection with all requirements, or if your objection is not received by [INSERT DATE], you will be considered to have waived all objections and will not be entitled to speak at the Final Fairness Hearing.

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

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

THE FINAL FAIRNESS HEARING

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

The Court will hold the Final Fairness Hearing at [INSERT DATE, TIME, LOCATION] or by remote or virtual means as ordered by the Court. The hearing may be moved to a different date, time, or location without additional notice, so it is recommended that you periodically check [INSERT WEBSITE] for updated information.

At the hearing, the Court will consider whether the proposed Settlement is fair, reasonable, adequate, is in the best interests of Settlement Class Members, and if it should be finally approved. If there are valid objections, the Court will consider them and will listen to people who have asked

to speak at the hearing if the request was made properly. The Court will also consider Class Counsel's request for an award of attorneys' fees and expenses.

After the Final Fairness Hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. You are not required to come to the Final Fairness Hearing. However, you are welcome to attend the hearing at your own expense.

If you submit an objection, you do not have to come to the hearing to talk about it. If your objection was submitted properly and on time, the Court will consider it. You also may pay your own lawyer to attend the Final Fairness Hearing, but that is not necessary. However, you must follow the requirements for making objections in Question 15, including the requirements for making appearances at the hearing.

19. May I speak at the hearing?

Yes. You can speak at the Final Fairness Hearing, but you must ask the Court for permission. To request permission to speak, you must file an objection according to the instructions in Question 15, including all the information required for you to make an appearance at the hearing. You cannot speak at the hearing if you exclude yourself from the Settlement.

DO NOTHING

20. What happens if I do nothing?

If you do nothing, you will not get any Settlement benefits, you will not be able to sue for the claims in this case, and you release the Released Claims, as set forth in the Settlement Agreement, against Defendant and the Released Parties described in Question No. 8.

GET MORE INFORMATION

21. How do I get more information about the Settlement?

This is only a summary of the proposed Settlement. If you want additional information about this lawsuit, including a copy of the Settlement Agreement, the Complaint, the Court's Preliminary Approval Order, Class Counsel's Motion for Attorneys' Fees and Expenses, and more, please visit [INSERT WEBSITE] or call [INSERT PHONE]. You may also contact the Settlement Administrator at [INSERT MAILING ADDRESS].

PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR LITIGATION TO THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR DEFENDANT'S COUNSEL.

EXHIBIT D

SETTLEMENT TIMELINE

<u>From Order Granting Preliminary Approval</u>	
Defendant provides list of Class Members to the Settlement Administrator	+14 days
Notice Date	+45 days
Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Costs and Expenses	+92 days
Objection Date	+105 days
Opt-Out Date	+105 days
Reminder Notice	+105 days
Claims Deadline	+135 days
<u>Final Approval Hearing</u>	+ 150 (at minimum) from Order Granting Preliminary Approval
Motion for Final Approval	+14 days before Final Approval Hearing
Payment of Attorneys' Fees and Expenses Class Representative Service Awards	+30 days of the Effective Date
Payment of Claims to Class Members	+30 days of the Effective Date
Deactivation of Settlement Website	+180 days of the Effective Date

EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BONNIE GILBERT, WENDY BRYAN, PATRICIA WHITE, DAVID GATZ, CRYSTAL HULLET, LORI GRADER, DARYL SWANSON, STEPHEN GABBARD, ALICIA DUNN, and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BIOPLUS SPECIALTY PHARMACY SERVICES, LLC,

Defendant.

Case No. 6:21-cv-02158-RBD-DCI

DECLARATION OF TERENCE R. COATES IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Terence R. Coates, hereby state that the following is true and accurate and based on my personal knowledge:

1. I am the managing partner of the law firm Markovits, Stock & DeMarco, LLC ("MSD"). I am one of the proposed Class Counsel in this case representing Plaintiffs Bonnie Gilbert, Wendy Bryan, Patricia White, David Gatz, Crystal Hullet, Lori Grader, Daryl Swanson, Stephen Gabbard, and Alicia Dunn (collectively, "Plaintiffs") and the putative Class and have monitored my firm's

participation in this matter from 2021 to the present. The contents of this Declaration are based upon my own personal knowledge, my experience in handling many class action cases, and the events of this litigation.

2. As a member of proposed Class Counsel, my firm has been centrally involved in all aspects of this litigation from the initial investigation to the present. I have been one of the primary points of contact for Plaintiffs and Class Counsel with counsel for Defendant BioPlus Specialty Pharmacy Services, LLC ("Defendant" or "BioPlus"). Class Counsel and Defendant's counsel are experienced in class action litigation. Class Counsel thoroughly investigated this case including researching and drafting potential causes of action against BioPlus, finalizing and filing three amended class action complaints, opposing a motion to dismiss, evaluating the strengths and weaknesses of Plaintiffs' claims, resolving the case on a classwide basis, negotiating and drafting the Settlement Agreement, and preparing the preliminary approval filings.

3. I have been practicing law since 2009 and have extensive experience handling complex class action cases. I am currently the Secretary of the Cincinnati Bar Association's Board of Trustees and the Executive Director of the Potter Stewart Inn of Court. I am a frequent speaker for the plaintiffs' perspective on recent trends in data privacy class action cases having recently spoken at the Trial Lawyers of Mass Tort's conference in Big Sky, Montana in March 2023, the NetDiligence

cybersecurity summit in Ft. Lauderdale, Florida in February 2023, and the Beazley Insurance national conference in Ft. Lauderdale, Florida in March 2023.

4. I am currently participating as a member of plaintiffs' counsel in over 70 data breach and data privacy cases pending around the country, including serving as co-lead counsel or a member of plaintiffs' counsel in: *In re Cerebral, Inc. Privacy Practices*, No. 2:23-cv-1803 (C.D. Cal.) (court-appointed interim class counsel in a pixel privacy class action); *Phillips v. Bay Bridge Administrators, LLC*, No. 1:23-CV-022 (W.D. Tex.) (court-appointed interim class counsel); *Abrams v. Savannah College of Art & Design*, No. 1:22-CV-04297 (N.D. Ga.) ($375,000 non-reversionary common fund data breach class action settlement); *Phelps v. Toyotetsu North America*, No. 6:22-cv-00106 (E.D. Ky.) ($400,000 non-reversionary common fund data breach class action settlement); *John v. Advocate Aurora Health, Inc.*, No. 22-CV-1253-JPS (E.D. Wis.) ($12.25 million non-reversionary data privacy class action settlement); *In re U.S. Vision Data Breach Litigation*, No. 22-cv-06558 (D.N.J.) (court-appointed interim co-lead class counsel for plaintiffs); *Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00185 (S.D. Ohio) ($1.75 million non-reversionary common fund data breach class settlement); *Vansickle v. C.R. England*, No. 22-cv-00374 (D. Utah; Doc. 22, August 16, 2022) ($1.4 million non-reversionary common fund data breach class settlement); *Migliaccio v. Parker Hannifin Corp.*, No. 1:22-CV-00835 (N.D. Ohio) ($1.75 million non-reversionary

