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15 UNITED STATES DISTRICT COURT
16 DISTRICT OF ARIZONA

18 Case No. 2:16-cv-02696-PHX-SRB

19
20 IN RE BANNER HEALTH DATA
21 BREACH LITIGATION

**STIPULATION AND SETTLEMENT
AGREEMENT**

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25 This Stipulation and Settlement Agreement (the “Stipulation” or “Settlement), dated
26 August 7, 2019, is made and entered into by and among: (1) Plaintiffs Howard Chen, Betty
27 Clayton, Stacey Halpin, Kim Maryniak, Summer Sadira, and Stan Griep (“Plaintiffs” or
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1 “Class Representatives”), on behalf of themselves and the proposed Settlement Class; and
2 (2) Defendant Banner Health (“Banner”) (collectively, the “Parties”).

3 **I. BACKGROUND**

4 1. This litigation arises from a criminal cyberattack against Banner’s computer
5 network in June and July of 2016.

6 2. Banner made a public announcement concerning the cyberattack on August
7 3, 2016.

8 3. Shortly after Banner’s initial announcement, eleven putative class action
9 lawsuits were filed against Banner over the attack. These cases were consolidated before
10 Judge Susan Bolton of the United States District Court for the District of Arizona in late
11 2016.

12 4. On April 6, 2017, six named plaintiffs filed a master consolidated amended
13 class action complaint (“First Consolidated Complaint”) in the consolidated proceeding,
14 asserting against Banner seven causes of action: (1) Negligence, (2) Negligence Per Se, (3)
15 Breach of Contract, (4) Breach of the Implied Covenant of Good Faith and Fair Dealing,
16 (5) Breach of the Implied Duty to Perform with Reasonable Care, (6) Unjust Enrichment,
17 and (7) Violation of the Arizona Consumer Fraud Act (“ACFA”).

18 5. Banner moved to dismiss Plaintiffs’ First Consolidated Complaint in April
19 2017, and the Court held oral argument on Banner’s motion in June 2017. On December
20 20, 2017, the Court granted in part and denied in part Banner’s Motion to Dismiss. The
21 Court denied Banner’s Motion to Dismiss as to Plaintiffs’ claims for Negligence,
22 Negligence *Per Se*, Unjust Enrichment, and violation of the ACFA, but granted it with
23 respect to Plaintiffs’ claims for breach of contract, breach of the implied covenant of good
24 faith and fair dealing, and breach of the implied duty to perform with reasonable care.

25 6. On January 16, 2018, Plaintiffs filed their Second Consolidated Amended
26 Complaint (“SAC”), asserting additional claims for breach of implied-in-fact contractual
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1 terms and promissory estoppel on behalf of potentially affected patients, insurance-plan,
2 and employee plaintiffs.

3 7. On February 27, 2018, Banner filed its second motion to dismiss, seeking
4 dismissal of these new claims for failure to state a claim.

5 8. On August 7, 2018, the Court dismissed Plaintiffs' promissory estoppel claim
6 as well as their implied-in-fact contractual term claims with respect to the insurance plan
7 and patient Plaintiffs, allowing the implied contract claims to proceed only on behalf of the
8 employee Plaintiffs.

9 9. After ruling on Banner's second motion to dismiss, Plaintiffs maintained
10 claims for: (1) Unjust Enrichment, (2) violations of the ACFA, (3) Negligence, (4)
11 Negligence *Per Se*, and (5) Breach of Implied Contract with respect to employee plaintiffs.

12 10. The Parties engaged in substantial voluntary and formal discovery, including
13 but not limited to the following: (a) Plaintiffs propounded, and Banner responded to, written
14 discovery, including twenty-three (23) interrogatories and fifty seven (57) formal requests
15 for document production, (b) Banner propounded, and the named Plaintiffs responded to,
16 written discovery, (c) Plaintiffs deposed one Banner 30(b)(6) witnesses, (d) Banner deposed
17 four of the named Plaintiffs; (e) Plaintiffs served and processed three document subpoenas
18 to Verizon, Mandiant, and Deloitte, and (f) the Parties negotiated key search terms to reduce
19 Banner's email production from more than 2 million files to approximately 800,000 records
20 through the use of Technology Assisted Review.

21 11. On December 11, 2018, the Parties attended private mediation.

22 12. On January 22, 2019, the Parties filed a Joint Motion to Stay the case pending
23 their settlement negotiations. The Court granted this motion on January 24, 2019.

24 13. On January 24, 2019, the Parties attended a second private mediation.

25 14. The Parties continued settlement negotiations thereafter. As part of these
26 negotiations, Plaintiffs' counsel and their cybersecurity consultant conducted an interview
27 of Banner's Chief Information Security Officer on April 9, 2019.

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- 1 ventures, personal representatives, predecessors, successors, transferees,
2 trustees, and assigns.
- 3 f. “Claim” means a claim for settlement benefits made under the terms of this
4 Settlement Agreement.
- 5 g. “Claimant” means a Settlement Class member who makes a Claim for
6 benefits under the Settlement Agreement.
- 7 h. “Claims Administrator” means JND Legal Administration or other third-
8 party settlement claims administrator chosen by the Parties to provide
9 Notice of the Settlement to the Settlement Class and administer the
10 Settlement, subject to the approval of the Court.
- 11 i. “Claims Deadline” means the final time and date by which a Claim must be
12 post marked or submitted to the Settlement Website in order for a Class
13 member to be entitled to any of the settlement consideration contemplated
14 by this Agreement. The Claims Deadline shall be twelve (12) months after
15 the Notice Date.
- 16 j. “Class Counsel” means Co-Lead Counsel and Class Executive Committee.
- 17 k. “Co-Lead Counsel” means Andrew S. Friedman of Bonnett, Fairbourn,
18 Friedman & Balint, P.C. and Paul L. Stoller of Dalimonte Rueb Stoller,
19 LLP.
- 20 l. “Class Executive Committee” means Eric H. Gibbs of Gibbs Law Group
21 LLP and Robert B. Carey of Hagens Berman Sobol Shapiro LLP.
- 22 m. “Class Representatives” means the Plaintiffs (as defined later in this
23 section).
- 24 n. “Complaint” means the Second Amended Consolidated Class Action
25 Complaint, or the “SAC,” filed on September 6, 2018.
- 26 o. “Court” refers to the United States District Court for the District of Arizona.
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1 p. “Effective Date of Settlement” or “Effective Date” means the date upon
2 which the Settlement in the Action shall become effective and final, and
3 occurs when each and all of the following conditions have occurred:

- 4 i. This Stipulation and Settlement has been fully executed by all
5 Parties and their counsel;
- 6 ii. Orders have been entered by the Court certifying the Settlement
7 Class, granting preliminary approval of this Stipulation, and
8 approving the forms of Notice described in Section VI, below;
- 9 iii. The notice program has been executed in accordance with the
10 Preliminary Approval Order;
- 11 iv. The Court has entered a Final Order and Judgment finally
12 approving the Settlement; and
- 13 v. The Final Judgment, as defined in Paragraph 18(r), below, has
14 been entered and all times to appeal therefrom have expired
15 with (1) no appeal or other review proceeding having been
16 commenced; or (2) an appeal or other review proceeding having
17 been commenced, and such appeal or other review having been
18 concluded such that it is no longer subject to review by any
19 court, whether by appeal, petitions for rehearing or reargument,
20 petitions for rehearing *en banc*, petitions for writ of certiorari,
21 or otherwise, and such appeal or other review has been resolved
22 in a manner that affirms the Final Judgment in all material
23 respects.

