

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF  
PENNSYLVANIA**

*IN RE GEISINGER SYSTEM SERVICES AND  
EVANGELICAL COMMUNITY HOSPITAL  
HEALTHCARE WORKERS ANTITRUST  
LITIGATION*

No. 4:21-cv-00196-MWB

Chief Judge Matthew W. Brann

**SETTLEMENT AGREEMENT BETWEEN  
PLAINTIFFS AND EVANGELICAL COMMUNITY HOSPITAL**

This Settlement Agreement (“Settlement Agreement”) is made and entered into as of the 9th day of June, 2025 (“Execution Date”), by and between Evangelical Community Hospital (“Evangelical”) and Plaintiffs Nichole Leib and Kevin Brokenshire (“Plaintiffs”), both individually and on behalf of the proposed Settlement Class (defined below), in the above-captioned action (“Action”). This Settlement Agreement is intended by Evangelical and Plaintiffs (the “Settling Parties,” as further defined below) to fully, finally, and forever resolve, discharge and settle the Released Claims (defined below), upon and subject to the terms and conditions hereof.

**RECITALS**

WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of the proposed Settlement Class against Evangelical and Geisinger System Services, Inc. (“Geisinger”);

WHEREAS, Plaintiffs allege, among other things, that Evangelical violated the antitrust laws by entering into and engaging in an unlawful horizontal no-poach agreement in restraint of trade and commerce, and these acts caused the Settlement Class to incur damages;

WHEREAS, Evangelical has not conceded or admitted any liability, or that it violated or breached any law, regulation, or duty owed to the Plaintiffs; has denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged in the Action; and further denies the allegations that Plaintiffs or any member of

the Settlement Class were harmed by any conduct of Evangelical alleged in the Action or otherwise;

WHEREAS, Plaintiffs and Evangelical engaged in extensive discovery regarding the facts pertaining to Plaintiffs' claims and Evangelical's defenses;

WHEREAS, Plaintiffs and Evangelical agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Evangelical or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, Co-Lead Counsel for Plaintiffs ("Co-Lead Counsel") have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in Plaintiffs' Consolidated Amended Class Action Complaint, the legal and factual defenses thereto, and the applicable law, that it is in the best interests of Plaintiffs and the proposed Settlement Class to enter into this Settlement Agreement to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for Plaintiffs and the proposed Settlement Class;

WHEREAS, Co-Lead Counsel consider the Settlement set forth herein to be fair, reasonable and adequate and in the best interests of Plaintiffs and the proposed Settlement Class;

WHEREAS, Evangelical has concluded, despite its belief that it is not liable for the claims asserted against it in the Action and that it has good defenses thereto, that it will enter into this Settlement Agreement in order to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby put to rest this controversy with respect to Plaintiffs and the proposed Settlement Class and avoid the risks inherent in complex litigation; and

WHEREAS, numerous arm's length settlement negotiations have taken place between counsel for Plaintiffs and Evangelical over the past year, this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Settling Parties, both

individually and on behalf of the proposed Settlement Class, has been reached as a result of the Settling Parties' negotiations (subject to the approval of the Court) as provided herein and is intended to supersede any prior agreements or understandings between the Settling Parties.

### **AGREEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their undersigned attorneys of record, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, that the Action and the Released Claims against Evangelical shall be finally and fully settled, compromised and dismissed on the merits and with prejudice, without costs as to Plaintiffs, the proposed Settlement Class, or Evangelical, upon and subject to the approval of the Court, following notice to the proposed Settlement Class, on the following terms and conditions:

### **DEFINITIONS**

1. As used in this Settlement Agreement, the following terms shall have the meanings specified below:

a) "Action" means *IN RE GEISINGER SYSTEM SERVICES AND EVANGELICAL COMMUNITY HOSPITAL HEALTHCARE WORKERS ANTITRUST LITIGATION*, Case No. 4:21-cv-00196-MWB, and each of the cases brought on behalf of plaintiffs previously consolidated and/or included as part of Docket No. 4:21-cv-00196-MWB.

b) "Affiliates" means entities controlling, controlled by or under common control with a Releasee or Releasor.

c) "Authorized Claimant" means any Settlement Class Member, in accordance with the terms of this Settlement Agreement, who is entitled to a distribution consistent with any Distribution Plan or order of the Court ordering distribution to the Settlement

Class.

d) "Claims Administrator" means the claims administrator(s) to be selected by Co-Lead Counsel and to be approved by the Court.

e) The "Class" or "Settlement Class" is defined as all natural persons who worked as Healthcare Workers (as defined herein) at Geisinger's or Evangelical's facilities located in Union, Snyder, Northumberland, Montour, Lycoming and Columbia counties in the Commonwealth of Pennsylvania ("Class Counties") from January 1, 2014 through August 5, 2020. Excluded from the Settlement Class are members of Geisinger's and Evangelical's boards of directors, Geisinger's and Evangelical's C-Suite Executives (as defined herein), and any and all judges assigned to hear or adjudicate any aspect of this litigation and their judicial staff..

