

Exhibit G

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
DENVER

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Attorneys for Defendant Magellan Health, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Chris Griffey, et al.,

Plaintiffs,

v.

Magellan Health, Incorporated,

Defendant.

No. CV-20-01282-PHX-MTL (Lead)
No. CV-20-01350-PHX-MTL (Consol.)

**CLASS ACTION SETTLEMENT
AGREEMENT**

(Assigned to the Honorable Michael T. Liburdi)

Daniel Ranson, et al.,

Plaintiffs,

v.

Magellan Health, Incorporated,

Defendant.

1 This Settlement Agreement, dated June 20, 2023, is made and entered into by and
2 among the following Settling Parties (defined below): Chris Griffey, Bharath
3 Maduranthgam Rayam, Laura Leather, Clara Williams, Daniel Ranson, Mitchell Flanders,
4 and Keith Lewis (collectively, “Plaintiffs”), individually and on behalf of the Settlement
5 Class (defined below), by and through their counsel of record, and Magellan Health, Inc.
6 (“Magellan”), by and through its counsel of record. The Settlement Agreement (defined
7 below) is subject to Court approval and is intended by the Settling Parties to fully, finally,
8 and forever resolve, discharge, and settle the Released Claims (defined below), upon and
9 subject to the terms and conditions thereof.

10 **I. THE LITIGATION**

11 This litigation arises from a 2020 phishing incident wherein a Magellan employee
12 clicked on a phishing email that resulted in a cybercriminal accessing a subset of data on a
13 Magellan corporate server and subsequently deploying ransomware to encrypt Magellan’s
14 files (the “Data Incident”). Plaintiffs allege that as a result of the Data Incident, the
15 cybercriminals gained access to certain of Plaintiffs’ and the Settlement Class Member’s
16 information. After responding to and investigating the Data Incident, Magellan notified
17 approximately 963,450 individuals of the Data Incident whose personal information
18 (“PII”) and personal health information (“PHI”), including names, addresses, employee ID
19 number, W-2 or 1099 details, treatment information, health insurance account information,
20 medical IDs, and in some instances, Social Security numbers or Taxpayer ID numbers,
21 may have been subject to unauthorized access during the Data Incident. Magellan also
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1 offered these individuals free credit monitoring. Individuals, including Plaintiffs, received
2 notices in or around May and June 2020.

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4 On June 29, 2020, Chris Griffey, Bharath Maduranthgam Rayam, Michael
5 Domingo, Laura Leather, and Clara Williams filed a putative class action. One week later,
6 on July 8, 2020, Daniel Ranson, Mitchell Flanders, Joseph Rivera, Teresa Culberson, and
7 Keith Lewis filed a substantially identical case. On October 8, 2020, the Court
8 consolidated both actions with and under the *Griffey* matter, titled *Griffey v. Magellan*
9 *Health, Inc.*, Case No. CV-20-01282-PHX-MTL. On December 11, 2020, the consolidated
10 plaintiffs filed their First Amended Consolidated Class Action Complaint, asserting 13
11 causes of action against Magellan on behalf of themselves and nationwide and various
12 putative classes.
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15 On January 25, 2021, the Court granted Magellan’s motion to dismiss in its entirety,
16 dismissing with prejudice the negligence *per se* claim and dismissing without prejudice the
17 remaining claims. On October 12, 2021, plaintiffs filed the operative complaint, the Second
18 Amended Consolidated Class Action Complaint (“SACC”), alleging eight claims against
19 Magellan. On October 26, 2021, Magellan moved to dismiss the SACC for failure to state
20 a claim under Fed. R. Civ. P. 12(b)(6). On June 2, 2022, the Court granted in part and
21 dismissed in part Magellan’s second motion to dismiss, dismissing Teresa Culberson and
22 Joseph Rivera from the Litigation, dismissing Plaintiffs Rayam’s and Williams’s
23 negligence claims, Plaintiffs Leather’s and Lewis’s unjust enrichment claims, Plaintiff
24 Domingo’s statutory claims, and Plaintiff Ranson’s CCPA claim.
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On September 30, 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 September 30 mediation, the Parties engaged in discovery, including exchanging discovery requests, the production of documents, and Plaintiff Leather’s deposition. During this time, the Parties continued to discuss settlement, and on May 4, 2023, the Parties reached a settlement, which is memorialized in this settlement agreement and attached exhibits (“Settlement Agreement”).

II. THE CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLING

Plaintiffs believe the claims asserted in the Litigation, as set forth in the SACC, 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 Magellan 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.

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1 **III. DENIAL OF WRONGDOING AND LIABILITY**

2 Magellan denies each and all of the claims and contentions alleged against it in the
3 Litigation. Magellan denies all charges of wrongdoing or liability as alleged, or which
4 could be alleged, in the Litigation. Nonetheless, Magellan has concluded that further
5 litigation would be protracted and expensive, and that it is desirable that the Litigation be
6 fully and finally settled in the manner and upon the terms and conditions set forth in this
7 Settlement Agreement. Magellan has considered the uncertainty and risks inherent in any
8 litigation. Magellan has, therefore, determined that it is desirable and beneficial that the
9 Litigation be settled in the manner and upon the terms and conditions set forth in this
10 Settlement Agreement.