24 q. “Fees and Expenses” means the reasonable attorneys’ fees and costs incurred
25 by counsel for the Plaintiffs and awarded by the Court, not to exceed
26 \$2,900,000 (Two Million Nine Hundred Thousand Dollars).

- 1 r. “Final Judgment” means a judgment entered by the Court, as discussed in
2 Section X, below.
- 3 s. “Initial Credit Offering” means the credit monitoring offered by Banner in
4 August of 2016 to persons potentially affected by the Security Incident.
- 5 t. “Notice” means the double-sided postcard “Notice of Pendency and Proposed
6 Settlement of Class Action,” substantially in the form of Exhibit A, attached
7 hereto, which is to be mailed to Settlement Class members, subject to
8 approval by the Court.
- 9 u. “Notice Date” means the first date upon which the Notice is disseminated.
- 10 v. “Parties” means (i) Class Representatives, on behalf of themselves and the
11 Settlement Class, and (ii) Banner.
- 12 w. “Plaintiffs” means Howard Chen, Betty Clayton, Stacey Halpin, Kim
13 Maryniak, Summer Sadira, and Stan Griep.
- 14 x. “Preliminary Approval Order” means the proposed order preliminarily
15 approving the Settlement and directing mailed notice to the Settlement Class
16 of the pendency of the Action and of the Settlement, to be entered by the
17 Court.
- 18 y. “Released Claim(s)” means any and all claims and causes of action of every
19 nature and description, known or unknown, whether arising under federal,
20 state, statutory, regulatory, common, foreign, or other law, that arise in any
21 way from or relate to the Actions against Banner or the Security Incident
22 (other than claims to enforce the Settlement), as more specifically described
23 in Paragraphs 28-31, below.
- 24 z. “Released Banner Claim(s)” means any and all claims and causes of action of
25 every nature and description, known or unknown, whether arising under
26 federal, state, statutory, regulatory, common, foreign, or other law, relating to
27 the institution, prosecution, or settlement of the Action that Banner could have
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1 asserted against the Released Plaintiff Parties or Class Counsel (other than
2 claims to enforce the Settlement).

3 aa. “Released Parties” means the Banner Released Parties and the Released
4 Plaintiff Parties, collectively.

5 bb. “Released Plaintiff Parties” means any and all of the Class Representatives,
6 Settlement Class members, Class Counsel, and any counsel for Plaintiffs in
7 the Action and their law firms, attorneys, and employees, and their respective
8 partners, employees, attorneys, heirs, executors, administrators, successors,
9 successors-in-interest, assigns, predecessors, trustees, estates, and transferees.

10 cc. “Security Incident” means the data incident giving rise to the Action, as
11 further described in the Complaint.

12 dd. “Settlement Class” means all persons who were notified by Banner that their
13 personal information may have been compromised as a result of the Security
14 Incident. Excluded from the Settlement Class are the officers and directors
15 of Banner during the Class Period, the Judge presiding over this action and
16 her Honor’s courtroom staff, and those entities that timely and validly
17 request exclusion from the Settlement Class.

18 **III. SETTLEMENT BENEFITS TO THE CLASS**

19 19. **Preliminary Injunctive Relief and Confirmatory Discovery of Data**
20 **Security Improvements:** Banner has provided discovery, including confirmatory
21 discovery, to the Class Representatives and Class Counsel regarding improvements to its
22 information security enterprise since the Security Incident. Banner has agreed to implement
23 extensive information security improvements, including a robust set of Future Business
24 Practice Commitments, which are described in Exhibit C.

25 20. **Credit Monitoring Protections:** Banner agrees to offer two (2) years of
26 additional credit monitoring for all Settlement Class members paid for by Banner. The
27 additional credit monitoring does not overlap with the Initial Credit Offering, and will
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1 automatically be offered to the Settlement Class members. The credit monitoring will be
2 provided by Identity Guard Total, powered by IBM Watson, and shall include at least the
3 following, or similar, services:

- 4 a. Up to \$1 Million Dollars reimbursement insurance from AIG covering losses
5 due to identity theft and stolen funds;
- 6 b. Three bureau credit monitoring providing notice of certain changes to the
7 enrolled Settlement Class member's credit profile, including two-credit
8 bureau inquiry alerts in real-time;
- 9 c. Real time authentication alerts in as little as three seconds when someone
10 attempts to make a change to enrolled Settlement Class members' personal
11 account information within Identity Guard's network;
- 12 d. LexisNexis Authentication Alerts utilizing LexisNexis' database of legal,
13 governmental and newsworthy incidents;
- 14 e. Alerts based on searches of payday-loan providers and court records and
15 monitoring of the top ten largest U.S. financial institutions, for attempted or
16 actual fraudulent use of the enrolled Settlement Class members' information;
- 17 f. Online income tax filing alerts provided by LexisNexis and Turbo Tax;
- 18 g. Dark Web Monitoring that will provide notification if an enrolled Settlement
19 Class member's information such as Social Security number, credit card
20 numbers, financial account numbers, and health insurance number are found
21 on the Dark Web;
- 22 h. Threat Alerts powered by IBM "Watson's" artificial intelligence of potential
23 threats relevant to the enrolled Settlement Class members found by IBM
24 Watson's artificial intelligence, for instance: breaches, phishing scams, and
25 malware vulnerabilities;
- 26 i. Customer support and victim assistance provided by Identity Guard;
- 27 j. Anti-phishing Applications for iOS & Android Mobile devices; and
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1 k. Safe browsing software for personal computers and Macs to help protect the
2 enrolled Settlement Class member's computer(s) against malicious content
3 with an add-on for Safari, Chrome, and Firefox web browsers that delivers
4 proactive malware protection by blocking various malware delivery channels
5 including phishing, malvertisements, and Flash (the extension also blocks
6 content and tracking cookies to help protect personal information).