f) "Class Member" or "Settlement Class Member" means a Person who falls within the definition of the Settlement Class and who does not timely and validly elect to be excluded from the Class in accordance with the procedure to be established by the Court.

g) "Co-Lead Counsel" means the law firms of Cotchett, Pitre & McCarthy, LLP and Berger Montague PC.

h) "Court" means the United States District Court for the Middle District of Pennsylvania.

i) "C-Suite Executives" are executives responsible for day-to-day operation of Defendants with job titles including, but not limited to, "Chief," "Executive," "CMO," "CNO," and "President." They are identifiable via Defendants' wage data.

j) "Defendants" refers to Geisinger System Services, Inc. and Evangelical Community Hospital.

k) “Distribution Plan” means any plan or formula of allocation, to be approved by the Court, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

l) “Document” is synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft of non-identical copy is a separate document within the meaning of this term.

m) “Effective Date” means the first date by which all of the following events and conditions have been met or have occurred:

- i. All parties have executed this Settlement Agreement;
- ii. The Court has preliminarily approved the Settlement Agreement, certified the Settlement Class for purposes of effectuating this Settlement, and approved the Settlement after providing notice to the Settlement Class as defined herein;
- iii. The Court has entered a Final Judgment; and
- iv. The Final Judgment (as more fully described in ¶7 of this Settlement Agreement) has become final, with the occurrence of the following: (A) the entry by the Court of a final order approving the Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure together with entry of a final judgment dismissing the Action and all claims therein by the Class against Evangelical with prejudice as to all Class Members (the “Final Judgment”), and (B) the expiration of the time for appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement and entry of the Final Judgment or, if an appeal from an approval

and Final Judgment is taken, the affirmance of such Final Judgment in its entirety, without modification, by the court of last resort to which an appeal of such Final Judgment may be taken, provided, however, a modification or reversal on appeal of any amount of Co-Lead Counsel's fees and expenses awarded by the Court from the Settlement Fund or any plan of allocation or distribution of the Settlement Fund shall not be deemed a modification of all or part of the terms of this Settlement Agreement or the Final Judgment. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

n) "Escrow Agent" means the agent jointly designated by Co-Lead Counsel and Evangelical, and any successor agent.

o) "Evangelical" refers to Defendant Evangelical Community Hospital.

p) "Execution Date" means the first date set forth above in this Settlement Agreement, which is June 9, 2025.

q) "Final" means, with respect to any order of court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes "Final" when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Settlement Agreement, an "appeal" includes appeals as of right,

discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving a Distribution Plan, and/or to any order issued in respect of an application for attorneys' fees and expenses consistent with this Settlement Agreement, shall not in any way delay or preclude the Judgment from becoming Final.

- r) "Geisinger" refers to Defendant Geisinger System Services, Inc.
- s) "Gross Settlement Fund" or "Settlement Fund" means the Settlement Amount plus any interest that may accrue.
- t) "Healthcare Workers" is defined as nurses, physicians, advanced practitioners, medical support personnel, and Other Healthcare Professionals (as defined herein).<sup>1</sup>
- u) "Judgment" means the order of judgment and dismissal of the Action with prejudice.
- v) "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth in ¶16.
- w) "Notice, Administrative and Claims Administration Costs" means the reasonable sum of nonrefundable settlement money to be paid out of the Gross Settlement Fund to pay for notice to the Class and related administrative and claims administration costs.
- x) "Other Healthcare Professionals" are health technicians, therapists,

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<sup>1</sup> Examples of jobs excluded from "Healthcare Workers" are Human Resources ("HR") and Information Technology ("IT") professionals, administrative assistants, registration clerks, patient access representatives, unit-desk clerks, housekeepers, cooks, customer service representatives, telephone operators, couriers, security officers, and Chaplains.

healthcare managers, or other healthcare professionals who contribute to the healthcare system in various capacities. "Other Healthcare Professionals" are identified in the Expert Report of Professor Edward Leamer Ph.D. dated January 16, 2024 at ¶¶ 21-24 and in Exhibit "4" thereto.

y) "Person(s)" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

z) "Plaintiffs" means named Plaintiffs Nichole Leib and Kevin Brokenshire.

aa) "Proof of Claim and Release" means the form to be sent to the Class, upon further order(s) of the Court, by which any member of the Class may make claims against the Gross Settlement Fund.