11 **IV. SETTLEMENT TERMS & DEFINITIONS**

12 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and
13 among Plaintiffs, individually and on behalf of the Settlement Class, Class Counsel, and
14 Magellan that, subject to the approval of the Court, the Litigation, and the Released Claims
15 shall be finally and fully compromised, settled, and released, and the Litigation shall be
16 dismissed with prejudice as to the Settling Parties and the Settlement Class, except those
17 members of the Settlement Class who timely opt-out of the Settlement, upon and subject
18 to the terms and conditions of this Settlement Agreement, as follows:

19 **1. Definitions**

20 As used in the Settlement Agreement, the following terms have the meanings
21 specified below:
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1 1.1 “Action” or “Litigation” means the action titled, *Griffey et al. v. Magellan*
2 *Health, Inc.*, Case No. CV-20-01282-PHX-MTL, District Court of Arizona.

3 1.2 “Agreement” or “Settlement Agreement” means this agreement, exhibits,
4 and the settlement embodied herein.

5 1.3 “Claim” means a claim for Settlement benefits made under the terms of this
6 Settlement Agreement.

7 1.4 “Claims Deadline” means the postmark and/or online submission deadline
8 for Valid Claims submitted pursuant to ¶¶ 2.1 and 2.2.

9 1.5 “Claim Forms” means the claim forms to be used by Settlement Class
10 Members to submit a Claim, either through the mail or online through the Settlement
11 Website, substantially in the form as shown in Exhibits A-1 and A-2 attached hereto.

12 1.6 “Claims-Made Benefits” means the Settlement benefits (as described below)
13 available to the Claims-Made Settlement Class Members. The Claims-Made Benefits will
14 be funded by Magellan in an amount not to exceed \$2,250,000, inclusive of (i) all Valid
15 Claims for Settlement benefits made under ¶ 2.1; (ii) reasonable Notice and Settlement
16 Administration Costs (defined below) incurred in the administration of both Claims-Made
17 and Common Fund Benefits, including all taxes owed by the Claims-Made Benefits and
18 Common Fund; (iii) any attorneys’ fees, costs, and expenses, as approved by the Court;
19 and (iv) any Service Awards approved by the Court.

20 1.7 “Claims-Made Settlement Class Members” means the approximately
21 599,248 Settlement Class Members who were notified that their information may have
22 been impacted in the Data Incident, and whose Social Security numbers were not impacted
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1 in the Data Incident. The Claims-Made Settlement Class Members are eligible to submit a
2 claim under the Claims-Made Benefits.

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4 1.8 “Class Counsel” means David K. Lietz of Milberg Coleman Bryson Phillips
5 Grossman PLLC, John A. Yanchunis of Morgan & Morgan Complex Litigation Group,
6 and Elaine A. Ryan of Auer Ryan, PC.

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8 1.9 “Common Fund” means a non-reversionary common fund to be funded by
9 Magellan in the amount of \$1,500,000.

10 1.10 “Common-Fund Settlement Class Members” means the approximately
11 364,202 Settlement Class Members who were notified of the Data Incident and who were
12 notified that their Social Security numbers may have been impacted in the Data Incident.
13 Common-Fund Settlement Class Members are eligible to submit a claim under the
14 Common Fund.
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17 1.11 “Court” means the United States District Court for the District of Arizona.

18 1.12 “Dispute Resolution” means the process for resolving disputed Claims as set
19 forth in this Settlement Agreement.

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21 1.13 “Effective Date” means the first date by which all of the events and
22 conditions specified in ¶ 1.14 herein have occurred and been met.

23 1.14 “Final” means the occurrence of all of the following events: (i) the settlement
24 pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered
25 a Judgment (as that term is defined below); and (iii) the time to appeal or seek permission
26 to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in
27 its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to
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1 which such appeal may be taken, and such dismissal or affirmance has become no longer
2 subject to further appeal or review. Notwithstanding the above, any order modifying or
3 reversing any attorneys' fee award or service award made in this case shall not affect
4 whether the Judgment is "Final" as defined herein or any other aspect of the Judgment.
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6 1.15 "Judgment" means a judgment rendered by the Court.
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8 1.16 "Long Form Notice" means the long form notice of settlement posted on the
9 Settlement Website, substantially in the form as shown in Exhibit C attached hereto.

10 1.17 "Magellan's Counsel" means Baker & Hostetler LLP and Lewis Roca
11 Rothgerber Christie LLP.
12

13 1.18 "Notice Date" means 45 days following entry of the Preliminary Approval
14 Order. The Notice Date shall be used for purposes of calculating the Claims Deadline, Opt-
15 Out Date and Objection Date deadlines, and all other deadlines that flow from the Notice
16 Date.
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18 1.19 "Notice and Settlement Administration Cost" means all costs incurred or
19 charged by the Settlement Administrator in connection with providing Notice to Settlement
20 Class Members and costs of administering the Common Fund and Claims-Made Settlement
21 benefits.
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23 1.20 "Objection Date" means the date by which the Settlement Class Members
24 must mail to Class Counsel and Magellan's Counsel, or in the alternative, file with the
25 Court their objection to the Settlement Agreement for that objection to be effective. The
26 postmark date shall constitute evidence of the date of mailing for these purposes.
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1 1.21 “Opt-Out Date” means the date by which the Settlement Class Members must
2 mail their requests to be excluded from the Settlement Class for that request to be effective.
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4 The postmark date shall constitute evidence of the date of mailing for these purposes.