7 **21. Ordinary Expense Reimbursement:** All Settlement Class members who
8 submit a valid claim are eligible for the following ordinary out-of-pocket expenses, not to
9 exceed \$500 per Settlement Class member, that were incurred after June 17, 2016, as a
10 result of the Security Incident: (i) long distance telephone charges; (ii) cell minutes (if
11 charged by minute), Internet usage charges (if charge by the minute or by the amount of
12 data usage and incurred solely as a result of the Security Incident, and text messages (if
13 charges by the message and incurred solely as a result of the Security Incident); (iii) postage;
14 (iv) documented costs associated with miscellaneous expenses such as notary, fax, postage,
15 copying, and mileage; (v) documented costs associated with credit freezes; (vi) documented
16 costs of credit- monitoring services active between August 3, 2017, and the date credit
17 monitoring becomes available under this Settlement; and (vii) up to three (3) hours of lost
18 time compensated at \$15.00 per hour upon attestation that time was spent as a result of the
19 Security Incident.

20 Settlement Class members seeking reimbursement under this Paragraph 21 must
21 complete and submit either a written or online Claim Form to the Claims Administrator,
22 postmarked or electronically submitted on or before the Claims Deadline, which shall be
23 twelve (12) months after the Notice Date as set forth in Paragraph 33(h), below. The Claim
24 Form must be verified by the Settlement Class member with an attestation that he or she
25 believes that the losses or expenses claimed were incurred as a result of the Security
26 Incident. The Claim Form will require documentation of the ordinary out-of-pocket cost(s).
27 If documentation cannot be provided, Settlement Class members may provide a written
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1 reason why documentation cannot be provided, which will be considered by the Settlement
2 Administrator. Documentation will not be required for ordinary claims for lost time.

3 **22. Extraordinary Expense Reimbursement:** All Settlement Class members
4 who submit a valid claim shall also be eligible to be reimbursed for documented
5 extraordinary monetary out-of-pocket losses and extraordinary compensable additional lost
6 time incurred after June 17, 2016, as a result of the Security Incident, in an amount not to
7 exceed \$10,000.00 per Settlement Class member. Settlement Class members are eligible for
8 the following extraordinary out-of-pocket expenses: (i) documented credit-monitoring or
9 identity- protection services obtained after receiving notice of the Security Incident above
10 any amounts compensated as Ordinary Expenses; (ii) documented professional fees and
11 other costs incurred to address identity fraud or theft, including but not limited to falsified
12 tax returns, new account fraud, existing account fraud, account takeover, and medical-
13 identity theft; (iii) other documented unreimbursed losses, fees, or charges incurred as a
14 result of identity fraud or theft, including but not limited to including but not limited to (a)
15 unreimbursed bank fees, (b) unreimbursed card reissuance fees, (c) unreimbursed overdraft
16 fees, (d) unreimbursed charges related to unavailability of funds, (e) unreimbursed late fees,
17 (f) unreimbursed over-limit fees, (g) unreimbursed charges from banks or credit card
18 companies, and (h) interest on payday loans due to card cancellation or due to over-limit
19 situations; and (iv) reimbursement for up to fifteen (15) additional hours of lost time not
20 reimbursed under Paragraph 21 spent resolving documented extraordinary losses subject to
21 the requirements of Paragraph 23(c) below.

- 22 a. Settlement Class members seeking reimbursement under this Paragraph 22
23 must complete and submit either a written or online Claim Form to the Claims
24 Administrator, postmarked or electronically submitted on or before the
25 Claims Deadline, which shall be twelve (12) months after the Notice Date as
26 set forth in Paragraph 33(h), below.

1 b. To claim extraordinary out-of-pocket expenses a Settlement Class member
2 must: (i) provide identification of the identity theft event(s); (ii) attest that he
3 or she believes that the losses or expenses were incurred as a result of the
4 Security Incident, and (iii) provide reasonable documentation of the out-of-
5 pocket losses claimed.

6 c. Claims for extraordinary compensable additional lost time, pursuant to
7 Paragraph 22(iv) above, shall be paid subject to the following requirements
8 and restrictions: (i) Settlement Class members may be reimbursed for up to
9 fifteen (15) additional hours of lost time, not reimbursed as ordinary expenses
10 under Paragraph 21, spent resolving documented extraordinary losses; (ii)
11 payment for lost time shall be at the rate of \$15.00 per hour unless the
12 Settlement Class member establishes through documented proof that the
13 Settlement Class member took unpaid time off work and the Settlement Class
14 member's actual standard compensation rate exceeds \$15.00 per hour, in
15 which case payment shall be at the rate of actual compensation up to a
16 maximum of \$40.00 per hour; (iii) Settlement Class members may only be
17 reimbursed for time reasonably spent in response to identity fraud or theft.
18 Reimbursement for extraordinary compensable additional lost time under
19 Paragraph 22 will be provided to Settlement Class members subject to the
20 following: (i) reimbursement for up to five (5) hours of extraordinary
21 compensable additional lost time will require an attestation that the time was
22 spent as a result of the documented identity fraud or theft; (ii) reimbursement
23 for more than five (5) hours will require a documented or written showing of
24 how the time was expended and why it was reasonably necessary.

25 **23. Exhaustion of Insurance Benefits:** As a condition precedent to being
26 reimbursed for ordinary or extraordinary out-of-pocket expenses under Paragraph 21 or
27 Paragraph 22 of the Settlement Agreement, Claimants must exhaust all insurance benefits
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1 available to them in connection with the Initial Credit Offering and the Settlement benefits
2 offered in Paragraph 20 that would provide compensation for such losses (the “Insurance”).
3 Upon submission of a Claim by a Settlement Class member, the Claims Administrator shall
4 determine whether the Insurance may provide coverage for some or all of the expenses
5 claimed by the Settlement Class member. In the event the Claims Administrator determines
6 that some or all of a Settlement Class member’s claim under the Settlement may be covered
7 by the Insurance, the Claims Administrator and Identity Guard shall assist the Claimant in
8 making a claim against the Insurance (the “Insurance Claim”). The Claims Administrator
9 and/or Identity Guard shall be available to answer questions regarding the Insurance and
10 the exhaustion requirements. While a Claimant’s Insurance Claim is pending or in process,
11 any portion of the Settlement Class member’s Claim that may be covered by and reimbursed
12 from the Available Insurance will not be paid to the Claimant until the Available Insurance
13 completes processing the Insurance Claim; however, claims for amounts that are not subject
14 to the Insurance will be processed and may be paid by the Claims Administrator pursuant
15 to the terms of this Agreement. If the Insurance does not pay some or all of the claim made
16 by a Settlement Class member against the Insurance, the unpaid balance of any such
17 Insurance Claim will be processed and the portion of such unpaid balance covered by
18 Paragraphs 21 or 22 may be paid by the Claims Administrator pursuant to the terms of this
19 Agreement. Nothing in this Settlement Agreement shall be construed to provide for a double
20 payment for the same loss or injury that reimbursed or compensated by any other source.