bb) "Released Claims" means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred, liabilities of any nature whatsoever, known or unknown (including, but not limited to, "Unknown Claims"), foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct on or before the Effective Date and arising out of or related in any way in whole or in part to any facts, circumstances, acts, or omissions by Releasees which



were alleged or which could have been alleged in any way related to the nucleus of operative facts alleged in the Action, including but not limited to any conduct by Releasees regardless of where it occurred at any time on or before the Effective Date concerning, arising out of or related to (1) the recruitment, hiring, employment, compensation, retention, solicitation, and job mobility of Healthcare Workers; (2) any agreement, understanding, or conspiracy to restrict, limit, suppress, or eliminate competition for Healthcare Workers, including any agreement not to recruit, solicit, hire, or poach each other's Healthcare Workers, or concerning wages, salary structures, bonuses, benefits, hours, or other terms and conditions of employment for Healthcare Workers, as alleged in the Action or that could have been alleged against the Releasees relating to Healthcare Workers; or (3) any other restraint of competition relating to Healthcare Workers that could have been or hereafter could be alleged against the Releasees as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, wage-fixing, labor-market collusion, civil conspiracy, consumer protection, or employment-related laws whether under federal, state, local or foreign law. Notwithstanding the foregoing, nothing herein shall release: claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, violations of employment or wage & hour laws, or securities claims, that do not arise out of or relate in any way in whole or in part to any facts, circumstances, acts, or omissions by Releasees which were alleged or which could have been alleged or are in any way related to the nucleus of operative facts alleged in the Action.

cc) "Releasees" refers jointly and severally, individually and collectively to Evangelical (as defined in ¶ 1(o) above) and each of its respective past and/or present

direct and indirect parents, members, subsidiaries, including, but not limited to, WellSpan Health, affiliates, predecessors, joint ventures, heirs, executors, administrators, successors and assigns, and their respective past, present and/or future officers, directors, employees, agents, attorneys and legal representatives, insurers, servants, and representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. For the avoidance of doubt, "Releasees" does not refer to, or mean, alleged co-conspirator and named Defendant Geisinger or any of its officers, affiliates or related entities in their capacity on behalf of Geisinger.

dd) "Releasers" refers jointly and severally, individually and collectively to Plaintiffs and each and every member of the Class on their own behalf and on behalf of their respective past, present, and/or future direct and indirect parents, members, subsidiaries and Affiliates, and their past, present and/or future officers, directors, employees, agents, attorneys and legal representatives, insurers, servants, and representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

ee) "Settlement" means the settlement of the Released Claims set forth herein.

ff) "Settlement Agreement" means this settlement agreement dated June 9, 2025.

gg) "Settlement Amount" means Nine Million Five Hundred Thousand U.S. Dollars (\$9,500,000.00).

hh) "Settling Parties" means, collectively, the Plaintiffs (on behalf of themselves and the Class) and Evangelical.

ii) "Unknown Claims" means any Released Claim that a Plaintiff and/or Class

Member does not know or suspect to exist in his, her, their or its favor at the time of the release of the Releasees that if known by him, her, their or it, might have affected his, her, their or its settlement with and release of the Releasees, or might have affected his, her, their or its decision not to object to this Settlement. Such Unknown Claims include claims that are the subject of California Civil Code § 1542 and equivalent, similar or comparable laws or principles of law. California Civil Code § 1542 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.

**Preliminary Approval Order, Notice Order and Settlement Hearing**

2. ***Reasonable Best Efforts to Effectuate this Settlement.*** The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Settlement Agreement. Evangelical agrees to provide data reasonably necessary and available to it for Plaintiffs to effectuate Class Notice, allocation, and payments to the Settlement Class.

3. ***Motion for Preliminary Approval.*** At a time to be determined by Co-Lead Counsel, Co-Lead Counsel shall submit this Settlement Agreement to the Court and shall apply for entry of a Preliminary Approval Order, requesting, inter alia, preliminary approval of the Settlement. The

motion shall include (a) the proposed Preliminary Approval Order, and (b) a request for certification of the Class for settlement purposes pursuant to Federal Rule of Civil Procedure 23.

4. ***Proposed Notice.*** At a time to be determined in their sole discretion, Co-Lead Counsel shall submit to the Court for approval a proposed form of, method for and schedule for dissemination of notice to the Class. This motion shall recite and ask the Court to find that the proposed form of and method for dissemination of the notice to the Class constitutes valid, due and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.

5. ***Claims Administrator.*** Plaintiffs shall retain a Claims Administrator, which shall be responsible for the claims administration process including distribution to Class Members pursuant to a court-approved plan of distribution. The fees and expenses of the Claims Administrator shall be paid exclusively out of the Settlement Fund. In no event shall Evangelical be separately responsible for any fees or expenses of the Claims Administrator.