common fund data breach class settlement); *Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495 (N.D. Ga.) ($7.75 million non-reversionary common fund data breach class settlement); *Tracy v. Elekta, Inc.*, No. 1:21-cv-02851-SDG (N.D. Ga.) (court-appointed interim class counsel); *In re Luxottica of America, Inc. Data Security Breach Litigation*, No. 1:20-cv-00908-MRB (S.D. Ohio) (court-approved interim co-liaison counsel); *Tate v. EyeMed Vision Care, LLC*, No. 1:21-cv-00036 (S.D. Ohio) (court-approved liaison counsel); *In re 20/20 Eye Care Network Inc. Data Breach Litigation*, No. 21-cv-61275 RAR (S.D. Fla.) (Plaintiffs' Executive Committee); *Baker v. ParkMobile, LLC*, No. 1:21-cv-02182 (N.D. Ga.) (Plaintiffs' Steering Committee); *Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.) ($825,000 non-reversionary common fund data breach class action settlement); *In re Herff Jones Data Security Breach Litigation*, No. 1:21-cv-01329-TWP-DLP (S.D. Ind.) (plaintiffs' counsel in approved $4.35 million common fund settlement); *In re CaptureRx Data Breach Litigation*, No. SA-21-CV-00523 (W.D. Tex.) (plaintiffs' counsel in a $4.75 million common fund settlement); *In re Netgain Technology, LLC, Consumer Data Breach Litigation*, No. 21-cv-1210, (D. Minn.; Plaintiffs' Executive Committee); *Medina v. PracticeMax Inc.*, No. CV-22-01261 (D. Ariz.) (court-appointed Executive Leadership Committee); *Bae v. Pacific City Bank*, No. 21STCV45922 (Los Angeles County Superior Court) (co-lead counsel for a $700,000 non-reversionary common fund settlement); and *In re Pawn America*

Consumer Data Breach Litigation, No. 0:21-cv-02554 (D. Minn.) (plaintiffs' counsel).

5. Federal courts have recognized me and my firm as experienced in handling complex cases including class actions. *See, e.g.*, *Shy v. Navistar Int'l Corp.*, No. 3:92-CV-00333, 2022 WL 2125574, at *4 (S.D. Ohio June 13, 2022) ("Class Counsel, the law firm Markovits, Stock & DeMarco, LLC, are qualified and are known within this District for handling complex including class action cases such as this one."); *Bechtel v. Fitness Equip. Servs., LLC*, 339 F.R.D. 462, 480 (S.D. Ohio 2021) ("plaintiffs' attorneys have appeared in this Court many times and have substantial experience litigating class actions and other complex matters."); *Schellhorn v. Timios, Inc.*, No. 2:221-cv-08661, 2022 WL 4596582, at *4 (C.D. Cal. May 10, 2022) (noting that Class Counsel, including "Terence R. Coates of Markovits, Stock & DeMarco, LLC, have extensive experience litigation consumer protection class actions …."); *Bedont v. Horizon Actuarial Services, LLC*, No. 1:22-CV-01565, 2022 WL 3702117, at *2 (N.D. Ga. May 12, 2022) (noting that class counsel, including Mr. Coates, "are well qualified to serve as Interim Co-Lead Class Counsel and that they will fairly, adequately, responsibly, and efficiently represent all Plaintiffs in the Cases in that role.").

THE SETTLEMENT

6. The Settlement Agreement is the result of hard bargaining and was negotiated at arm's-length. It will resolve claims arising from the Data Incident that occurred between October 25, 2021 and November 11, 2021, impacting the private information of approximately 349,188 BioPlus patients.

7. The Settlement provides benefits to two group of Settlement Class Members: those who were notified that their Social Security numbers were potentially accessed in the Data Incident ("SSN Class Members"), and those who were notified that their Social Security numbers were not involved in the Data Incident ("Non-SSN Class Members").

8. SSN Class Members may submit a claim for the following benefits from the Settlement: (1) $50 cash payment, adjusted up or down depending upon the number of claims approved, *and* (2) reimbursement for up to $7,500 for (a) documented out-of-pocket expenses, and (b) up to three (3) hours of lost time spent dealing with the Data Incident (at $25 per hour). The claims of SSN Class Members will be paid from a $1,025,000 non-reversionary common ("SSN Settlement Fund").

9. Non-SSN Class Members may submit a claim for reimbursement for up to $750 for (a) documented out-of-pocket expenses and (b) reimbursement for up to two (2) hours of lost time spent dealing with the Data Incident (at $25 per hour). Claims for lost time and expenses by Non-SSN Class Members may be stacked up

to a maximum of $750. The claims of Non-SSN Class Members will be paid from a separate $1,175,000 reversionary settlement fund ("Non-SSN Settlement Fund").

10. BioPlus has agreed to pay Court-approved attorneys' fees and expenses and settlement administration expenses from both Settlement Funds. Class Counsel has agreed not to request attorneys' fees exceeding $733,333.33, which represents one-third (1/3) of the combined maximum value of the Settlement Funds ($2,200,000). Class Counsel has also agreed not to seek reimbursement of expenses in excess of $15,000. Defendant has reserved the right to challenge any request for fees or expenses by Class Counsel.

11. The Settlement was reached only after several months of negotiation and exchanges of Rule 408 discovery. The parties first attempted mediation on August 23, 2022 under the supervision of Rodney A. Max from Upchurch Watson White & Max Mediation Group. ECF No. 46. However, the parties were unable to reach an agreement. *Id.* The parties returned to mediation on April 12, 2023. Following hours of hard bargaining on both sides, the parties reached the settlement in principle that is the subject of this motion for preliminary approval. The Settlement in principle was not finalized in the form of a full settlement agreement until June 30, 2023. Based on these facts, there was no collusion or illegality within the settlement process.

12. The informal discovery conducted for settlement purposes in this case included BioPlus producing information about the Data Incident, the number of individuals impacted, the notice program, and the incident response. Through the receipt of this information, Plaintiffs were able to properly evaluate the potential for damages on a class-wide basis. Class Counsel are not aware of any individual cases related to the Data Incident being pursued against BioPlus.

THE NOTICE IS ADEQUATE

13. The proposed Notices are adequate, providing all Class Members with Notice via Regular U.S. mail and/or email to the extent emails are available. The Notices clearly and concisely inform Settlement Class Members of the Settlement Benefits (including the difference between benefits available to SSN Class Members and Non-SSN Class Members), and that all Settlement Class Members will have to submit a claim for the Settlement Benefits after the Court grants Final Approval. The Notices will inform Class Members that they may do nothing and be bound by the settlement, that they may object to the Settlement, or they may exclude themselves by completing the exclusion form and not be bound by the settlement.

THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND PRELIMINARY APPROVAL IS APPROPRIATE

14. Class Counsel and Counsel for BioPlus believe the Settlement is fair, reasonable, and adequate. Plaintiffs were also informed about the status of settlement negotiations and remained engaged as the Class Representatives at all times during

the pendency of this matter. They support the terms of the Settlement and have no conflicts with the Class they seek to represent.

15. In my experience in handling over 70 data breach class action cases for plaintiffs, I am confident in concluding that the settlement is fair and reasonable in that it provides all Settlement Class Members with significant potential compensation, including reimbursement for what will likely be the full amount of any individual's actual losses or expenses fairly traceable to the Data Incident. I am also aware that my co-counsel have significant experience litigating data breach class actions for plaintiffs and also opine that the Settlement is fair and reasonable. My firm's biography is attached to this Declaration as **Exhibit A**. The biographies of the other members of Class Counsel may be located at:

a. Ryan D. Maxey of Maxey Law Firm, P.A.
   https://www.maxeyfirm.com/about
b. John A. Yanchunis of Morgan & Morgan:
   https://www.forthepeople.com/attorneys/john-yanchunis/
c. Nicholas A. Migliaccio of Migliaccio & Rathod, LLP;
   https://classlawdc.com/team/nicholas-migliaccio/
d. Joseph M. Lyon of The Lyon Firm, LLC:
   https://www.thelyonfirm.com/joseph-lyon/
e. J. Gerard Stranch, IV, of Stranch, Jennings & Garvey, PLLC:

https://stranchlaw.com/our-attorneys/j-gerard-stranch-iv/

f. Gary E. Mason of Mason LLP:

https://www.masonllp.com/staff/gary-e-mason/

g. M. Anderson Berry of Clayeo C. Arnold, A Professional Corp.:

https://www.justice4you.com/m-anderson-berry.html

h. Gregory Haroutunian of Clayeo C. Arnold, A Professional Corp.:

https://www.justice4you.com/gregory-haroutunian.html

CLASS COUNSEL'S PROPOSED ATTORNEYS' FEES & EXPENSES ARE REASONABLE AND SHOULD PERMIT PRELIMINARY APPROVAL

16. Class Counsel agree not to request attorneys' fees exceeding $733,333.33, which represents one-third (1/3) of the combined maximum value of the Settlement Funds ($2,200,000). Class Counsel has also agreed not to seek reimbursement of expenses in excess of $15,000. Defendant has reserved the right to challenge any request for fees or expenses by Class Counsel.

17. Class Counsel have undertaken this case on a contingency fee basis and have not received any payment for their work in this case to date and have not been reimbursed for any of their litigation expenses.

18. Following Preliminary Approval, Class Counsel will file a separate motion with relevant facts and authorities supporting their request for fees and expenses. Settlement Class Members will have an opportunity to review this motion before the deadline to object or opt out of the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on January 5, 2024, at Cincinnati, Ohio.

/s/ Terence R. Coates
Terence R. Coates

EXHIBIT A

MARKOVITS
STOCK
DeMARCO

MARKOVITS, STOCK & DeMARCO, LLC

Markovits, Stock & DeMarco, LLC is a boutique law firm whose attorneys have successfully represented clients in some of the largest and most complex legal matters in U.S. history. Our deep and varied experience extends from representing businesses, public pension funds, and individuals in federal and state courts across the nation, to successfully arguing appeals at the highest levels of the legal system – including prevailing before the United States Supreme Court. This broad-based litigation and trial expertise, coupled with no overstaffing and overbilling that can typify complex litigation, sets us apart as a law firm. But expertise is only part of the equation.

"Legal success comes only from recognizing a client's goals and being able to design and effectively execute strategies that accomplish those goals. We understand that every client is different, which is why we spend so much time learning what makes them tick."

As the business world becomes increasingly complex, you need to be able to trust your law firm to help you make the right decisions. Whether you seek counsel in resolving a current conflict, avoiding a future conflict, or navigating the sometimes choppy state and local government regulatory waters, the lawyers at Markovits, Stock & DeMarco have both the experience and track record to meet your legal needs.

BILL MARKOVITS

Bill Markovits practices in the area of complex civil litigation, with an emphasis on securities, antitrust, RICO, and False Claims Act cases. Bill began his career as a trial lawyer at the U.S. Department of Justice Antitrust Division in Washington, D.C. He continued a focus on antitrust after moving to Cincinnati, where he became an adjunct professor of antitrust law at the University of Cincinnati Law School. Bill has been involved in the past in a number of notable cases, including: the Choice Care securities, antitrust and RICO class action in which the jury awarded over $100 million to a class of physicians; a fraud/RICO case on behalf of The Procter & Gamble Company, which resulted in a settlement of $165 million; an eleven year antitrust and RICO class action against Humana, including appeals that reached the United States Supreme Court, which culminated in a multi-million dollar settlement; and a national class action against Microsoft, in which he was chosen from among dozens of plaintiffs' attorneys to depose Bill Gates. More recently, Bill was: a lead counsel for plaintiffs in the Fannie Mae Securities Litigation that settled for $153 million; a lead counsel for plaintiffs in a class action against Duke Energy that settled for $80.75 million; and lead counsel for plaintiff in *Collins v. Eastman Kodak*, where he successfully obtained a preliminary injunction against Kodak on an antitrust tying claim. Based upon the result in *Collins*, Bill was a 2015 finalist in the American Antitrust Institute's Antitrust Enforcement Awards under the category "Outstanding Antitrust Litigation Achievement in Private Law Practice."

Bill has received a number of awards and designations, including current and past designations as a "Best Lawyer in America" in the fields of antitrust and commercial litigation.

Education:

Harvard Law School, J.D. (1981), cum laude

Washington University, A.B. (1978), Phi Beta Kappa

Significant and Representative Cases:

- *Collins v. Eastman Kodak*, United States District Court, Southern District of Ohio. Lead counsel representing Collins in antitrust tying claim, resulting in preliminary injunction against Kodak.
- *In Re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, United States District Court, District of Columbia. Co-lead counsel representing Ohio pension funds in securities class action that settled for $153 million.
- *Ohio Employees Retirement System v. Federal Home Loan Mortgage, aka Freddie Mac, et al.*, United States District Court, Northern District of Ohio, Eastern Division. Special counsel representing Ohio pension fund in securities class action.
- *Williams v. Duke Energy et al.*, United States District Court, Southern District of Ohio. Representing class of energy consumers against energy provider in complex antitrust and RICO class action that settled for $80.75 million.
- *In Re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, United States District Court, Central District of California. Former member of economic loss lead counsel committee, representing class of consumers in litigation relating to sudden acceleration.
- *In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, United States District Court, Eastern District of Louisiana. RICO workgroup coordinator in class action resulting from oil spill.
- *In Re Microsoft Corp. Litigation*, United States District Court, District of Maryland. Member of co-lead counsel firm in antitrust class action.
- *Procter & Gamble v. Amway Litigation*, United States District Court, Southern District of Texas, at

Houston; United States District Court, District of Utah, at Salt Lake City. Member of trial team representing Procter & Gamble in obtaining jury verdict against Amway distributors relating to spreading of false business rumors.