21 **24. Overall Cap on Ordinary and Extraordinary Claims for Expense**
22 **Reimbursement:** Total payments under Paragraph 21 and Paragraph 22 to all Settlement
23 Class members for ordinary or extraordinary expense reimbursement shall not exceed
24 \$6,000,000 (the “Claims Made Settlement Cap”). If the valid claims submitted, pursuant to
25 Paragraph 21 and Paragraph 22 for ordinary or extraordinary expense reimbursement, on or
26 before the Claims Deadline, exceed the Claims Made Settlement Cap, all such claims shall
27 be reduced on a pro rata basis prior to payment. Otherwise, once the Claim Deadline is
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1 reached the Claims Administrator shall process and pay valid claims in their entirety. The
2 Claims Made Settlement Cap is limited to payments made pursuant to Paragraphs 21 and
3 22 of the Settlement Agreement; the Claims Made Settlement Cap does not apply to any
4 amounts paid pursuant to any other Paragraph or provision.

5 25. **Incentive Award:** Thirty (30) days after the Effective Date of the Settlement,
6 Banner will pay incentive awards of up to \$5,000 to Plaintiffs Howard Chen, Betty Clayton,
7 Stacey Halpin, Kim Maryniak, Summer Sadira, and Stan Griep, or in amounts otherwise
8 approved by the Court, in the Action.

9 **IV. STIPULATED CLASS ACTION SETTLEMENT CERTIFICATION**

10 26. Only for purposes of effectuating the Settlement, Class Representatives, Class
11 Counsel, and Banner agree and stipulate to the certification of the Settlement Class as
12 defined in this Agreement. Class Representatives, Class Counsel, and Banner further agree
13 and stipulate that, subject to Court approval, Class Counsel shall act as counsel for the
14 Settlement Class.

15 27. Class Representatives, Class Counsel, and Banner agree and stipulate that the
16 Settlement should be approved by the Court, and that the Court should make a determination
17 that the Settlement is fair, reasonable, and made in good faith. Class Counsel and Banner
18 shall bear the expenses and responsibility for taking all necessary measures to obtain Court
19 approval, including, without limitation, preparing and filing all papers with the Court
20 necessary for obtaining such approval, and following the required procedures for a good
21 faith determination. Class Counsel shall manage the case until the final fairness hearing.

22 **V. RELEASES**

23 28. Settlement Class members who do not opt-out of the Settlement in accordance
24 with Court approved opt-out procedures and deadlines release any and all claims arising
25 from or related to claims asserted in the Complaint as more specifically set forth in
26 Paragraphs 29 through 31, below.

1 29. The obligations incurred under this Stipulation shall be in full and final
2 disposition of the Action and of any and all Released Claims as against all Banner Released
3 Parties and any and all Released Banner Claims as against all Released Plaintiff Parties.

4 30. Upon the Effective Date, and without any further action, the Releasing
5 Plaintiff Parties, for good and valuable consideration the adequacy of which is hereby
6 acknowledged, shall fully, finally, and forever release, relinquish, and discharge any and all
7 Released Claims against each and every one of the Banner Released Parties, and shall
8 forever be barred and enjoined, without the necessity of any of the Banner Released Parties
9 posting a bond, from commencing, instituting, prosecuting, or maintaining any of the
10 Released Claims. Upon the Effective Date, and without any further action, Class
11 Representatives further agree not to knowingly and voluntarily assist in any way any third
12 party in commencing or prosecuting any suit against the Banner Released Parties relating
13 to any Released Claim.

14 31. Upon the Effective Date of the Settlement, and without further action, Banner,
15 on behalf of itself, and its heirs, executors, trustees, administrators, predecessors,
16 successors, and assigns, for good and valuable consideration the receipt and adequacy of
17 which is hereby acknowledged, shall fully, finally, and forever release, relinquish, and
18 discharge the Released Banner Claims, and shall forever be barred and enjoined, without
19 the necessity of any of the Released Plaintiff Parties posting a bond, from commencing,
20 instituting, prosecuting, or maintaining any of the Released Banner Claims.

21 **VI. ADMINISTRATION OF THE SETTLEMENT AND CLASS NOTICE**

22 32. The Claims Administrator shall provide notice to the Settlement Class
23 members and administer the Settlement under the Parties' supervision and subject to the
24 exclusive jurisdiction of the Court.

25 33. Dissemination of the Notice shall be accomplished by the Claims
26 Administrator and shall comply with the following:
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- 1 a. *Class Member Information*: No later than thirty (30) days after entry of the
2 Preliminary Approval Order, Banner shall provide the Claims Administrator
3 with the name and physical address of each Settlement Class member
4 (collectively, “Class Member Information”) that Banner possesses. Banner
5 warrants and represents that it will provide the most current Class Member
6 Information for all Settlement Class members as such information is
7 contained in its records, as such records were updated in the mailing for the
8 incident response related to the Security Incident. Prior to the mailing of the
9 Class Notice, the Claims Administrator will run the mailing list for the Notice
10 through the U.S. Postal Service’s National Change of Address Database for
11 verification and correction of addresses to attempt to reduce the number of
12 returned mail items. In the case of Notices undelivered and returned by the
13 U.S. Postal Service, the Claims Administrator will re-mail any Notice so
14 returned with a forwarding address.
- 15 b. The Class Member Information and its contents shall be used by the Claims
16 Administrator solely for the purpose of performing its obligations pursuant to
17 this Agreement and shall not be used for any other purpose at any time. Except
18 to administer the Settlement as provided for in this Agreement, or to provide
19 all data and information in its possession to the Parties upon request, the
20 Claims Administrator shall not reproduce, copy, store, or distribute in any
21 form, electronic or otherwise, the Class Member Information.
- 22 c. *Settlement Website*: Prior to the dissemination of the Notice, the Parties agree
23 to create, or to direct the Claims Administrator to create, a website dedicated
24 to providing information related to the Security Incident, the Action, and this
25 Settlement, including the Long Form notice contained within Exhibit B. The
26 website will include the information in the Notice, access to relevant publicly
27 available court documents relating to the Action, and provide Settlement
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1 Class members with the ability to enroll in the credit monitoring, make claims
2 for other Class benefits, and allow Settlement Class members to submit
3 documents to supplement or cure deficient claims. The website will make
4 clear that Settlement Class members who have opted-out of the Settlement in
5 accordance with Court-approved deadlines and procedures have not released
6 any claims they may have related to the Security Incident and may still file
7 claims related to the allegations in the Complaint. The website will also give
8 notice that there is a statute of limitations for filing claims and inform
9 individuals that their claims may have been tolled but that the Parties are not
10 providing legal advice and that they should contact an attorney immediately
11 if they believe they have a claim. The Settlement Website will also make
12 available to the Settlement Class members Spanish translations of the short-
13 form and long-form notices.