6. ***Requests for Exclusion (Opt Outs).*** Any Class Member that wishes to seek exclusion from the Settlement Class by “opting out” must timely submit a written request for exclusion to the Claims Administrator (a “Request for Exclusion”). To be effective, each such Request for Exclusion must state: the Settlement Class Member’s full legal name, address and telephone number; that the Class Member worked as a Healthcare Worker at Geisinger or Evangelical in one of the Class Counties in Central Pennsylvania during the Class Period; and that the Class Member (1) wishes to be excluded from the *In re Geisinger System Services and Evangelical Community Hospital Healthcare Workers Antitrust Litigation* class action settlement and (2) understands that by so doing, the Class Member will not be able to get any money or benefits from the Settlement with Evangelical under the Settlement Agreement. All Requests for Exclusion must be signed and dated by the Class Member or its officer or legal representative, and be (1)

mailed to the Claims Administrator via First Class United States Mail (or United States Mail for overnight delivery) and received by a date certain to be specified on the Notice, or (2) received by the Claims Administrator by that date. Persons who opt out are not entitled to any monetary award from the Settlement Fund.

7. ***Motion for Final Approval and Entry of Final Judgment.*** Prior to the date set by the Court to consider whether this Settlement should be finally approved, Co-Lead Counsel shall submit a motion for final approval of the Settlement by the Court. The Settling Parties shall jointly seek entry of the Final Approval Order and Judgment:

- a) certifying the Settlement Class, as defined in this Settlement Agreement, pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;
- b) fully and finally approving the Settlement contemplated by this Settlement Agreement and its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions;
- c) finding that the notice given to the Class Members constituted the best notice practicable under the circumstances and complies in all respects with the requirements of Federal Rule of Civil Procedure 23 and due process;
- d) directing that the Action be dismissed with prejudice as to Evangelical without costs;
- e) discharging and releasing the Releasees from all Released Claims;
- f) permanently barring and enjoining the institution and prosecution, by Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any claims related in any way to the Released Claims;
- g) reserving continuing and exclusive jurisdiction over the Settlement, including all

future proceedings concerning the administration, consummation and enforcement of this Settlement Agreement;

- h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of a final judgment as to Evangelical; and
- i) containing such other and further provisions consistent with the terms of this Settlement Agreement to which the parties expressly consent in writing.

8. ***Stay Order.*** Upon the Execution Date, the Action shall continue to be stayed, and the existing stay (ECF No. 237) shall remain in place. Should the Action be tried against any Defendants other than Evangelical, the parties specifically agree that any findings therein shall not be binding on or admissible in evidence against Evangelical or prejudice Evangelical in any way in any future proceeding involving Evangelical.

9. Upon the date that the Court enters an order preliminarily approving the Settlement, Plaintiffs and members of the Class shall be barred and enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum or other forum of any kind worldwide based on the Released Claims.

#### **Releases**

10. ***Released Claims.*** Upon the Effective Date, the Releasors (regardless of whether any such Releasor ever seeks or obtains any recovery by any means, including, without limitation, by submitting a Proof of Claim and Release, any distribution from the Gross Settlement Fund) by virtue of this Settlement Agreement shall be deemed to have, and by operation of the Judgment shall have fully, finally and forever released, relinquished and discharged all Released Claims against the Releasees.

11. ***No Future Actions Following Release.*** The Releasors shall not, after the Effective Date, seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action or

complaint or collect from or proceed against Evangelical or any other Releasee (including pursuant to the Action) based on the Released Claims in any forum worldwide, whether on his, her, their, or its own behalf or as part of any putative, purported or certified class.

12. *Covenant Not to Sue.* Releasors hereby covenant not to sue the Releasees with respect to any such Released Claims. Releasors shall be permanently barred and enjoined from instituting, commencing or prosecuting against the Releasees any claims based in whole or in part on the Released Claims. The Settling Parties contemplate and agree that this Settlement Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or maintained in any case sought to be prosecuted by or on behalf of Plaintiffs or Class Members with respect to the Released Claims.

13. *Waiver of California Civil Code § 1542 and Similar Laws.* The Releasors acknowledge that, by virtue of the execution of this Settlement Agreement, and for the consideration received hereunder, it is their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code § 1542, as set forth in ¶ 1(ii), or equivalent, similar or comparable laws or principles of law. The Releasors acknowledge that they have been advised by Co-Lead Counsel of the contents and effects of California Civil Code § 1542, and hereby expressly waive and release with respect to the Released Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors may hereafter discover facts other than or different from those which they know or believe to be true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly waive and fully, finally and forever settle and release any known or unknown, suspected or unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and

accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is not a mere recital.

14. ***Claims Excluded from Release.*** Notwithstanding the foregoing, the releases provided herein shall not release Evangelical for claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, violations of employment or wage & hour laws or securities claims or any other claims that do not arise out of or relate in any way in whole or in part to any facts, circumstances, acts, or omissions by Releasees which were alleged or which could have been alleged or are in any way related to the nucleus of operative facts alleged in the Action. Additionally, the releases provided herein shall not release any claims to enforce the terms of this Settlement Agreement.