5 1.22 “Person” means an individual, corporation, partnership, limited partnership,
6 limited liability company or partnership, association, joint stock company, estate, legal
7 representative, trust, unincorporated association, government or any political subdivision
8 thereof, and any business or legal entity, and their respective spouses, heirs, predecessors,
9 successors, representatives, agents and/or assignees.
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11 1.23 “Preliminary Approval Order” means the order preliminarily approving the
12 Settlement Agreement and ordering that notice be provided to the Settlement Class. The
13 Settling Parties’ proposed form of Preliminary Approval Order is attached as Exhibit D
14 attached hereto.
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16 1.24 “Released Claims” shall collectively mean any and all past, present, and
17 future claims and causes of action including, but not limited to, any causes of action arising
18 under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or
19 common law of any country, state, province, county, city, or municipality, including
20 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States as
21 defined below; violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* and all similar state consumer-protection statutes; violations of the
23 California Consumer Protection Act of 2018, Cal. Civ. Code § 1798, *et seq.* and all similar
24 state privacy-protection statutes; violations of the California Customer Records Act, Cal.
25 Civ. Code § 1798.84, *et seq.* and all similar notification statutes in effect in any states in the
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1 United States; negligence; negligence *per se*; breach of contract; breach of implied contract;
2 breach of fiduciary duty; breach of confidence; invasion of privacy; fraud;
3 misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment;
4 wantonness; failure to provide adequate notice pursuant to any breach notification statute
5 or common law duty; and including, but not limited to, any and all claims for damages,
6 injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and
7 expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future
8 damages, statutory damages, punitive damages, special damages, exemplary damages,
9 restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or
10 unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other
11 form of legal or equitable relief that either has been asserted, was asserted, or could have
12 been asserted, by any member of the Settlement Class against any of the Released Parties
13 based on, relating to, concerning or arising out of the Data Incident and alleged theft of
14 other personal information or the allegations, transactions, occurrences, facts, or
15 circumstances alleged in or otherwise described in the Litigation. Released Claims shall not
16 include the right of any Settlement Class Member or any of the Released Parties to enforce
17 the terms of the settlement contained in this Settlement Agreement, and shall not include
18 the claims of the Settlement Class Members who have timely excluded themselves from the
19 Settlement Class.
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26 1.25 "Related Entities" means Magellan's past or present parents, subsidiaries,
27 divisions, and related or affiliated entities, and each of their respective predecessors,
28 successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers, and

1 includes, without limitation, any Person related to any such entity who is, was or could
2 have been named as a defendant in any of the actions in the Litigation, other than any
3 Person who is found by a court of competent jurisdiction to be guilty under criminal law
4 of initiating, causing, aiding or abetting the criminal activity occurrence of the Data
5 Incident or who pleads *nolo contendere* to any such charge.
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8 1.26 “Released Parties” means Magellan and its Related Entities and each of their
9 past or present parents, subsidiaries, divisions, and related or affiliated entities, and each
10 of their respective predecessors, successors, directors, officers, principals, agents,
11 attorneys, insurers, and reinsurers.
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13 1.27 “Settlement Administration” means the processing of Notice and the
14 processing and payment of Claims received from Settlement Class Members by the
15 Settlement Administrator.
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17 1.28 “Settlement Administrator” means Kroll Settlement Administration, a
18 company experienced in administering class action claims generally and specifically those
19 of the type provided for and made in data breach litigation.
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21 1.29 “Settlement Class” means all persons who were notified that their
22 information may have been impacted in the Data Incident. The Settlement Class
23 specifically excludes: (i) Magellan and its respective officers and directors; (ii) all
24 Settlement Class Members who timely and validly request exclusion from the Settlement
25 Class; (iii) the Judge and/or magistrate assigned to evaluate the fairness of this settlement;
26 and (iv) any other Person found by a court of competent jurisdiction to be guilty under
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1 criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo*
2 *contender* to any such charge.

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4 1.30 “Settlement Class Member(s)” means all Persons meeting the definition of
5 the Settlement Class.

6 1.31 “Settlement Website” means a website, the URL for which to be mutually
7 selected by the Settling Parties, that will inform Settlement Class Members of the terms of
8 this Settlement Agreement, their rights, dates and deadlines and related information, as
9 well as provide the Settlement Class Members with the ability to submit a Claim online.
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11 1.32 “Settling Parties” means, collectively, Magellan and Plaintiffs, individually
12 and on behalf of the Settlement Class, and all Released Parties.
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14 1.33 “Short Form Notices” means the short form notices of the proposed class
15 action settlement, substantially in the form as shown in Exhibits B-1 and B-2 attached
16 hereto. The Short Form Notice will direct recipients to the Settlement Website and inform
17 Settlement Class Members of, among other things, the Claims Deadline, the Opt-Out and
18 Objection Deadlines, and the date of the Final Fairness.
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20 1.34 “Unknown Claims” means any of the Released Claims that Plaintiffs do not
21 know or suspect to exist in their favor at the time of the release of the Released Parties that,
22 if known by them, might have affected their settlement with, and release of, the Released
23 Parties, or might have affected their decision not to object to and/or to participate in this
24 Settlement Agreement. With respect to any and all Released Claims, the Settling Parties
25 stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall
26 have waived the provisions, rights, and benefits conferred by California Civil Code § 1542,
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1 (or any similar comparable, or equivalent provision of any federal, state or foreign law, or
2 principle of common law which is similar, comparable, or equivalent to California Civil
3 Code §1542), which provides:
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5 A GENERAL RELEASE DOES NOT EXTEND TO
6 CLAIMS THAT THE CREDITOR OR RELEASING
7 PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN
8 HIS OR HER FAVOR AT THE TIME OF EXECUTING
9 THE RELEASE, AND THAT, IF KNOWN BY HIM OR
10 HER, WOULD HAVE MATERIALLY AFFECTED HIS
11 OR HER SETTLEMENT WITH THE DEBTOR OR
12 RELEASED PARTY.