- *United States ex rel. Brooks v. Pineville Hospital*, United States District Court, Eastern District of Kentucky. One of the lead counsel in successful False Claims Act litigation.
- *Procter & Gamble v. Bankers' Trust Litigation*, United States District Court, Southern District of Ohio. Co-counsel in successful $165 million settlement; developed the RICO case.
- *United States ex rel. Watt v. Fluor Daniel*, United States District Court, Southern District of Ohio. Co- lead counsel of successful False Claims Act case.
- *Forsyth v. Humana*, United States District Court, District of Nevada. Represented class of consumers in antitrust and RICO class action; successfully argued antitrust appeal; co-chaired successful Supreme Court appeal on RICO.
- *In Re Choice Care Litigation*, United States District Court, Southern District of Ohio, Western Division. Trial attorney on largest antitrust/RICO/securities verdict.

Presentations & Publications:

- *"Implications of Sixth Circuit Collins Inkjet Corp. v. Eastman Kodak Co. Decision,"* American Bar Association panel discussion, December 10, 2015
- "*Defining the Relevant Market in Antitrust Litigation,*" Great Lakes Antitrust Seminar, October 29, 2010
- "*Beyond Compensatory Damages – Tread, RICO and The Criminal Law Implications,*" HarrisMartin's Toyota Recall Litigation Conference, Part II, May 12, 2010
- "*The Racketeer Influenced and Corrupt Organizations Act (RICO),*" HarrisMartin's Toyota Recall Litigation Conference, March 24, 2010
- "*The False Claims Act: Are Healthcare Providers at Risk?,*" presentation to Robert Morris College Second Annual Health Services Conferences, Integrating Health Services: Building a Bridge to the 21st Century, Moon Township, PA, October 9, 1997
- "*The Federal False Claims Act: Are Health Care Providers at Risk?,*" (Co-Speaker), Ohio Hospital Association, April, 1996
- "*A Focus on Reality in Antitrust,*" Federal Bar News & Journal, Nov/Dec 1992
- "*Using Civil Rico and Avoiding its Abuse,*" Ohio Trial, William H. Blessing, co-author, Summer 1992
- "*Antitrust in the Health Care Field,*" a chapter published in Legal Aspects of Anesthesia, 2nd ed., William H. L. Dornette, J.D., M.D., editor
- *Antitrust Law Update, National Health Lawyers Health Law Update and Annual Meeting (Featured Speaker)*, San Francisco, California, 1989

Affiliations:

- American Association for Justice
- American Bar Association
- American Trial Lawyers Association
- Cincinnati Bar Association
- District of Columbia Bar Association (non-active)
- Hamilton County Trial Lawyers Association
- National Health Lawyers Association
- Ohio State Bar Association
- Ohio Trial Lawyers Association

Courts Admitted:

- District of Columbia (1981)
- State of Ohio (1983)
- United States District Court, Southern District of Ohio (1983)
- U.S. Court of Appeals, 6th Circuit (1991)
- U.S. Court of Appeals, 9th Circuit (1995)
- U.S. Supreme Court, United States of America (1998)
- United States District Court, Northern District of Ohio (2008)

PAUL M. DEMARCO

Paul M. De Marco is a founding member of Markovits, Stock & DeMarco, LLC. He is an Appellate Law Specialist certified by the Ohio State Bar Association and has handled more than 100 appellate matters, including cases before the Supreme Court of the United States, six federal circuits, and five state supreme courts.

Paul's practice also focuses on class actions and other complex litigation. During his 25 years in Cincinnati, Paul has been actively involved in successful litigation related to the U.S. Department of Energy's Fernald nuclear weapons plant, the Lucasville (Ohio) prison riot, Lloyd's of London, defective Bjork-Shiley heart valves, Holocaust-related claims against Swiss and Austrian banks, the Bankers Trust derivative scheme, Cincinnati's Aronoff Center, the San Juan DuPont Plaza Hotel fire, the Procter & Gamble Satanism rumor, the Hamilton County (Ohio) Morgue photograph scandal, defective childhood vaccines, claims arising from tire delamination and vehicle roll-over, racial hostility claims against one of the nation's largest bottlers, fiduciary breach claims against the nation's largest pharmacy benefits manager, and claims arising from the heatstroke death of NFL lineman Korey Stringer.

Education:

College of Wooster (B.A., 1981)

University of the Pacific, McGeorge School of Law (J.D. with distinction, 1983)

University of Cambridge (1985)

Significant and Representative Appeals:

- *Arthur Anderson LLP v. Carlisle*, 556 U.S. 624, 129 S.Ct. 1896 (2009): In a case involving allegations of a fraudulent tax shelter and accounting and legal malpractice, the Supreme Court of the United States resolved the issue of the rights of non-parties to arbitration clauses to enforce them against parties, which had divided the circuits.
- *Williams v. Duke Energy International, Inc.*, 681 F.3d 788 (6th Cir. 2012): In a case brought as a class action by a utility's ratepayers for selective payment of illegal rebates to certain ratepayers, the United States Court of Appeals for the Sixth Circuit reversed a district court's dismissal of the excluded ratepayers' claims that the utility violated the RICO statute, the Robinson-Patman Act, and the state corrupt practices act.
- *State of Ohio ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 865 N.E.2d 1289 (2007): The Supreme Court of Ohio upheld the appellate court's issuance of the extremely rare writ of procedendo commanding the trial judge to proceed with a trial on claims he mistakenly believed the previous jury had resolved.
- *Chesher v. Neyer*, 477 F.3d 784 (6th Cir. 2007): The Sixth Circuit affirmed the district court's rejection of qualified immunity defenses raised by the Hamilton County (Ohio) coroner, his chief deputy, the coroner's administrative aide, a staff pathologist, and a pathology fellow in connection with the Hamilton County Morgue photo scandal.
- *State of Ohio ex rel. CNG Fin'l Corp. v. Nadel*, 111 Ohio St.3d 149, 855 N.E.2d 473 (2006): The Supreme Court of Ohio affirmed the appellate court's refusal to issue a writ of procedendo commanding the trial judge to halt injunctive proceedings and decide an arbitration issue.
- *Smith v. North American Stainless, L.P.*, 158 F. App'x. 699 (6th Cir. 2006): Rejecting a steel manufacturer's "up-the-ladder" immunity defense, the United States Court of Appeals for the Sixth Circuit reversed the district court's dismissal of a wrongful claim brought by the widow and estate of a steel worker killed on the job.
- *Procter & Gamble Co. v. Haugen*, 427 F.3d 727 (10th Cir. 2005): The United States Court of Appeals for the Tenth Circuit reversed the district court's dismissal of Procter & Gamble's Lanham Act claims, paving the way for a $19.25 million jury verdict in its favor.