#### **Settlement Consideration and Settlement Fund**

15. ***Settlement Payments.*** Evangelical shall pay by wire transfer the Settlement Amount (\$9,500,000) to the Escrow Agent pursuant to escrow instructions as follows: (i) a Two Hundred Thousand Dollar (\$200,000) non-reimbursable amount within ten (10) business days of preliminary approval and (ii) the entire remaining portion of the Settlement Amount (\$9,300,000) within thirty (30) business days following the preliminary approval. This Settlement Amount constitutes the total amount of payment that Evangelical is required to make in connection with this Settlement Agreement. This amount shall not be increased or subject to reduction, and upon the occurrence of the Effective Date, no funds shall revert to Evangelical except as provided herein. The Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

16. ***Disbursements Prior to Effective Date.*** No amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice, Administrative and



Claims Administration Costs may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 20 (b) below) may be paid from the Gross Settlement Fund as they become due; and (c) attorneys' fees and reimbursement of litigation costs may be paid as ordered by the Court, which may be disbursed during the pendency of any appeals, which may be taken from the judgment to be entered by the Court finally approving this Settlement.

17. ***Refund by Escrow Agent.*** If the Settlement as described herein is not finally approved by any court, or it is terminated as provided herein, or the Judgment as described herein is not approved or entered or is overturned on appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Amount while held in escrow, excluding only Notice, Administrative and Claims Administration Costs and Taxes and/or Tax Expenses not to exceed Two Hundred Thousand Dollars (\$200,000), shall be refunded, reimbursed and repaid by the Escrow Agent to Evangelical within thirty (30) days after receiving notice pursuant to ¶45 below.

18. ***Refund by Co-Lead Counsel.*** If the Settlement as described herein is not finally approved by any court, or it is terminated as provided herein, or the Judgment as described herein is not approved or entered or is overturned on appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Settlement Agreement (as well as interest on such amounts) shall be refunded, reimbursed and repaid by Co-Lead Counsel within thirty (30) days after receiving notice pursuant to ¶45 below.

19. ***No Additional Payments by Evangelical.*** Under no circumstances will Evangelical be required to pay more or less than the Settlement Amount pursuant to this Settlement Agreement and the Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense Award (as defined in ¶ 37 below), the Notice, Administrative and Claims Administrative Costs, class representative service awards, if any, and any other costs associated with the

implementation of this Settlement Agreement shall be exclusively paid from the Settlement Amount.

20. **Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

- a) For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 by, e.g., (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this paragraph) shall be consistent with the provisions of this paragraph and in all events shall reflect that all Taxes as defined in ¶ 20(b) below on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 20(b) hereof;
- b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including

any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Evangelical or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes (collectively, "Taxes"); and (ii) all expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (collectively, "Tax Expenses"). In all events neither Evangelical nor its counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Evangelical and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Evangelical nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other,

their tax attorneys and their accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

**Limited Cooperation**

21. In the event that Geisinger's proposed settlement agreement is not approved, these cooperation provisions will apply. For the avoidance of doubt, if both the Geisinger and Evangelical settlement agreements are finally approved, this will effectively end the litigation and Evangelical shall have no responsibility for providing the cooperation outlined in this Section. However, the Settling Parties agree that Evangelical will not voluntarily and/or affirmatively assist the Plaintiffs or their representatives in any activities that would waive the attorney-client, work product or other privileges of Evangelical or with respect to Joint Defense Information of any other party to any Joint Defense Agreement including, but not limited to, any Joint Defense Agreement with Geisinger.

22. *Authentication of Documents.* Upon reasonable request by Plaintiffs, Evangelical agrees to make reasonable efforts to authenticate and provide the foundation for admissibility of up to fifty (50) documents or items produced in the Action, provided Plaintiffs supply a specific list of such documents or items. Authentication shall be by affidavit or declaration, to the extent Evangelical can do so in good faith. If Evangelical cannot authenticate all listed items in good faith, Plaintiffs may not substitute or add further documents. This authentication assistance shall be timely provided.

23. *Foundation Testimony.* If necessary, Evangelical will produce qualified representatives, via affidavit, declaration, or trial testimony, to authenticate documents, establish business record status, or provide other foundations necessary for admissibility of documents produced. Plaintiffs agree to make best efforts to secure stipulations to minimize the necessity of Evangelical witness appearances at trial solely for foundational purposes.

24. *Limitation of Use of Cooperation Materials.* Plaintiffs shall use information

provided by Evangelical under this Cooperation provision exclusively for prosecuting this Action and shall not utilize such information against Evangelical beyond what is reasonably necessary for this Action or as otherwise required by law unless independently available.