11 Plaintiffs may hereafter discover facts in addition to, or different from, those that
12 they, and any of them, now know or believe to be true with respect to the subject matter of
13 the Released Claims, but Plaintiffs expressly shall have, upon the Effective Date, fully,
14 finally and forever settled and released any and all Released Claims. The Settling Parties
15 acknowledge that the foregoing waiver is a material element of the Settlement Agreement
16 of which this release is a part.
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18 1.35 “Valid Claims” means Claims in an amount approved by the Settlement
19 Administrator or found to be valid through the claims processing and/or Dispute Resolution
20 process.
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22 **2. Settlement Structure**
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24 2.1 Claims-Made Benefits

25 2.1.1 Claims-Made Settlement Class Members shall have the opportunity
26 to submit a Claim for Claims-Made Settlement Benefits on or before the Claims Deadline.
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28 The benefits available to Claims-Made Settlement Class Members, as described below,

1 shall include (1) Lost-Time Claims; (2) Out-of-Pocket Expense Claims; and (3) Identity
2 Protection Benefits.

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4 a) Lost-Time Claims: Claims-Made Settlement Class Members may
5 submit a Claim for up to three hours of time spend related to the Data
6 Incident at \$20 per hour if the Settlement Class Member (1) attests
7 that any claimed lost time was spent related to and arising out of the
8 Data Incident, and (2) selects the applicable activity the time was
9 spent on or provides a brief general description of how the claimed
10 lost time was spent. No documentation need be submitted in
11 connection with Lost-Time Claims.

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14 b) Out-of-Pocket Expense Claims: Claims-Made Settlement Class
15 Members may submit a Claim for reimbursement of documented out-
16 of-pocket losses reasonably and fairly traceable to the Data Incident.
17 Out-of-Pocket-Expense Claims will include, without limitation,
18 unreimbursed losses relating to fraud or identity theft; professional
19 fees including attorneys' fees, accountants' fees, and fees for credit
20 repair services; costs associated with freezing or unfreezing credit
21 with any credit reporting agency; credit monitoring costs that were
22 incurred on or after April 2020 that the claimant attests under penalty
23 of perjury were caused or otherwise incurred as a result of the Data
24 Incident, through the date of claim submission; and miscellaneous
25 expenses such as notary, data charges (if charged based on the
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1 amount of data used) fax, postage, copying, mileage, cell phone
2 charges (only if charged by the minute), and long-distance telephone
3 charges. Claims-Made Settlement Class Members with Out-of-
4 Pocket-Expense Claims must submit documentation and attestation
5 supporting their claims. This may include receipts or other
6 documentation, not “self-prepared” by the claimant, that documents
7 the costs incurred. “Self-prepared” documents such as handwritten
8 receipts are, by themselves, insufficient to receive reimbursement,
9 but may be considered to add clarity or support to other submitted
10 documentation. Out-of-Pocket Expense Claims must include an
11 attestation that the monetary losses are fairly traceable to the Data
12 Incident and were not incurred due to some other event or reason.

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17 c) Identity-Theft Protection Benefits: Claims-Made Settlement Class
18 Members may submit a Claim to accept the 12 months of free
19 identity-theft-protection services offered as part of the Settlement.

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21 2.1.2 Claims-Made Settlement Class Members’ claims for Lost Time
22 and/or Out-of-Pocket Losses are subject to an individual cap of \$750 per claimant.

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24 2.1.3. Use of Claims-Made Benefits: The Claims-Made Benefits shall be
25 used to pay for (i) reasonable Notice and Settlement Administration Costs incurred in the
26 administration of both Claims-Made Benefits and Common Fund, including all taxes owed
27 by the Claims-Made Benefits and Common Fund; (ii) any attorneys’ fees, costs, and
28 expenses, as approved by the Court; (iii) any Service Awards approved by the Court; and

1 (iv) any Claims-Made Benefits to Claims-Made Settlement Class Members, pursuant to
2 the terms and conditions of this Agreement. In no event shall the total costs of Claims-
3 Made Benefits exceed \$2,250,000.
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5 2.2 Common-Fund Benefits

6 2.2.1 The Common-Fund Settlement Class Members shall have the
7 opportunity to submit a Claim for Common-Fund Benefits on or before the Claims
8 Deadline. The Common-Fund Benefits, as described below, shall include (1) Pro-Rata
9 Cash Payments; or (2) Lost-Time Claims and (3) Out-of-Pocket Expense Claims. These
10 benefits shall be paid from the \$1,500,000 non-reversionary Common Fund.
11

12 a) \$100 Pro-Rata Cash Payment: Common-Fund Settlement Class
13 Members may submit a Claim for a \$100 cash payment. The
14 Settlement Administrator will make *pro rata* settlement payments,
15 which may increase or decrease the \$100 Cash Payment, subject to
16 the Common Fund cap (described below).
17

18 b) Lost-Time Claims: Common-Fund Settlement Class Members may
19 submit a Claim for up to five hours of time spend remedying issues
20 related to the Data Incident at \$25 per hour if the Settlement Class
21 Member (1) attests that any claimed lost time was spent related to
22 and arising out of the Data Incident, and (2) selects the applicable
23 activity the time was spent on or provides a brief general description
24 of how the claimed lost time was spent. No documentation need be
25 submitted in connection with Lost-Time Claims.
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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 April 2020 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

1 attestation that the monetary losses are fairly traceable to the Data
2 Incident and were not incurred due to some other event or reason.