- *Roetenberger v. Christ Hospital*, 163 Ohio App.3d 555, 839 N.E.2d 441 (2005): In this medical malpractice action for wrongful death, the Ohio court of appeals reversed the jury verdict in the physician's favor due to improper arguments by his attorney and instructional error by the trial court.
- *City of Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 768 N.E.2d 1136 (2002): In this landmark decision on public nuisance law, the Supreme Court of Ohio held that a public nuisance action could be maintained for injuries caused by a product — in this case, guns — if the design, manufacture, marketing, or sale of the product unreasonably interferes with a right common to the general public.
- *Norgard v. Brush Wellman, Inc.*, 95 Ohio St.3d 165, 766 N.E.2d 977 (2002): In an employee's intentional tort action alleging that his employer subjected him to long-term beryllium exposure, the Supreme Court of Ohio ruled that a cause of action for an employer intentional tort accrues when the employee discovers, or by the exercise of reasonable diligence should have discovered, the workplace injury and — here's the ground-breaking part of the holding — the wrongful conduct of the employer.
- *Wallace v. Ohio Dep't of Commerce*, 96 Ohio St.3d 266, 773 N.E.2d 1018 (2002): In overturning the dismissal of a suit against the state fire marshal for negligently inspecting a fireworks store that caught fire killing nine people, the Supreme Court of Ohio held for the first time that the common-law public-duty rule cannot be applied in cases against the state in the Ohio Court of Claims.

Courts Admitted:

- Ohio
- California
- Supreme Court of the United States
- U.S. Court of Appeals, 1st Circuit
- U.S. Court of Appeals, 4th Circuit
- U.S. Court of Appeals, 5th Circuit
- U.S. Court of Appeals, 6th Circuit
- U.S. Court of Appeals, 7th Circuit
- U.S. Court of Appeals, 9th Circuit
- U.S. Court of Appeals, 10th Circuit
- U.S. District Court, Southern District of Ohio
- U.S. District Court, Northern District of Ohio
- U.S. District Court, Eastern District of California
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of California
- U.S. Court of Federal Claims

Since 1994, Paul has worked to promote professional responsibility among lawyers, serving first as a member and eventually the chair of the Cincinnati Bar Association Certified Grievance Committee, and since 2008 as a member of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

He also is a member of many legal organizations, including the Federal Bar Association, Ohio State Bar Association, Cincinnati Bar Association, American Bar Association, ABA Council of Appellate Lawyers, and the Cincinnati Bar Association's Court of Appeals Committee.

Paul was one of the founders of the Collaborative Law Center in Cincinnati, a member of Cincinnati's Citizens Police Review Panel (1999-2002), and a member of Cincinnati CAN and its Police and Community Subcommittee following the 2001 riots.

He currently serves on the boards of the Ohio Justice and Policy Center and the Mercantile Library and on the advisory committees of the Fernald Community Cohort and the Fernald Workers' Medical Monitoring Program.

TERENCE R. COATES

Terry Coates is Markovits, Stock & DeMarco's managing partner. His legal practice focuses on personal injury law, sports & entertainment law, business litigation and class action litigation. Mr. Coates is currently participating as a member of plaintiffs' counsel in the over 75 data breach cases pending around the country, including serving as co-lead counsel for plaintiff in *Migliaccio v. Parker Hannifin Corp.*, No. 1:22-CV-00835 (N.D. Ohio) (Class Counsel for $1.75 million data breach class action settlement); *Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.) (Class Counsel for $825,000 data breach class action settlement); *Abrams v. Savannah College of Art & Design*, No. 1:22-CV-04297 (N.D. Ga.) (Class Counsel for data breach class action settlement); *John v. Advocate Aurora Health, Inc.*, No. 22-CV-1253-JPS (E.D. Wis.) (Class Counsel in $12,225,000 data privacy class action settlement); *In re Cerebral, Inc. Privacy Practices*, No. 2:23-cv-1803 (C.D. Cal.) (interim co-lead class counsel in a data privacy class action); *In re U.S. Vision Data Breach Litigation*, No. 22-cv-06558 (D. N.J.) (court-appointed interim co-lead class counsel for plaintiffs); *Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00185 (S.D. Ohio) (Class Counsel for $1.75 million common fund settlement); *Vansickle v. C.R. England*, No. 22-cv-00374 (D. Utah) (Class Counsel in data breach class action settlement in principle); *Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00185 (S.D. Ohio) (Class Counsel for $1.75 million common fund settlement); *Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495 (N.D. Ga.) (class counsel in data breach class action settlement in principle); *Tracy v. Elekta, Inc.*, No. 1:21-cv-02851-SDG (N.D. Ga.) (court-appointed interim class counsel); *Rodriguez v. Professional Finance Company, Inc.*, No. 1:22-cv-1679 (D. Colo.) (same).

Education:

Thomas M. Cooley Law School, J.D. (2009)

Wittenberg University, B.A. (2005)

Representative Cases:

- *Bechtel v. Fitness Equipment Services, LLC*, No. 1:19-cv-726-KLL (S.D. Ohio) ($3.65 million common fund settlement finally approved on September 20, 2022);
- *Bowling v. Pfizer, Inc.*, No. C-1-95-256 (S.D. Ohio) (Class Counsel for recipients of defective mechanical heart valves including continued international distribution of settlement funds to remaining class members);
- *Collins Inkjet Corp. v. Eastman Kodak Company*, No. 1:13-cv-0664 (S.D. Ohio) (trial counsel for Collins in an antitrust tying claim resulting in a preliminary injunction against Kodak – a decision that was affirmed by the Sixth Circuit Court of Appeals: *Collins Inkjet Corp. v. Eastman Kodak Co.*, 781 F.3d 264 (6th Cir. 2015));
- *Day v. NLO, Inc.*, Case No. C-1-90-67 (S.D. Ohio) (Class Counsel for certain former workers at the Fernald Nuclear weapons facility; the medical monitoring program continues);
- *In re Fannie Mae Securities Litigation*, Case No. 1:04-cv-1639 (D.D.C.) (represented Ohio public pension funds as Lead Plaintiffs in Section 10b securities class action litigation resulting in a $153 million court-approved settlement);
- *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litigation*, MDL No. 2151 (C.D. Cal.) (represented plaintiffs and prepared class representatives for deposition testimony resulting in a court-approved settlement valued in excess of $1.5 billion);
- *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, Case No. 09-1967 (N.D. Cal.) (represented NCAA, Olympic, and NBA legend, Oscar Robertson, in antitrust claims against the National Collegiate Athletic Association (NCAA), Collegiate Licensing Company (CLC), and Electronic Arts (EA) leading to a $40 million settlement with EA and CLC and the Court issuing a permanent injunction against the NCAA for unreasonably restraining trade in violation of antitrust law);
- *Linneman v. Vita-Mix Corp.*, No. 14-cv-748, (S.D. Ohio) (Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement);