25. ***Effect of Agreement Termination.*** Should this Agreement fail to receive final approval or is terminated, Plaintiffs shall not introduce cooperation-provided materials as evidence against Evangelical in any proceeding unless independently obtained or by court order.

26. ***Duration of Cooperation Obligations.*** Evangelical's cooperation obligations shall remain effective until otherwise ordered by the Court or until Final Judgment is entered against all Defendants.

27. ***Enforcement of Cooperation.*** Should Plaintiffs contend Evangelical or any associated individual has not adequately cooperated as described herein, Plaintiffs may petition the Court to compel compliance. This provision does not limit Evangelical's right to defend the adequacy and compliance of its cooperation efforts.

#### **Administration and Distribution of Gross Settlement Fund**

28. ***Time to Appeal.*** The time to appeal from an approval of the Settlement shall commence upon the Court's entry of the Judgment regardless of whether either the Distribution Plan or an application for attorneys' fees and expenses has been submitted to the Court or resolved.

29. ***Distribution of Gross Settlement Fund.*** Upon further orders of the Court, the Claims Administrator, subject to such supervision and direction of the Court and/or Co-Lead Counsel as may be necessary or as circumstances may require, shall administer the claims submitted by members of the Class and shall oversee distribution of the Gross Settlement Fund to Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Settlement Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

- a) To pay all costs and expenses reasonably and actually incurred in providing notice

to the Class in connection with administering and distributing the Net Settlement Fund to Authorized Claimants, and in connection with paying escrow fees and costs, if any;

- b) To pay all costs and expenses, if any, reasonably and actually incurred in claims administration and assisting with the filing and processing of such claims;
- c) To pay the Taxes and Tax Expenses as defined herein;
- d) To pay any Fee and Expense Award along with proportional interest earned on the Settlement Fund that is allowed by the Court, subject to and in accordance with the Agreement;
- e) To pay any class representative service awards, if any, as ordered by the Court; and
- f) To distribute the balance of the "Net Settlement Fund" to Authorized Claimants as allowed by the Agreement, any Distribution Plan or order of the Court along with proportional interest earned on the Settlement Fund.

30. ***Distribution of Net Settlement Fund.*** The Net Settlement Fund shall be distributed in accordance with the Distribution Plan that is approved by the Court.

31. All Persons who fall within the definition of the Class who do not timely and validly request to be excluded from the Class shall be subject to and bound by the provisions of this Settlement Agreement, the releases contained herein, and the Judgment with respect to all Released Claims, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Gross Settlement Fund or the Net Settlement Fund.

32. ***No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their counsel shall have any responsibility for, interest in or liability whatsoever with respect to the distribution of the Gross Settlement Fund, the Distribution Plan, the determination, administration,

or calculation of claims, the Settlement Fund's qualification as a "qualified settlement fund", the payment or withholding of Taxes or Tax Expenses, the distribution of the Net Settlement Fund, or any losses incurred in connection with any such matters. The Releasors hereby fully, finally and forever release, relinquish and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Co-Lead Counsel or the Claims Administrator based on the distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan or further orders of the Court.

33. ***Balance Remaining in Net Settlement Fund.*** If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Co-Lead Counsel may reallocate such balance among Authorized Claimants in an equitable and economic fashion, distribute the remaining funds through cy pres, or allow the money to escheat to federal or state governments, subject to Court approval. In no event shall the Net Settlement Fund revert to Evangelical.

34. ***Distribution Plan Not Part of Settlement.*** It is understood and agreed by the Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's claim, is not a part of this Settlement Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to terminate or cancel this Settlement Agreement or affect the finality of the Judgment, the Final Approval Order, or any other orders entered pursuant to this Settlement Agreement. The time to appeal from an approval of the Settlement shall commence upon the Court's entry of the Judgment regardless of whether either the Distribution Plan or an application for attorneys' fees and expenses has been submitted to the Court or approved.

### **Attorneys' Fees and Reimbursement of Expenses**

35. ***Fee and Expense Application.*** Co-Lead Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Gross Settlement Fund, for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Action; plus (c) any interest on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be awarded by the Court.

36. ***Payment of Fee and Expense Award.*** Any amounts that are awarded by the Court pursuant to the above paragraph (the "Fee and Expense Award") shall be paid from the Gross Settlement Fund consistent with the provisions of this Settlement Agreement.

37. ***Award of Fees and Expenses Not Part of Settlement.*** The procedure for, and the allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement set forth in this Settlement Agreement and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Settlement Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement.

38. ***No Liability for Fees and Expenses of Co-Lead Counsel.*** Evangelical shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Co-Lead Counsel pursuant to this Settlement Agreement and/or to any other Person who may assert some claim thereto or any Fee and Expense Award that the Court may make in the Action, other than as set forth in this Settlement Agreement.