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4 2.2.2 Common-Fund Settlement Class Members may either (1) submit a
5 claim for the Pro-Rata Cash Payment or (2) submit a claim for Lost Time and/or Out-of-
6 Pocket Expenses

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8 2.2.3 Common-Fund Settlement Class Members’ claims for Lost Time
9 and/or Out-of-Pocket Losses are subject to an individual cap of \$5,000 per claimant.

10 2.3 Notice Deadline: Settlement Class Members seeking reimbursement under
11 ¶¶ 2.1 or 2.2 must complete and submit a Claim Form to the Settlement Administrator,
12 postmarked or submitted online on or before the 90th day after the Notice Date. The notice
13 to the Settlement Class will specify this deadline and other relevant dates described herein.
14 The Claim Form must be verified by the Settlement Class Member with a statement that
15 his or her claim is true and correct, to the best of his or her knowledge and belief and is
16 being made under penalty of perjury. Notarization shall not be required.

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19 2.4 Dispute Resolution

20 2.4.1 The Settlement Administrator, in its sole discretion to be reasonably
21 exercised, will determine whether: (1) the Claimant is a Settlement Class Member; (2) the
22 Claimant has provided all information needed to complete the Claim Form, including any
23 documentation that may be necessary to reasonably support the Out-of-Pocket Expenses
24 Claims described above; and (3) the information submitted could lead a reasonable person
25 to conclude that more likely than not the Claimant has suffered the claimed losses as a
26 result of the Data Incident (collectively, “Facially Valid”). The Settlement Administrator
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1 shall have the sole discretion and authority to determine whether and to what extent
2 documentation for Out-of-Pocket Expenses reflect valid Out-of-Pocket Expenses actually
3 incurred that are fairly traceable to the Data Incident, but may consult with Class Counsel
4 and Magellan’s Counsel in making individual determinations. Out-of-Pocket Expenses will
5 be presumed “fairly traceable” if: (1) the timing of the losses occurred on or after April
6 2020; and (2) the personal information used to commit identity theft or fraud consisted of
7 the same type of personal information that was provided to Magellan prior to the Data
8 Incident. The Settlement Administrator is authorized to contact any Settlement Class
9 Member to seek clarification regarding a submitted claim prior to making a determination
10 as to its validity. Out-of-Pocket Expenses are not eligible for reimbursement to the extent
11 a Settlement Class Member has already been reimbursed for the same expense by any other
12 source, including any compensation provided in connection with the credit monitoring
13 product previously offered by Magellan.
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18 2.4.2 To the extent the Settlement Administrator determines a claim for
19 Out-of-Pocket Expenses, or Lost Time is deficient in whole or in part, within a reasonable
20 time of making such a determination, but no later than 14 days after the Claims Deadline,
21 the Settlement Administrator is authorized to contact the Settlement Class Member via
22 telephone or e-mail in an attempt to informally resolve the deficiency prior to sending a
23 formal deficiency notice. If the deficiency is not resolved in this manner, the Settlement
24 Administrator shall formally notify the Settlement Class Member of the deficiencies and
25 give the Settlement Class Member 21 days to cure the deficiencies. Such notifications shall
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1 be sent via e-mail, unless the Claimant did not provide an e-mail address, in which case
2 such notifications shall be sent via U.S. mail.

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4 2.4.3 If the Settlement Class Member attempts to cure the deficiencies but,
5 at the sole discretion and authority of the Settlement Administrator, fails to do so, the
6 Settlement Administrator shall notify the Settlement Class Member of that determination
7 within 10 days of the determination that the deficiencies have not been cured. The
8 Settlement Administrator may consult with counsel for both Parties prior to making such
9 determinations. The notice shall inform the Settlement Class Member of his or her right to
10 dispute in writing the deficiency determination and of his or her right to request an appeal
11 of this determination within 30 days of the deficiency determination.

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14 2.4.4 If a Settlement Class Member disputes in writing a determination and
15 requests an appeal, the Settlement Administrator shall provide Class Counsel and
16 Magellan's Counsel a copy of the Settlement Class Member's dispute and his or her Claim
17 Form along with all documentation or other information submitted by the Settlement Class
18 Member. Class Counsel and Magellan's Counsel shall confer regarding the claim
19 submission, and their agreement on approval or denial of the Settlement Class Member's
20 claim, in whole or in part, will be final.

23 **3. Notice and Settlement Administration Expenses**

24 3.1 All Notice and Settlement Administration Costs, including, without
25 limitation, the fees and expenses of the Settlement Administrator, shall be paid by Magellan
26 directly to the Settlement Administrator. Such costs are subject to the \$2,250,000 Claims-
27 Made Benefits cap.
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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 250 timely and valid Opt-Outs submitted, Magellan may, by notifying Settlement Class Counsel and the Court in writing, void this Settlement Agreement. If Magellan voids the Settlement Agreement pursuant to this paragraph, Magellan shall be obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs, and expenses of Class Counsel and service awards.