- *Ryder v. Wells Fargo Bank, N.A.*, No. 1:2019-cv-00638 (S.D. Ohio) (member of class counsel in a $12 million settlement on behalf of roughly 1,830 class members);
- *Shy v. Navistar International Corp.*, No. 92-cv-0333-WHR (S.D. Ohio) (class counsel for a class action settlement valued at over $742 million);
- *Walker v. Nautilus, Inc.*, No. 2:20-cv-3414-EAS (S.D. Ohio) ($4.25 million common fund settlement; and,
- *Williams v. Duke Energy*, No. 1:08-cv-00046 (S.D. Ohio) (representing class of energy consumers against energy provider in complex antitrust and RICO class action resulting in the court granting final approval of an $80.875 million settlement).

Community Involvement:

- Cincinnati Academy of Leadership for Lawyers (CALL), Class XXI, *Participant* (2017)
- Cincinnati Chamber of Commerce C-Change Class 9, *Participant* (2014)
- Cincinnati Chamber of Commerce, *Ambassador* (2014)
- Cincinnati Athletic Club, *President* (2015-2017)
- Cincinnati Athletic Club, *Vice President* (2014-2015)
- Cincinnati Bar Association, Board of Trustees, *Trustee* (2019-present)
- Cincinnati Bar Association, Board of Trustees, *Executive Committee* (2021-present)
- Cincinnati Bar Association, Board of Trustees, *Secretary* (2023-present)
- Cincinnati Bar Association, *Membership Services & Development Committee* (2014-present)
- Cincinnati Bar Association, *Run for Kids Committee* (2009-2014)
- Cincinnati Bar Association, *Social Committee* (2011-2014)
- Clermont County Humane Society, *Board Member* (2014-2017)
- Clermont County Humane Society, *Legal Adviser* (2017-present)
- Potter Stewart Inn of Court, *Executive Director* (2021-present)
- Summit Country Day High School, *Mock Trial Adviser* (2013-2016)
- St. Peter in Chains, Cathedral, Parish Council (2014-2017)

Recognitions:

- Super Lawyers, Rising Star (2014 – 2022)
- Super Lawyers, Super Lawyer (2022-present)
- Best Lawyers in America, Commercial Litigation (2020-present)
- Wittenberg University Outstanding Young Alumnus Award (2014)
- Cincinnati Bar Association, Young Lawyers Section Professionalism Award (2015)
- JDRF Bourbon & Bow Tie Bash, *Young Professional (Volunteer) of the Year* for the Flying Pig Marathon (2016)
- Cincinnati Business Courier, Forty Under 40 (2019)
- Cincinnati Cystic Fibrosis Foundation, Cincinnati's Finest Honoree (2020)

Courts Admitted:

- State of Ohio (2009)
- United States District Court, Southern District of Ohio (2010)
- United States District Court, Northern District of Ohio (2010)
- United States District Court, Eastern District of Michigan (2021)
- United States District Court, District of Colorado (2022)
- United States District Court, Eastern District of Wisconsin (2022)
- United States District Court, Western District of Michigan (2023)
- United States District Court, District of Nebraska (2023)
- United States Court of Appeals, Sixth Circuit (2018)

JUSTIN C. WALKER

Justin C. Walker is Of Counsel at Markovits, Stock & DeMarco. Justin's practice areas are focused on complex civil litigation and constitutional law, with an emphasis on consumer fraud and defective products. Before joining Markovits, Stock & DeMarco in April 2019, Justin practiced at the Finney Law Firm, a boutique law firm specializing in complex litigation and constitutional law. At the beginning of his legal career, Justin served as a judicial extern for Senior United States District Judge Sandra S. Beckwith before taking a full-time position as a law clerk and magistrate in the Hamilton County Ohio Court of Common Pleas for the Honorable Norbert A. Nadel. After completing his clerkship, Justin took a position as a prosecutor, serving as first chair for multiple jury trials. Justin then entered private practice, shifting his practice to focus on litigation matters.

Education:

University of Cincinnati, J.D. (2005)

Miami University, B.S. (2001)

Courts Admitted:

- State of Ohio (2005)
- U.S. Court of Appeals, 6th Circuit (2017)
- U.S. District Court, Southern District of Ohio (2008)
- U.S. Bankruptcy Court, Southern District of Ohio (2009)

Representative Cases:

- *Linneman v. Vita-Mix Corp.*, Case No. 15-cv-748, United States District Court, Southern District of Ohio (Co-Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement).
- *Baker v. City of Portsmouth*, Case No. 1:14-cv-512, 2015 WL 5822659 (S.D. Ohio Oct. 1, 2015) (Co-Counsel for a class of property owners, the Court ruled that City violated the Fourth Amendment when it required property owners to consent to a warrantless inspection of their property or face a criminal penalty where not valid exception to the warrant requirement exists).
- *E.F. Investments, LLC v. City of Covington, Kentucky*, Case No. 17-cv-00117-DLB-JGW, United States District Court, Eastern District of Kentucky (Lead Counsel on case brought on behalf of local property owners, contending that City's rental registration requirements violated the Fourth Amendment resulting in a settlement).
- *State of Ohio ex rel. Patricia Meade v. Village of Bratenahl*, 2018-04409, Supreme Court State of Ohio (Co-Counsel on behalf of local taxpayer contending that Defendant's violated Ohio Open Meetings Law).
- *Dawson v. Village of Winchester*, United States District Court, Southern District of Ohio (Lead Counsel represented Plaintiff claiming Federal Civil Rights violations due to unconstitutional arrest and detainment).

Affiliations and Presentations:

- Cincinnati Bar Association
- Clermont County Bar Association
- American Association for Justice
- "Municipal Bankruptcy: Chapter 9 – Should Cincinnati Consider Filing for Bankruptcy"
- "Ohio CLE Introduction to Bankruptcy for Lawyers CLE"

CHRISTOPHER D. STOCK

Chris's legal practice focuses on securities class action and multi-district products liability litigation, as well as appellate advocacy. Serving as a judicial law clerk for Ohio Supreme Court Justice Terrence O'Donnell gave Chris invaluable insight into how courts synthesize and deconstruct legal arguments. Since then, Chris has briefed and argued numerous cases before the United States Court of Appeals for the Sixth Circuit, the Ohio Supreme Court, and Ohio appellate courts, including obtaining a rare summary reversal from the United States Supreme Court.