### **Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

39. ***Occurrence of Effective Date.*** Upon the occurrence of all of the events required in



order to trigger the Effective Date as defined in ¶ 1(m), any and all remaining interest or right of Evangelical in or to the Gross Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement Fund (less any Notice and Administrative Costs, Taxes or Tax Expenses or any Fee and Expense Award paid) shall be transferred from the Escrow Agent to the Claims Administrator as successor Escrow Agent within ten (10) days after the Effective Date.

40. ***Failure of Effective Date to Occur.*** If, for whatever reason, the Effective Date does not occur or is not met, then this Settlement Agreement shall be cancelled and terminated, subject to and in accordance with ¶¶ 44-45, below, unless the Settling Parties mutually agree in writing to proceed with this Settlement Agreement.

41. ***Exclusions.*** Co-Lead Counsel shall cause copies of requests for exclusion from the Class to be provided to counsel for Evangelical. No later than 14 days after the final date for mailing requests for exclusion, Co-Lead Counsel shall provide counsel for Evangelical with a complete and final list of Requests for Exclusion from the Class. With the motion for final approval of the Settlement, Co-Lead Counsel will file with the Court a complete list of Requests for Exclusion from the Class, including only the name, city and state of the person requesting exclusion

42. Evangelical shall have the option to rescind and terminate this Settlement Agreement in its entirety if based on available data, the aggregate number of Class Members that opt out of this Settlement Agreement exceeds a threshold agreed to by Plaintiffs and Evangelical in the Confidential Supplemental Agreement that has been executed separately by Plaintiffs and Evangelical. Evangelical shall exercise this option to rescind and terminate this Settlement Agreement by providing written notice to Class Counsel. Upon such rescission and termination, Plaintiffs and Evangelical will notify the Court immediately and withdraw all pending motions filed to effectuate this Settlement. Plaintiffs and Evangelical will also, as may be required by the Court, submit the Confidential Supplemental Agreement to the Court for in-camera review should the

Court request it. In the event that Evangelical exercises its option to rescind and terminate this Settlement Agreement: (i) this Settlement Agreement shall be null and void as to Evangelical, and shall have no force or effect and shall be without prejudice to the rights and contentions of Releasees and Releasors in this or any other litigation; (ii) the Gross Settlement fund shall be refunded promptly to Evangelical, minus such payment (as set forth in this Settlement Agreement) of Notice and Administrative Costs and Taxes and Tax Expenses not to exceed Two Hundred Thousand Dollars (\$200,000), consistent with the provisions herein.

43. **Objections.** Settlement Class members who wish to object to any aspect of the Settlement must file with the Court a written statement containing their objection by the end of the period to object to the Settlement. Any award or payment of attorneys' fees made to counsel to an objector to the Settlement shall only be made by order of the Court order pursuant to the provisions of Federal Rule of Civil Procedure 23(e)(5)(B).

44. **Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified or reversed, then this Settlement Agreement and the Settlement incorporated therein shall be cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding the Settlement identified by the Court and any court of appeal. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense Application or Distribution Plan, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Settlement Agreement by any Settling

Party. Without limiting the foregoing, Evangelical shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action against Evangelical.

45. **Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Settlement Agreement should terminate, or be cancelled or otherwise fail to become effective for any reason or the Settlement as described herein is not finally approved by the Court, or the Judgment is reversed or vacated following any appeal taken therefrom, then:

- a) within thirty (30) days after written notification of such event is sent by counsel for Evangelical to the Escrow Agent, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Fund while held in escrow excluding only Notice Administrative and Claims Administration Costs that have either been properly disbursed or are due and owing not to exceed Two Hundred Thousand Dollars (\$200,000), Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to Court order will be refunded, reimbursed and repaid by the Escrow Agent to Evangelical; if said amount or any portion thereof is not returned within such thirty (30) day period, then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is returned;
- b) within sixty (60) days after written notification of such event is sent by Counsel for Evangelical to Co-Lead Counsel, all attorneys' fees and costs which have been disbursed to Co-Lead Counsel pursuant to Court order shall be refunded, reimbursed and repaid by Co-Lead Counsel to Evangelical;
- c) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross

Settlement Fund and pay the proceeds to Evangelical, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund, pursuant to such written request;

- d) the Settling Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective claims and defenses, preserved as they existed on that date;
- e) the terms and provisions of this Settlement Agreement, with the exception of §§ 46-51 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Action or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and
- f) any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, nunc pro tunc.

**No Admission of Liability**

46. *Final and Complete Resolution.* The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action and Released Claims and to compromise claims that are contested, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Action.

47. *Federal Rule of Evidence 408.* The Settling Parties agree that this Settlement Agreement, its terms and the negotiations surrounding this Settlement Agreement shall be governed

by Federal Rule of Evidence 408 and shall not be admissible or offered or received into evidence in any suit, action or other proceeding, except upon the written agreement of the Settling Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give effect to, declare or enforce the rights of the Settling Parties with respect to any provision of this Settlement Agreement.