14 *d. Settlement Call Center:* The Claims Administrator shall establish and
15 maintain a call center with staff trained to respond to inquiries from
16 Settlement Class members.

17 *e.* Within seven (7) days of receiving the Class Member Information, the Claims
18 Administrator shall crosscheck the Class Member Information against the
19 National Change of Address directory to ensure the most recent and accurate
20 addresses are used to disseminate the Notice. Upon receipt of any notice of
21 address or forwarding address, the Claims Administrator shall forward any
22 returned mail.

23 *f.* Within thirty (30) days of receiving the Class Member Information, the
24 Claims Administrator shall commence the dissemination of the Notice.

25 *g.* Notice shall be given by U.S. mail to all Settlement Class members and
26 postage will be prepaid by Banner. Notice shall consist of a double-sided
27 postcard that provides instructions on how to enroll in the credit monitoring
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1 and how to make claims for Settlement Class benefits, including directing the
2 Settlement Class members to the Settlement Website and providing the
3 Settlement Class members with a telephone number they can call to enroll in
4 the Settlement Class benefits, and providing notice that Settlement Class
5 members have sixty (60) days after the Notice Date to object to or to opt out
6 of the Settlement. The postcard will also notify Settlement Class members
7 that Spanish translations of the short-form and long-form notices are available
8 on the Settlement Website.

- 9 h. All Settlement Class members shall receive twelve (12) months after the
10 Notice Date to enroll in the credit monitoring and make claims for Class
11 benefits. Settlement Class members may make multiple claims for Class
12 benefits within twelve months after the Notice Date, though the total Class
13 benefits to any Settlement Class member shall not exceed the limits provided
14 under Paragraphs 21, 22, and 24, above.

15 34. The notice provided to the Settlement Class members shall, pursuant to
16 LRCiv 54.2(i), include notice of the amount of attorneys' fees and related non-taxable costs,
17 or a fair estimate thereof, sought in accordance with this Settlement Agreement.

18 35. The administration of the Settlement is defined as the approval of the form of
19 notice program and all related forms; initial mailing of the notice of class action settlement;
20 creation and maintenance of publication website; administration and coordination of the
21 mailing and distribution of credit monitoring codes to be activated after final approval of
22 Settlement; day-to-day administration of the settlement, including responding to Settlement
23 Class member inquiries; delivery to the Parties of any requests for opt-outs or objections;
24 communication to the Parties about any issues that may arise; and the preparation of an
25 Affidavit of Fairness of the Notice Program to be submitted to the Court with the Motion
26 for Final Approval.

1 36. Under the procedure set forth in the Notice, potential Settlement Class
2 members have the right and ability to exclude themselves from the Settlement Class as set
3 forth in the proposed Preliminary Approval Order. In order to validly be excluded from the
4 Settlement, the potential Settlement Class member must send a letter that says he or she
5 wants to be excluded from the Settlement in *In Re: Banner Health Data Breach Litigation*,
6 Case No. 2:16-cv-02696-PHX-SRB, in the United States District Court for the District of
7 Arizona, to the Claims Administrator and include his or her name, address, and signature
8 by the date set by the Court and as outlined in the Notice. If the opt-out is untimely or
9 otherwise fails to comply with any of the provisions for a valid opt-out, it shall not be
10 considered a valid opt-out.

11 37. The Claims Administrator shall cause copies of requests for exclusion from
12 Settlement Class members to be provided to Class Counsel and Banner's Counsel as they
13 are received. No later than ten (10) calendar days after the final date for mailing requests
14 for exclusion, the Claims Administrator shall provide Class Counsel and Banner's Counsel
15 a complete and final list of all known Settlement Class members who have excluded
16 themselves from the Settlement. Class Counsel shall provide this information to the Court
17 before the final approval hearing.

18 38. The Notice will inform the Settlement Class members that they may send in
19 a written objection in this case, *In Re: Banner Health Data Breach Litigation*, Case No.
20 2:16-cv-02696-PHX-SRB, in the United States District Court for the District of Arizona.
21 To be valid, an objection must state: (a) the objector's full name, address, telephone number,
22 and e-mail address (if any); (b) information identifying the objector as a Settlement Class
23 member; (c) a written statement of all grounds for the objection, accompanied by any legal
24 support the objector cares to submit; (d) the identity of all lawyers (if any) representing the
25 objector; (e) the identity of all of the objector's lawyers (if any) who will appear at the Final
26 Fairness Hearing; (f) a list of all persons who will be called to testify at the Final Fairness
27 Hearing in support of the objection; (g) a statement confirming whether the objector intends
28

1 to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector's
 2 signature or the signature of the objector's duly authorized lawyer or other duly authorized
 3 representative (along with documentation setting forth such representation).

4 39. In addition to the foregoing, objections should also provide the following
 5 information: (a) a list, by case name, court, and docket number, of all other cases in which
 6 the objector (directly or through a lawyer) has filed an objection to any proposed class action
 7 settlement within the last three (3) years; (b) a list, by case name, court, and docket number,
 8 of all other cases in which the objector's lawyer (on behalf of any person or entity) has filed
 9 an objection to any proposed class action settlement within the last three (3) years; and (c)
 10 a list, by case number, court, and docket number, of all other cases in which the objector
 11 has been a named plaintiff in any class action or served as a lead plaintiff or class
 12 representative.

13 40. The Notice will further inform Settlement Class members that to be
 14 considered timely, any valid objection in the appropriate form must be **filed** with the Clerk
 15 of the United States District Court for the District of Arizona Sandra Day O'Connor U.S.
 16 Courthouse, Suite 522, 401 West Washington Street, SPC 50, Phoenix, AZ 85003-2153, no
 17 later than the date set by this Court and outlined in the Notice. The Notice will inform
 18 Settlement Class members that they must **mail** a copy of their objection to the following
 19 three different places postmarked no later than the date set by the Court and outlined in the
 20 Notice:

COURT	CLASS COUNSEL	BANNER'S COUNSEL
United States District Court for the District of Arizona Sandra Day O'Connor U.S. Courthouse, Suite 522 401 West Washington Street, SPC 50 Phoenix, AZ 85003-2153	Andrew S. Friedman William F. King BONNETT FAIRBOURN FRIEDMAN & BALINT, P.C. 2325 E. Camelback Road, Suite 1100 Phoenix, Arizona 85016	Casie D. Collignon Paul Karlsgodt BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, CO 80202

1 41. The Parties agree that Plaintiffs will take the lead in drafting responses to any
2 objections to the Settlement, including any appeals filed by the objectors. However, both
3 Parties retain their rights to make any argument(s) in response to any objector.