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

1 Date. Such notice shall state: (i) the objector's full name and address; (ii) the case name
2 and docket number: *Griffey v. Magellan Health, Inc.*, Case No. CV-20-01282-PHX-MTL;
3 (iii) a written statement of all grounds for the objection, including whether the objection
4 applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement
5 Class, accompanied by any legal support for the objection the objector believes applicable;
6 (iv) the identity of any and all counsel representing the objector in connection with the
7 objection; (v) a statement whether the objector and/or his or her counsel will appear at the
8 Final Fairness Hearing; and (vi) the objector's signature or the signature of the objector's
9 duly authorized attorney or other duly authorized representative (if any) representing him
10 or her in connection with the objection. To be timely, written notice of an objection in the
11 appropriate form must be mailed, with a postmark date no later than 60 days from the
12 Notice Date, to Class Counsel David Lietz, Milberg Coleman Bryson Phillips Grossman
13 PLLC, 5335 Wisconsin Avenue NW, Suite 440, Washington, DC 20015; and counsel for
14 Magellan, Christopher A. Wiech and Keeley O. Cronin at 1801 California Street, Suite
15 4400, Denver, CO 80202. The objector or his or her counsel may also file their Objection
16 with the Court through the Court's ECF system, with service on Class Counsel and
17 Magellan's counsel, to be made through the ECF system. For all objections mailed to Class
18 Counsel and Magellan's Counsel, Class Counsel will file them with the Court as an exhibit
19 to Plaintiffs' motion for final approval.
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26 5.2 Any Settlement Class Member who fails to comply with the requirements for
27 objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear
28 separately and/or to object to the Settlement Agreement, and shall be bound by all the terms

1 of the Settlement Agreement and by all proceedings, orders and judgments in the
2 Litigation. The exclusive means for any challenge to the Settlement Agreement shall be
3 through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the
4 Settlement Agreement, the final order approving this Settlement Agreement, or the
5 Judgment to be entered upon final approval shall be pursuant to appeal under the Federal
6 Rules of Appellate Procedure and not through a collateral attack.
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9 **6. Settlement Class Certification**

10 6.1 The Settling Parties agree, for purposes of this settlement only, to the
11 certification of the Settlement Class. If the settlement set forth in this Settlement
12 Agreement is not approved by the Court, or if the Settlement Agreement is terminated or
13 cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement,
14 and the certification of the Settlement Class provided for herein, will be vacated and the
15 Litigation shall proceed as though the Settlement Class had never been certified, without
16 prejudice to any Person's or Settling Party's position on the issue of class certification or
17 any other issue. The Settling Parties' agreement to the certification of the Settlement Class
18 is also without prejudice to any position asserted by the Settling Parties in any other
19 proceeding, case or action, as to which all of their rights are specifically preserved.
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23 **7. Releases**

24 7.1 Upon the Effective Date, each Settlement Class Member, including
25 Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully,
26 finally, and forever released, relinquished, and discharged all Released Claims. Further,
27 upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class
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1 Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a
2 member of or on behalf of the general public or in any capacity, be permanently barred and
3 enjoined from commencing, prosecuting, or participating in any recovery in any action in
4 this or any other forum (other than participation in the settlement as provided herein) in
5 which any of the Released Claims is asserted.
6

7
8 7.2 Upon the Effective Date, Magellan shall be deemed to have, and by operation
9 of the Judgment shall have, fully, finally, and forever released, relinquished, and
10 discharged, Representative Plaintiffs, each and all of the Settlement Class Members, Class
11 Counsel, of all claims, including Unknown Claims, based upon or arising out of the
12 institution, prosecution, assertion, settlement, or resolution of the Litigation, except for
13 enforcement of the Settlement Agreement. Any other claims or defenses Magellan may
14 have against such Persons including, without limitation, any claims based upon or arising
15 out of any contractual, employment, or other business relationship with such Persons that
16 are not based upon or do not arise out of the institution, prosecution, assertion, settlement,
17 or resolution of the Litigation are specifically preserved and shall not be affected by the
18 preceding sentence.
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22 7.3 Notwithstanding any term herein, neither Magellan nor its Released Parties
23 shall have or shall be deemed to have released, relinquished or discharged any claim or
24 defense against any Person other than Representative Plaintiffs, each and all of the
25 Settlement Class Members, and Class Counsel.
26

27 **8. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service**
28 **Awards to Representative Plaintiffs**

1 8.1 The Parties have agreed that, as part of the Settlement, the Court shall
2 determine the amount of any award of attorneys’ fees, costs, and service awards.

3
4 8.2 Plaintiffs’ Counsel shall submit a motion to the Court requesting attorneys’
5 fees, costs, and service awards no later than 14 days before the Objection and Opt-Out
6 Deadlines.

7
8 8.3 Magellan shall retain any and all rights to oppose any such filed motion(s)
9 on any and all available grounds related to the amount of attorneys’ fees, costs, and/or
10 service awards.

11 8.4 Any attorneys’ fees and costs awarded by the Court, as well as any service
12 awards awarded by the Court, shall be due and payable within 30 days after the Effective
13 Date. Any attorneys’ fees, costs, and/or Service Awards awarded by the Court shall be paid
14 by Magellan. Such costs are subject to \$2,250,000 Claims-Made Benefits cap.

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

19 9.1 Contemporaneously with Plaintiffs’ Motion for Preliminary Approval, but in
20 no event later than June 20, 2023, Class Counsel and Magellan’s Counsel shall jointly
21 submit this Settlement Agreement to the Court, and Class Counsel will file a motion for
22 preliminary approval of the settlement with the Court requesting entry of a Preliminary
23 Approval Order in the form substantially similar to Exhibit D in both terms and cost,
24 requesting, *inter alia*:

- 25
26 a) certification of the Settlement Class for settlement purposes only
27 pursuant to ¶ 6.1;
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- 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 Settlement Administration, LLC as the Settlement Administrator.