Chris also served as both Deputy First Assistant Attorney General and Deputy State Solicitor for Ohio Attorney General Jim Petro. In these positions, Chris was principal counsel to the Attorney General on a wide variety of legal and policy-oriented issues, including numerous constitutional and regulatory matters arising from state agencies, boards, and commissions. Prior to his service in state government, Chris was an attorney at a 500-lawyer nationally-recognized law firm.

He received multiple designations as an Ohio Super Lawyers "Rising Star."

Education:

The Ohio State University, Moritz College of Law, J.D. (2002)

The Ohio State University, BA (1997)

Significant Cases:

- *In re Fannie Mae Securities Litigation,* Case No. 1:04-cv-1639 (D.D.C.). Represented Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation.
- *Ohio Public Employees Retirement System v. Freddie Mac, et al.,* Case No. 4:08-cv-160 (N.D. Ohio). Representing Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation.
- *Williams v. Duke Energy,* Case No.: 1:08-CV-00046 (S.D. Ohio). Represented class of energy consumers against energy provider in complex antitrust and RICO class action.
- *Slaby v. Wilson,* Hamilton County Court of Common Pleas. Represented two private individuals who were falsely accused by a County Commissioner of murdering their child and covering up the child's death (as well as sexual abuse of child).
- *Kelci Stringer, et al. v. National Football League, et al.,* United States District Court, Southern District of Ohio, Western Division. Represented professional football player against NFL and helmet manufacturer in wrongful death/products liability litigation related to professional football player's death.
- *Susan B. Anthony List v. Driehaus,* United States District Court, Southern District of Ohio, Western Division. Represented former Congressman in defamation action against organization who published false statements about former Congressman's voting record and alleged influence over organization's commercial activities.
- *Mitchell v. Esparza,* Case No. 02-1369 (United States Supreme Court). Obtained summary reversal of Sixth Circuit decision on Eighth Amendment capital sentencing issue.
- *Cleveland Bar Association v. CompManagement, Inc.,* Case No. 04-0817 (Ohio Supreme Court). Represented the State of Ohio as amicus in landmark workers' compensation lawsuit.

Presentations:

- Class Action Boot Camp: The Basics and Beyond (2012).
- Harris Martin Toyota Sudden Unintended Acceleration Litigation Conference: TREAD Act Liability and Toyota (2010).
- Harris Martin BP Oil Spill Litigation Conference: The RICO Act's Application to the BP Oil Spill (2010).

Affiliations:

- Ohio State Bar Association
- Cincinnati Bar Association

Courts Admitted:

- State of Ohio (2002)
- United States District Court, Southern District of Ohio (2003)
- Sixth Circuit Court of Appeals, Ohio (2003)
- United States District Court, Northern District of Ohio (2007)

DYLAN J. GOULD

Dylan is an associate attorney at Markovits, Stock & DeMarco. Dylan's practice primarily focuses on class action and complex civil litigation with an emphasis on cases involving consumer fraud and data privacy. He also has experience with matters related to sports & entertainment, personal injury, commercial law, civil conspiracy, and civil litigation under the RICO Act. At the University of Cincinnati College of Law, where he spent multiple semesters on the Dean's Honors List, Dylan was selected to the Trial Practice and Moot Court teams, participating in mock trial and appellate court competitions with law students across the country. Upon graduation, Dylan joined Markovits, Stock & DeMarco, where he quickly gained valuable experience in nearly every facet of the litigation process while skillfully guiding several cases to final judgment, including as a court appointed member of class counsel in multiple actions gaining final approval of class action settlement. In recognition of his achievements, Dylan was named an Ohio Super Lawyers Rising Star in 2021 and 2023. Aside from his litigation practice, Dylan is also a Certified Contract Advisor with the National Football League Players Association.

Education:

University of Cincinnati, J.D. (2018)

University of Colorado at Boulder, B.A. (2015)

Courts Admitted:

- State of Ohio (2018)
- United States District Court, Southern District of Ohio (2019)
- United States District Court, Northern District of Ohio (2022)
- United States District Court, Eastern District of Wisconsin (2022)
- United States Court of Appeals, Sixth Circuit (2023)

Representative Cases:

- *In re Advocate Aurora Health Pixel Litigation*, No. 22-CV-1253-JPS (E.D. Wis.) (court appointed member of class counsel for preliminarily approved $12,225,000 common fund settlement in data privacy action);
- *Anderson v. Fortra LLC*, No. 0:23-cv-00533 (SRN/DTS) (D. Minn.) (court appointed member of Executive Committee Counsel in pending data breach action involving millions of victims);
- *Lutz v. Electromed, Inc.*, No. 21-cv-2198 (D. Minn.) (court appointed member of class counsel in data breach action that gained final approval of $825,000 common fund settlement);
- *Compound Property Management LLC v. Build Realty, Inc.*, No. 1:19-CV-133, 2023 WL 2140981 (S.D. Ohio Feb. 21, 2023) (granting contested class certification of claims related to complex real estate lending scheme in civil RICO action and appointing Mr. Gould as a member of class counsel);
- *Voss v. Quicken Loans*, No. A 2002899, 2023 WL 1883124 (Feb. 8, 2023 Ohio Com.Pl.) (granting contested class certification of action under Ohio Revised Code § 5301.36 and appointing Mr. Gould as member of class counsel);

Affiliations:

Cincinnati Bar Association

Ohio State Bar Association

JONATHAN T. DETERS

Jon is a Cincinnati native whose legal practice is focused on complex civil litigation, class action litigation, personal injury law, and sports & entertainment law. Jon has been a litigator since the start of his career, and his clients have included individuals, businesses, local governments, and government officials. Jon's experience serving as both plaintiff and defense counsel make him uniquely qualified and well-suited to represent individual and corporate clients in litigation. Jon has been designated as an Ohio Super Lawyers "Rising Star" from 2019-present, which is a distinction awarded to less than 2.5% of Ohio attorneys under the age of 40.

Before joining Markovits, Stock & DeMarco in January 2022, Jon practiced at Schroeder, Maundrell, Barbiere & Powers, an Ohio law firm specializing in civil litigation, personal injury, and constitutional law. While in law school, Jon served as a constable in the Hamilton County Ohio Court of Common Pleas for the Honorable Steven E. Martin and worked as law clerk at the Law Office of Steven R. Adams.