4 42. In the event that the Claims Administrator determines that some or all of a
5 Claim is deficient, the Claims Administrator shall respond to the Claimant with a written
6 Notice of Deficient Claim. Notices of Deficient Claims shall (a) be written in plain, easily
7 understandable English, (b) explain the reason for the deficiency(ies), (c) explain what type
8 of documentation or other proof, if any, can cure the deficiency(ies), (d) explain the
9 available procedures for submitting documents or other proof to supplement or cure the
10 deficiencies, and (e) advise Claimants that they must provide information sufficient to cure
11 the identified deficiencies within 30 days of the Notice being provided. Where a claim is
12 submitted electronically and an email address is provided, the Claims Administrator shall
13 provide any Notices of Deficient Claims via email; otherwise the Claims Administrator
14 shall provide any Notices of Deficient Claims via U.S. Mail. The Claims Administrator
15 shall adjudicate claims and issue Notices of Deficient Claims on a rolling basis throughout
16 the claims period.

17 **VII. NOTICE AND ADMINISTRATION EXPENSES**

18 43. All costs of notice and administration, including, without limitation, the fees
19 and expenses of the Claims Administrator, shall be paid separately by Banner directly to
20 the Claims Administrator or other party. Any amounts paid for notice and administration
21 (including contracting for outside vendors for this work) will not be reimbursed to Banner
22 if the Settlement does not become final.

23 **VIII. ATTORNEYS' FEES AND EXPENSES**

24 44. Banner will pay the attorneys' fees and costs incurred by Class Counsel in the
25 Action, as approved by the Court, in an amount up to but not to exceed \$2,900,000 (Two
26 Million Nine Hundred Thousand Dollars).

27
28

1 45. To facilitate the Parties' agreement on attorneys' fees and costs and
2 reimbursement in this Action, Plaintiffs and their attorneys agree not to seek more than
3 \$2,900,000 (Two Million Nine Hundred Thousand Dollars) in fees, inclusive of costs, and
4 Banner agrees not to contest a request for attorneys' fees and costs by Plaintiffs and their
5 attorneys so long as the request does not exceed \$2,900,000 (Two Million Nine Hundred
6 Thousand Dollars). The Parties did not discuss or agree upon payment of attorneys' fees
7 and costs until after they agreed on all material terms of relief to the Settlement Class.

8 46. Any attorneys' fees and costs awarded by Court shall be due and payable
9 within 30 business days of the Effective Date of this Settlement.

10 **IX. PRELIMINARY APPROVAL OF SETTLEMENT**

11 47. Concurrently with their application for preliminary Court approval of the
12 Settlement contemplated by this Stipulation and promptly after execution of this
13 Stipulation, Class Counsel will apply to the Court for entry of a Preliminary Approval
14 Order. The Preliminary Approval Order will, *inter alia*, preliminarily approve the
15 Settlement, set the date for the Final Fairness Hearing, and prescribe the method for giving
16 notice of the Settlement to the Settlement Class.

17 **X. FINAL JUDGMENT**

18 48. If the Preliminary Approval Order is entered by the Court, Class Counsel will
19 move the Court, within the time frames contemplated by the Preliminary Approval Order,
20 for entry of a Final Judgment.

21 **XI. WAIVER OR TERMINATION**

22 49. Banner shall have the right to terminate the Settlement if more than 500
23 persons opt out of the Settlement Class. If Banner chooses to exercise this provision, the
24 case will resume as if the Settlement never took place.

25 50. If the Effective Date of Settlement does not occur, or if the Settlement is
26 terminated or fails to become effective for any reason, then the Parties shall be deemed to
27 have reverted to their respective statuses in the Action as of the date and time immediately
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1 prior to the execution of this Stipulation, and, except as to paragraph 43 concerning
2 Banner's obligation to pay Notice and Administration costs or as otherwise expressly
3 provided, the Parties shall proceed in all respects as if this Stipulation and any related orders
4 had not been entered.

5 **XII. NO ADMISSION OF WRONGDOING OR LACK OF MERIT**

6 51. The terms of this Stipulation (whether the Stipulation becomes final or not),
7 the negotiations leading up to this Stipulation, the fact of the Settlement, and the
8 proceedings taken pursuant to the Settlement, shall not: (a) be construed as an admission of
9 liability or an admission of any claim or defense on the part of any party, in any respect; (b)
10 form the basis for any claim of estoppel by any third-party against any released party; or (c)
11 be admissible in any action, suit, proceeding, or investigation as evidence, or as an
12 admission, of any wrongdoing or liability whatsoever by any party, or as evidence of the
13 truth of any of the claims or allegations contained in the Action.

14 **XIII. MISCELLANEOUS PROVISIONS**

15 52. All of the exhibits attached hereto are hereby incorporated by reference as
16 though fully set forth herein.

17 53. The Parties to the Stipulation intend and agree that the Settlement is a final
18 and complete resolution of all disputes related to the Action by Banner, the Class
19 Representatives, and the Settlement Class members who have not timely excluded
20 themselves from the Settlement.

21 54. The Parties agree that the benefits provided herein and the other terms of the
22 Settlement were negotiated at arm's length in good faith by the Parties to the Stipulation
23 with the assistance of experienced and independent mediators, and reflect a settlement that
24 was reached voluntarily after consultation with experienced legal counsel.

25 55. This Stipulation may not be modified or amended, nor may any of its
26 provisions be waived, except by a writing signed by all Parties or their successors-in-
27 interest.

28

1 56. The headings herein are used for the purpose of convenience only and are not
2 meant to have legal effect.

3 57. The Parties hereby irrevocably submit to the continuing and exclusive
4 jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating
5 to this Settlement as embodied in the Stipulation or its applicability, and agree that they will
6 not oppose the designation of such suit, action, proceeding, or dispute as a related case to
7 the Action.

8 58. The Stipulation may be executed in one or more counterparts. All executed
9 counterparts and each of them shall be deemed to be one and the same instrument, provided
10 that counsel for the Parties to the Stipulation shall exchange among themselves original
11 signed counterparts. Electronically transmitted signatures are valid signatures as of the date
12 thereof.

13 59. The construction, interpretation, operation, effect, and validity of the
14 Stipulation, and all documents necessary to effectuate it, shall be governed by the laws of
15 the State of Arizona without regard to conflicts of laws, except to the extent that federal law
16 requires that federal law govern. The Parties understand and agree that any disputes arising
17 out of the Stipulation shall be governed and construed by and in accordance with the laws
18 of the State of Arizona, without reference or regard to choice-of-law principles.

19 60. The Stipulation shall not be construed more strictly against one Party to the
20 Stipulation than another merely by virtue of the fact that it, or any part of it, may have been
21 prepared by counsel for one of the Parties, it being recognized that the Stipulation is the
22 result of arm's-length negotiation between the Parties to the Stipulation, and all Parties to
23 the Stipulation have contributed substantially and materially to the preparation of the
24 Stipulation.