1 9.2. The Short Form Notices, Long Form Notice, and Claim Forms have been
2 reviewed and approved by the Settlement Administrator but may be revised as agreed upon
3 by the Settling Parties prior to submission to the Court for approval. Immaterial revisions
4 to these documents may also be made prior to dissemination of Notice.
5

6 **10. Settlement Administration and Class Notice**

7 10.1 Notice shall be provided to Settlement Class Members by the Settlement
8 Administrator as follows:
9

10 a) *Class Member Information*: No later than 14 days after entry of the
11 Preliminary Approval Order, Magellan shall provide the Settlement
12 Administrator with the name and last known physical address of each
13 Settlement Class Member (collectively, “Class Member
14 Information”) that Magellan possesses.
15

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

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 in Magellan’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;

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- 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

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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, Proposed Settlement Class Counsel and Magellan shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

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 Magellan reports as to both claims and distribution and Class Counsel and Magellan 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 Magellan 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.

1 10.4 All Settlement Class Members who fail to timely submit a claim for any
2 benefits hereunder within the time frames set forth herein, or such other period as may be
3 ordered by the Court, or otherwise allowed, shall be forever barred from receiving any
4 payments or benefits pursuant to the settlement set forth herein, but will in all other respects
5 be subject to, and bound by, the provisions of the Settlement Agreement, the releases
6 contained herein and the Judgment.
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9 10.5 No Person shall have any claim against the Settlement Administrator,
10 Magellan, Class Counsel, Plaintiffs, and/or Magellan’s Counsel based on distributions of
11 benefits to Settlement Class Members.
12

13 10.6 *Establishment of Common Fund.* Within 30 days of the Final Approval
14 Order, Magellan shall deposit the sum of \$1,500,000 into an account established and
15 administered by the Settlement Administrator.
16

17 10.7 Non-Reversionary. The Common Fund is non-reversionary. As of the
18 Effective Date, all rights of Magellan in or to the Common Fund shall be extinguished,
19 except in the event this Settlement Agreement is terminated, as described in Paragraph
20 11.2.
21

22 10.8 Qualified Settlement Fund. The Parties agree that the Common Fund is
23 intended to be maintained as a qualified settlement fund within the meaning of Treasury
24 Regulation § 1.468 B-1, and that the Settlement Administrator shall invest the Settlement
25 Fund exclusively in instruments or accounts backed by the full faith and credit of the United
26 States Government or fully insured by the United States Government or an agency thereof,
27 including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the
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1 Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by
2 the full faith and credit of the United States Government. Magellan and Magellan’s
3 Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to
4 investment decisions executed by the Settlement Administrator. All risks related to the
5 investment of the Common Fund shall be borne solely by the Common Fund and its Escrow
6 Agent. Further, the Settlement Administrator, within the meaning of Treasury Regulation
7 § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for
8 or in respect of the Common Fund and paying from the Common Fund any taxes and tax-
9 related expenses owed with respect to the Common Fund. The Parties agree that the
10 Common Fund shall be treated as a qualified settlement fund from the earliest date possible
11 and agree to any relation-back election required to treat the Common Fund as a qualified
12 settlement fund from the earliest date possible. The Settlement Administrator shall provide
13 an accounting of any and all funds in the Common Fund, including any interest accrued
14 thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

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19 10.9 Custody of Common Fund. The Common Fund shall be deemed to be in the
20 custody of the Court and shall remain subject to the jurisdiction of the Court until such
21 time as the entirety of the Common Fund is distributed pursuant to this Settlement
22 Agreement or the balance returned to those who paid the Common Fund in the event this
23 Settlement Agreement is terminated in accordance with Paragraph 11.2.
24

25
26 10.10 Use of the Common Fund. As further described in this Agreement, the
27 Common Fund shall be used by the Settlement Administrator to pay for the following: (i)
28 taxes and tax-related expenses, (ii) Valid Claim(s) by Common-Fund Settlement Class

1 Members for Out-of-Pocket Losses; (iii) Valid Claim(s) by Common-Fund Settlement
2 Class Members for Lost Time; and (iv) Valid Claims by Common-Fund Settlement Class
3 Members for Cash Payment. Following payment of all of the above expenses, any amount
4 remaining in the Common Fund shall be paid to the Non-Profit Residual Recipient in
5 accordance with Paragraph 10.12. No amounts may be withdrawn from the Common Fund
6 unless expressly authorized by this Agreement or approved by the Court.
7

8
9 10.11 Taxes and Representations. Taxes and tax-related expenses relating to the
10 Common Fund shall be considered Notice and Administrative Expenses and shall be timely
11 paid by the Settlement Administrator out of the Common Fund without prior order of the
12 Court. Further, the Common Fund shall indemnify and hold harmless the Parties, their
13 counsel, and their insurers and reinsurers for taxes and tax-related expenses (including,
14 without limitation, taxes payable by reason of any such indemnification payments). The
15 Parties and their respective counsel have made no representation or warranty with respect
16 to the tax treatment by any Class Representative or any Settlement Class Member of any
17 payment or transfer made pursuant to this Agreement or derived from or made pursuant to
18 the Common Fund. Each Class Representative and Settlement Class Member shall be
19 solely responsible for the federal, state, and local tax consequences to him, her, or it of the
20 receipt of funds from the Common Fund pursuant to this Agreement.
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24 10.12 “Non-Profit Residual Recipient” means Electronic Frontier Foundation,
25 subject to approval by the Court.
26

27 **11. Conditions of Settlement, Effect of Disapproval, Cancellation, or**
28 **Termination**

1 11.1 The Effective Date of the settlement shall be conditioned on the occurrence
2 of all of the following events:

- 3
- 4 a) the Court has entered the Preliminary Approval Order and Publishing
5 of Notice of a Final Fairness Hearing, as required by ¶ 9.1;
- 6 b) Magellan has not exercised its option to terminate the Settlement
7 Agreement pursuant to ¶ 4.3;
- 8
- 9 c) the Court has entered the Judgment granting final approval to the
10 settlement as set forth herein; and
- 11 d) the Judgment has become Final, as defined in ¶ 1.14.