Education:

Salmon P. Chase School of Law at Northern Kentucky University, J.D. (2015)

Xavier University, Cincinnati, Ohio, Honors Bachelor of Arts (2012)

Representative Cases:

- *Baker v. Carnine*, No. 1:19-CV-60 (2022), United States District Court, Southern District of Ohio
- *Jones v. Vill. of Golf Manor,* No. 1:18-CV-403 (2020), United States District Court, Southern District of Ohio
- *Vaduva v. City of Xenia*, 780 F. App'x 331 (2019), United States Court of Appeals, Sixth Circuit
- *Gillispie v. Miami Twp.*, No. 3:13-CV-416 (2017), United States District Court, Southern District of Ohio
- *City of Mt. Healthy v. Fraternal Ord. of Police, Ohio Lab. Council, Inc.*, 101 N.E.3d 1163 (2017), Ohio First District Court of Appeals

Community Involvement:

- Cincinnati Bar Association, *Member*
- Ohio Bar Association, *Member*
- Boy Hope Girls Hope of Cincinnati, *Young Professionals Board Member*
- Board of Trustees of the New St. Joseph Cemetery, Cincinnati, Ohio, *Member*

Courts Admitted:

- State of Ohio
- United States District Court, Southern District of Ohio
- United States Court of Appeals, Sixth Circuit

EXHIBIT 3

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

BONNIE GILBERT, WENDY BRYAN, PATRICIA WHITE, DAVID GATZ, CRYSTAL HULLET, LORI GRADER, DARYL WANSON, STEPHEN GABBARD, and ALICIA DUNN, on behalf of themselves and all other similarly situated,

Plaintiffs,

vs.

BIOPLUS SPECIALTY PHARMACY SERVICES, LLC,

Defendant.

Case No. 6:21-cv-02158-RBD-DCI

DECLARATION OF SCOTT M. FENWICK OF KROLL SETTLEMENT ADMINISTRATION LLC IN CONNECTION WITH PRELIMINARY APPROVAL OF SETTLEMENT

I, Scott M. Fenwick, hereby declare:

1. I am a Senior Director of Kroll Settlement Administration LLC ("Kroll"),[1] the Settlement Administrator to be appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with preliminary approval of the settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities, labor and employment, consumer and government enforcement matters. Kroll has provided class action services in over 3,000 settlements varying in size and complexity over the past 50 years.

3. Kroll is prepared to provide a full complement of notification and claims administration services in connection with that certain Settlement Agreement and Release (the "Settlement Agreement") entered into in connection with the above-captioned matter, including notice of the settlement disseminated by mail, email and through the use of a Settlement Website to be created in connection with this matter.

4. It is Kroll's understanding that it will be provided with Class Member Information for each of the Settlement Class Members covered under the proposed Settlement Agreement, which will include names, email addresses where available, physical addresses and an identifier denoting if

the record is for a Non-SSN Class Member or a SSN Class Member, and other elements pertinent to the administration of the Settlement.

Notice by Email

5. In preparation for disseminating notices by email, Kroll will work with Class Counsel and BioPlus's counsel (collectively, "Counsel") to finalize the language for the email form of the Short Form Notices that will be sent to Non-SSN Class Members and SSN Class Members (collectively "Notices"). Once the email forms of the Notices are approved, Kroll will create an email notice template in preparation for the email campaign. Kroll will prepare a file with available Settlement Class Member email addresses and upload the file to an email campaign platform. Kroll will prepare email proofs for Counsel's review and approval. The proofs/test emails for approval will include the body of the email and subject line. Once the proofs/test emails are approved, the email campaign will begin as directed in the Settlement.

6. Kroll will track and monitor emails that are rejected or "bounced back" as undeliverable. At the conclusion of the email campaign, Kroll will provide a report with the email delivery status of each record. The report will include the number of records that had a successful Notice delivery, and a count of the records where delivery failed. Kroll will also update its

administration database with the appropriate status of the email campaign for each of the Settlement Class Member records.

Notices by Mail

7. Kroll will work with Counsel to format the Notices for mailing. Upon approval, Kroll will coordinate the preparation of the Notice proofs for Counsel to review and approve.

8. As required under Section 10(d) of the Settlement Agreement, Kroll will send the Notices by first-class mail to the physical addresses of Settlement Class Members, who have a mailing address in the Class Member Information to be provided.

9. In preparation for mailing the Notices, Kroll will send the Class Member Information through the United States Postal Service's ("USPS") National Change of Address ("NCOA") database. The NCOA process will provide updated addresses for Settlement Class Members who have submitted a change of address with the USPS in the last 48 months, and the process will also standardize the addresses for mailing. Kroll will then prepare a mail file of Settlement Class Members that are to receive the Notices via first-class mail.

10. As required under Section 10(e) of the Settlement Agreement, mailed Notices returned by the USPS with a forwarding address will be automatically re-mailed to the updated address provided by the USPS.

11. As required under Section 10(f) of the Settlement Agreement, mailed Notices returned by the USPS undeliverable as addressed without a forwarding address will be sent through an advanced address search process in an effort to find a more current address for the record. If an updated address is obtained through the advanced search process, Kroll will re-mail the Notices to the updated address.

Settlement Website

12. Kroll will work with Counsel to create a dedicated Settlement Website. The Settlement Website URL will be determined and approved by Counsel. The Settlement Website will contain a summary of the Settlement, will allow Settlement Class Members to contact the Settlement Administrator with any questions or changes of address, provide notice of important dates such as the Final Fairness Hearing, Claims Deadline, Objection Date, and Opt-Out Date, and provide Settlement Class Members who file Claim Forms online the opportunity to select an electronic payment method, including Venmo, Zelle, Paypal, ACH, or payment by check. The Settlement Website will also contain relevant case documents including the

Settlement Agreement, Claim Form, the Short Form Notices, the Long Form Notice, the Preliminary Approval Order, and any other materials agreed upon by Counsel and/or required by the Court.

Toll-Free Number

13. Kroll will also establish a toll-free number for the Settlement. The toll-free number will allow Settlement Class Members to call and obtain information about the Settlement through an Interactive Voice Response System, as well as a voice mail box, allowing Kroll to return messages.

Post Office Box

14. Kroll will designate a post office box with the mailing address captioned *Gilbert et al. v. BioPlus Specialty Pharmacy Services* c/o Kroll Settlement Administration, PO Box <<####>>, New York, NY <<Zip-Zip4>> in order to receive requests for exclusion, Claim Forms, and correspondence from Settlement Class Members.

Reminder Notices

15. As required under Section 10(j) of the Settlement Agreement, 60 days after the Notice Date, Kroll will send Reminder Notices via email to Settlement Class Members who have not yet submitted a Claim Form and have not opted out of the Settlement, and for whom Kroll also has a valid email address included in the Class Member Information or otherwise

provided directly to Kroll by a Settlement Class Member. The Reminder Notices will be sent using the same form of the Notices as the original email campaign.

Notice and Settlement Administration Cost

16. Based on Kroll's current understanding of the class size and requested administration services, estimated fees and expenses for Notice and Settlement Administration Cost are approximately $350,000 for fees and costs for direct notice and claims administration under the Settlement. The current estimate is subject to change depending on factors such as the actual Settlement class size and/or any Settlement Administration scope change not currently under consideration.

I declare under penalty of perjury under the laws of the United Sates that the above is true and correct to the best of my knowledge and that this declaration was executed on June 30, 2023, in Woodbury, Minnesota.

Scott M. Fenwick