25 61. Any and all counsel and Parties to the Stipulation who execute the Stipulation
26 and any of the exhibits hereto, or any related Settlement documents, represent that they have
27 reviewed and understand those documents and have the full authority to execute the
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1 Stipulation, and that they have the authority to take appropriate action required or permitted
2 to be taken pursuant to the Stipulation to effectuate its terms.

3 62. Class Counsel and Banner's Counsel agree to recommend approval of the
4 Stipulation by the Court and to undertake their best efforts and cooperate fully with one
5 another in seeking Court approval of the Preliminary Approval Order, the Stipulation, and
6 the Settlement and to promptly agree upon and execute all such other documentation as may
7 be reasonably required to obtain final approval by the Court of the Settlement and the entry
8 of the Final Judgment.

9 63. Banner agrees to comply with the CAFA notice provisions set out in 28
10 U.S.C. 1715.

11 **IN WITNESS WHEREOF**, the Parties have, through their respective counsel,
12 executed this Stipulation as of the date first above written.

13 **Approved as to form by counsel for Plaintiffs and the Settlement Class:**

14 BONNETT FAIRBOURN FRIEDMAN & BALINT, P.C.

15 By: /s/ Andrew S. Friedman

16 Andrew S. Friedman

17 William F. King

18 DALIMONTE RUEB STOLLER, LLP

19 By: /s/ Paul L. Stoller

20 Paul L. Stoller

21 **Approved as to form by counsel for Defendant:**

22 BAKER & HOSTETLER LLP

23 By: /s/ Casie D. Collignon

24 Paul G. Karlsgodt

25 Casie D. Collignon

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BAKER & HOSTETLER LLP

By: s/ Casie D. Collignon
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Robert B. Carey (011186)
Leonard W. Aragon (020977)
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rob@hbsslw.com
leonard@hbsslw.com
michellak@hbsslw.com

Executive Committee Counsel for Plaintiffs

EXHIBIT A

Banner Health Settlement
Case 2:19-cv-02690-SRB
c/o JND Legal Administration
PO Box 91157
Seattle, WA 98111

Document 171-1 Filed 12/05/19 Page 30 of 42

PRE-SORTED
FIRST-CLASS
MAIL
AUTO
U.S. POSTAGE
PAID

**LEGAL NOTICE BY ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

<MAILER ID>
<IMB>
<Name>
<Address1>
<Address2>
<City>, <State> <Zip>
<Country>

If you were sent notification that your personal information may have been compromised as a result of the cyberattack at Banner Health in June and July of 2016, you could get benefits from a class action settlement.

This Notice contains information about a proposed class action settlement with Banner Health. More detailed information can be found at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) or by calling toll-free at 1-877-514-0829. Your legal rights may be affected whether you act or don't act.

What is this Notice for? This Notice is being sent to inform you that a settlement has been reached in the lawsuit *In Re: Banner Health Data Breach Litigation* (Case No. 2:16-cv-02696-PHX-SRB) which is pending in the United States District Court for the District of Arizona. This class settlement has been preliminarily approved by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Who is included? Settlement Class Members include all persons who were sent notification that their Personal Information may have been compromised as a result of the June and July 2016 cyberattack ("Security Incident") at issue in the Litigation. Excluded from the Settlement Class are all those persons who submit timely and valid requests for exclusion from the Settlement Class.

What are my options? You can file a claim to receive Settlement benefits, do nothing and stay in the case, exclude yourself, or object to the Settlement. If you do not exclude yourself, and the Court approves the Settlement, you will be bound by the Court's orders and judgments, even if you do not file a claim. If the Settlement is approved by the Court, any legal action you may have against the Defendant related to the allegations in the Lawsuit will be released.

Para una notificación en español, visite [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com)

Case 2:16-cv-02696-SRB Document 171-1 Filed 12/05/19 Page 32 of 42

What can I get? Under the proposed Settlement, Class Members who submit a valid claim by **Month Day, 20**, are entitled to one or more of the benefits outlined below:

- 1) Ordinary Cash Reimbursement** - a cash payment for up to 3 hours of undocumented lost time in connection with the Security Incident and/or additional documented expenses or monetary loss (up to \$500.00 per Class Member) as outlined in the Settlement Agreement;
- 2) Extraordinary Cash Reimbursement** - a cash payment for up to 15 additional hours of documented lost time in connection with the Security Incident and/or additional documented expenses or monetary loss (up to \$10,000.00 per Class Member) as outlined in the Settlement Agreement; and
- 3) Two Years of Credit Monitoring** which includes \$1 Million in identity theft coverage.

How do I file a claim? Class Members may submit a claim online at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com). If you cannot file your claim online, you may contact the Claims Administrator toll-free at 1-877-514-0829 to request that a Claim Form be mailed to you. For more information on the Settlement claim process, please visit [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) or call toll-free 1-877-514-0829.

What happens next? The Court will hold a Final Approval Hearing on **Month Day, 20** to decide whether the Settlement is fair, reasonable, and adequate. The Court will also decide whether to approve Class Counsels' attorneys' fees and expenses (up to \$2,900,000) and whether to award \$5,000 each to the six Representative Plaintiffs (\$30,000 in total). You or your attorney may ask permission to speak at the hearing at your own cost.

How do I get more information? If you wish to file a claim, object to the Settlement, or exclude yourself from the Settlement, you must follow the procedures outlined on the Settlement Website. Please visit [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) or call 1-877-514-0829.

Carefully separate this Address Change Form at the perforation

Name: _____

Current Address: _____



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



POSTAGE WILL BE PAID BY ADDRESSEE

BANNER HEALTH SETTLEMENT
C/O JND LEGAL ADMINISTRATION
PO BOX 91157
SEATTLE WA 98111-9889



EXHIBIT B

A court authorized this notice. This is not a solicitation from a lawyer.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA HAS PRELIMINARILY APPROVED A CLASS ACTION SETTLEMENT THAT MAY AFFECT YOU.

If you received notice from Banner Health that your personal information may have been compromised as a result of a cyberattack that occurred in June and July of 2016, this settlement may affect your rights.