12

13 11.2 If all conditions specified in ¶ 11.1 hereof are not satisfied, the Settlement
14 Agreement shall be canceled and terminated subject to ¶ 11.4 unless Class Counsel and
15 Magellan’s Counsel mutually agree in writing to proceed with the Settlement Agreement.

16

17 11.3 Within seven days after the Opt-Out Date, the Settlement Administrator
18 shall furnish to Class Counsel and to Magellan’s Counsel a complete list of all timely and
19 valid requests for exclusion (the “Opt-Out List”).

20

21 11.4 In the event that the Settlement Agreement or the releases set forth in ¶¶ 7.1,
22 7.2, and 7.3 above are not approved by the Court or the settlement set forth in the Settlement
23 Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be
24 restored to their respective positions in the Litigation and shall jointly request that all
25 scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice
26 to any Settling Party or Settling Party’s counsel, and (b) the terms and provisions of the
27 Settlement Agreement shall have no further force and effect with respect to the Settling
28

1 Parties and shall not be used in the Litigation or in any other proceeding for any purpose,
2 and any judgment or order entered by the Court in accordance with the terms of the
3 Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any
4 statement in this Settlement Agreement to the contrary, no order of the Court or
5 modification or reversal on appeal of any order reducing the amount of attorneys' fees,
6 costs, expenses, and/or service awards shall constitute grounds for cancellation or
7 termination of the Settlement Agreement. Further, notwithstanding any statement in this
8 Settlement Agreement to the contrary, Magellan shall be obligated to pay amounts already
9 billed or incurred for costs of notice to the Settlement Class above and shall not, at any
10 time, seek recovery of same from any other party to the Litigation or from counsel to any
11 other party to the Litigation.
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15 **12. Miscellaneous Provisions**

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17 12.1 The Settling Parties (i) acknowledge that it is their intent to consummate this
18 agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and
19 implement all terms and conditions of this Settlement Agreement, and to exercise their best
20 efforts to accomplish the terms and conditions of this Settlement Agreement.
21

22 12.2 The Settling Parties intend this settlement to be a final and complete
23 resolution of all disputes between them with respect to the Litigation. The settlement
24 compromises claims that are contested and shall not be deemed an admission by any
25 Settling Party as to the merits of any claim or defense. The Settling Parties each agree that
26 the settlement was negotiated in good faith by the Settling Parties and reflects a settlement
27 that was reached voluntarily after consultation with competent legal counsel. The Settling
28

1 Parties reserve their right to rebut, in a manner that such party determines to be appropriate,
2 any contention made in any public forum that the Litigation was brought or defended in
3 bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to
4 any other Party as it relates to the Litigation, except as set forth herein.
5

6 12.3 Neither the Settlement Agreement, nor the settlement contained herein, nor
7 any act performed or document executed pursuant to or in furtherance of the Settlement
8 Agreement or the settlement (i) is or may be deemed to be or may be used as an admission
9 of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing
10 or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used
11 as an admission of, or evidence of, any fault or omission of any of the Released Parties in
12 any civil, criminal or administrative proceeding in any court, administrative agency or
13 other tribunal. Any of the Released Parties may file the Settlement Agreement and/or the
14 Judgment in any action that may be brought against them or any of them in order to support
15 a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,
16 good faith settlement, judgment bar, or reduction or any other theory of claim preclusion
17 or issue preclusion or similar defense or counterclaim.
18

19 12.4 The Settlement Agreement may be amended or modified only by a written
20 instrument signed by or on behalf of all Settling Parties or their respective successors-in-
21 interest.
22

23 12.5 This Agreement contains the entire understanding between Magellan and
24 Plaintiffs regarding the payment of the Litigation settlement and supersedes all previous
25 negotiations, agreements, commitments, understandings, and writings between Magellan
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1 and Plaintiffs in connection with the payment of the Litigation settlement. Except as
2 otherwise provided herein, each party shall bear its own costs.

3
4 12.6 Class Counsel, on behalf of the Settlement Class, is expressly authorized by
5 Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement
6 Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly
7 authorized to enter into any modifications or amendments to the Settlement Agreement on
8 behalf of the Settlement Class which they deem appropriate in order to carry out the spirit
9 of this Settlement Agreement and to ensure fairness to the Settlement Class.
10

11 12.7 Each counsel or other Person executing the Settlement Agreement on behalf
12 of any party hereto hereby warrants that such Person has the full authority to do so.
13

14 12.8 The Settlement Agreement may be executed in one or more counterparts.
15 All executed counterparts and each of them shall be deemed to be one and the same
16 instrument. A complete set of original executed counterparts shall be filed with the Court.
17

18 12.9 The Settlement Agreement shall be binding upon, and inure to the benefit
19 of, the successors and assigns of the parties hereto.
20

21 12.10 The Court shall retain jurisdiction with respect to implementation and
22 enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the
23 jurisdiction of the Court for purposes of implementing and enforcing the settlement
24 embodied in the Settlement Agreement.
25

26 12.11 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,”
27 and “him” means “him, her, or it.”
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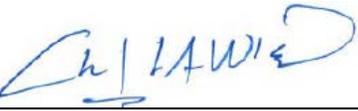
12.12 All dollar amounts are in United States dollars (USD).

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
DENVER

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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 Magellan 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.

/s/ 

/s/ 

Christopher A. Wiech (*pro hac vice*)
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