48. *Use of Agreement as Evidence.* Neither this Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any allegation made in the Action, or of any wrongdoing or liability of Evangelical; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Settlement Agreement and/or the Judgment in any action for any purpose, including, but not limited to, 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. The limitations described in this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order, or the Judgment, or if the Settlement Agreement is terminated or rescinded.

#### **Miscellaneous Provisions**

49. *Voluntary Settlement.* The Settling Parties agree that the Settlement Amount and the

other terms of the Settlement as described herein were negotiated in good faith by the Settling Parties and reflect a settlement that was reached voluntarily and after consultation with competent legal counsel.

50. ***Consent to Jurisdiction.*** Evangelical and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, Evangelical and the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

51. ***Resolution of Disputes; Retention of Exclusive Jurisdiction.*** Any disputes between or among Evangelical and any Class Member concerning matters contained in this Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Settlement Agreement.

52. ***Binding Effect.*** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs and Co-Lead Counsel shall be binding upon all Class Members.

53. ***Authorization to Enter Settlement Agreement.*** The undersigned representatives of Evangelical represent that they are fully authorized to enter into and to execute this Settlement

Agreement on behalf of Evangelical. Co-Lead Counsel, on behalf of Plaintiffs and the Class, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of Plaintiffs and the Class pursuant to this Settlement Agreement to effectuate its terms and to enter into and execute this Settlement Agreement and any modifications or amendments to the Settlement Agreement on behalf of the Class that they deem appropriate.

54. *Notices.* All notices under this Settlement Agreement shall be in writing. Each such notice shall be given either by (a) email; (b) hand delivery; (c) registered or certified mail, return receipt requested, postage pre-paid; (d) Federal Express or similar overnight courier; or (e) facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall be addressed to Co-Lead Counsel at their addresses set forth below, and if directed to Evangelical, shall be addressed to their attorneys at the addresses set forth below or such other addresses as Co-Lead Counsel or counsel for Evangelical may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

If directed to Plaintiffs, address notice to:

COTCHETT, PITRE & MCCARTHY, LLP  
Adam J. Zapala (azapala@cpmlegal.com)  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Facsimile: (650) 697-0577

BERGER MONTAGUE PC  
Eric L. Cramer (ecramer@bm.net)  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103  
Telephone: (215) 875-4604  
Facsimile: (215) 875-5707

If directed to Evangelical, address notice to:

FOX ROTHSCHILD LLP  
Theodore H. Jobes (tjobes@foxrothschild.com)  
Two Commerce Square  
2001 Market Street, Suite 1700  
Philadelphia, PA 19103  
Telephone: (215) 299-2000

55. ***Confidentiality of Settlement Negotiations.*** Co-Lead Counsel shall keep strictly confidential and not disclose to any third party any non-public information regarding the Settling Parties' negotiation of this Settlement and/or the Settlement Agreement. For the sake of clarity, information contained within this Settlement Agreement shall be considered public, and Evangelical may issue a press release regarding execution of the Settlement Agreement and the amount paid in connection with the Settlement Agreement.

56. ***Headings.*** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

57. ***No Party Deemed to Be the Drafter.*** None of the parties hereto shall be deemed to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

58. ***Choice of Law.*** This Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the Commonwealth of Pennsylvania, and the rights and obligations of the parties to this Settlement Agreement shall be construed and enforced in accordance with, and governed by, the substantive laws of the Commonwealth of Pennsylvania without giving effect to that State's choice of law principles.

59. ***Amendment; Waiver.*** This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred



hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

60. ***Execution in Counterparts.*** This 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. Counsel for the parties to this Settlement Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

61. ***Notification of State Officials.*** Evangelical shall be responsible for providing all notices required by the Class Action Fairness Act, 28 U.S.C. § 1715, to be provided to state attorneys general or to the Attorney General of the United States.

62. ***Integrated Agreement.*** This Settlement Agreement, along with the Confidential Supplemental Agreement, constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Settlement Agreement other than the representations, warranties and covenants contained and memorialized herein and in the Confidential Supplemental Agreement. It is understood by the Settling Parties that, except for the matters expressly represented herein and in the Confidential Supplemental Agreement, the facts or law with respect to which this Settlement Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true; each party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Settlement Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law. Except as otherwise provided herein, each party shall bear its own costs and attorneys' fees.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,  
have executed this Settlement Agreement as of the Execution Date.

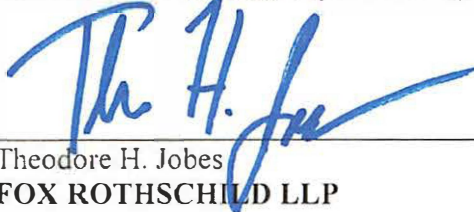


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