Para una notificación en español, visite [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com)

- A class action settlement has been reached under which your rights may be affected.
- This proposed settlement will resolve a class action lawsuit pending in the United States District Court for the District of Arizona, titled *In Re: Banner Health Data Breach Litigation*, Case No. 2:16-cv-02696-PHX-SRB (the “Action”). On **[PRELIMINARY APPROVAL DATE]**, the Court preliminarily approved the Settlement.
- If you received notice from Banner Health that your personal information may have been compromised as a result of a cyberattack that occurred in June and July of 2016 (the “Security Incident”) at Banner Health, you are a member of the Settlement Class. Excluded from the Settlement Class are all those persons who timely and validly request exclusion from the Settlement Class.
- If you are a Class Member, then you may be entitled to compensation under the terms of a proposed settlement. If you are a Class Member and you wish to file a claim, comment on the Settlement, object to the Settlement, or exclude yourself from the Settlement, you must do so following the procedures outlined in this notice.
- This notice is to advise you of the status of the lawsuit, the terms of the proposed Settlement, and your rights in connection with the proposed Settlement. This is not a lawsuit against you. A full copy of the Settlement Agreement may be reviewed at the Settlement Website at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com). This Notice contains only a summary of the Settlement Agreement.
- Your legal rights are affected whether you act or don’t act. **Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
ACTION	EXPLANATION	DUE DATE
DO NOTHING	You will be included in the Settlement, receive no benefits, and give up your rights to sue Banner Health about the legal claims in the Litigation.	

QUESTIONS? VISIT [WWW.\[SETTLEMENTWEBSITE\].COM](http://www.[SETTLEMENTWEBSITE].COM) OR CALL TOLL-FREE AT 1-877-514-0829.

SUBMIT A CLAIM FORM	Class Members can choose to submit a claim to receive Settlement benefits. For more information about submitting a claim, see question 5. If you submit a claim and receive a payment, you give up your right to sue the Defendant about the claims in the Litigation.	Month Day, 2020
EXCLUDE YOURSELF	If you choose to exclude yourself (opt out), you will not be included in the Settlement. You will receive no benefits and you will keep any right you currently have to sue the Defendant about the claims in the Litigation.	Month Day, 2020
OBJECT	If you do not exclude yourself, and if you disagree with the Settlement, you can write to the Court to explain your objection.	Month Day, 2020
GO TO A HEARING	Ask to speak in court about the fairness of the Settlement.	Month Day, 2020

YOU MUST FILE A CLAIM FORM TO RECEIVE SETTLEMENT BENEFITS.

THE DEADLINE TO FILE A CLAIM FORM IS **[NOTICE DATE + 12 Months]**. THE DEADLINE TO OBJECT OR EXCLUDE YOURSELF IS **[NOTICE + 60 DAYS]**.

YOU CAN FILE A CLAIM FORM ONLINE OR PRINT AND MAIL YOUR CLAIM FORM TO THE CLAIMS ADMINISTRATOR

1. WHY DID I GET NOTICE OF THIS SETTLEMENT?

You received postcard notice of this Settlement because records show that you received notice from Banner Health that your personal information may have been compromised as a result of the Security Incident in 2016. If these records are correct, you are a Class Member and you are entitled to receive Settlement benefits if you submit a Claim Form and/or enroll in Credit Monitoring before the deadline and if the Court grants final approval of the Settlement. You also have other options as described in this notice.

2. WHAT IS THIS LAWSUIT ABOUT?

The Settlement Class Representatives filed a complaint against Banner. The complaint alleges that Banner Health acted unlawfully by failing to prevent the Security Incident. The Class Members claimed that Banner Health failed to fulfill its legal duty to adequately secure and safeguard the information of the Class Representatives and Class Members and that Banner Health breached promises made to the Class Representatives and Class Members concerning the security of their data.

QUESTIONS? CALL TOLL-FREE **1-877-514-0829**

Banner Health denies the allegations asserted by the Settlement Class Representatives in the Action and contends that Banner Health was and is in compliance with applicable state and federal law. The Court has not made any ruling on the merits of this case. The attorneys for the Settlement Class Representatives and Banner Health have agreed to settle the Action, subject to the approval of the Court.

3. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

If you received notice from Banner Health that your personal information may have been compromised a result of the Security Incident at Banner Health, you are a member of the Settlement Class.

4. WHAT DOES THE SETTLEMENT PROVIDE?

If the Court grants final approval, Banner Health will provide the following Settlement benefits to Class Members:

1. **Ordinary Cash Reimbursement** - a cash payment for up to 3 hours of undocumented lost time in connection with the Security Incident and/or additional documented expenses or monetary loss (up to \$500.00 per Class Member) as outlined in the Settlement Agreement;
2. **Extraordinary Cash Reimbursement** - a cash payment for up to 15 additional hours of documented lost time in connection with the Security Incident and/or additional documented expenses or monetary loss (up to \$10,000.00 per Class Member) as outlined in the Settlement Agreement; and
3. **Two Years of Credit Monitoring** which includes \$1 Million in identity theft coverage.

Cash Reimbursement Terms: Banner Health will pay up to a total of \$6,000,000 for Class Members' valid claims for Ordinary or Extraordinary Cash Reimbursement. To receive compensation for out-of-pocket losses or lost time incurred due to the Security Incident, you must submit a Claim Form by **[NOTICE DATE + 12 Months]**. Claims for Ordinary Lost Time will be compensated at \$15.00 per hour upon attestation by the Class Member that the time was spent as a result of the Security Incident. Claims for Extraordinary Lost Time will be compensated at the rate of \$15.00 per hour unless the Class Member establishes through documented proof that the Class Member took unpaid time off work and the Class Member's actual standard compensation rate exceeds \$15.00 per hour, in which case payment shall be at the rate of actual compensation up to a maximum of \$40.00 per hour. If the valid claims for Ordinary and Extraordinary Cash Reimbursement submitted by Class Members exceed a total of \$6,000,000, all claims will be reduced on a *pro rata* basis prior to payment. Otherwise, the Claims Administrator will process and pay valid claims in their entirety. The amount you are entitled to receive depends on several factors, including how many Claim Forms are filed before the deadline. You can look at the Claim Form [\[Link to Claim Form\]](#) to see an explanation of the types of loss that are considered Ordinary or Extraordinary as well as specific documentation requirements and hourly payment rates for claimed lost time.

QUESTIONS? CALL TOLL-FREE 1-877-514-0829

Credit Monitoring Offering Terms: To receive two (2) years of additional credit monitoring provided by Banner, Class Members must enroll in credit monitoring online or by mail no later than [NOTICE DATE + 12 Months].

Injunctive Relief: The Settlement also includes injunctive relief for all Settlement Class Members regardless of whether you make a claim in the Settlement. Banner has provided proof of its security enhancements to the Class Representatives and Class Counsel regarding improvements to its information security enterprise since the Security Incident. Banner has also agreed to implement extensive information security improvements, including a robust set of future business practice commitments and commitments to substantial information security funding.

Fees, Costs, and Expenses Associated with the Settlement: The parties estimate that the fees, costs, and expenses associated with the Settlement will be as follows: (i) Settlement Administration Costs estimated to be One Million Five Hundred Thousand Dollars (\$1,500,000); (ii) a Fee and Cost Award, to be requested by Class Counsel, not to exceed Two Million Nine Hundred Thousand Dollars (\$2,900,000); and (iii) a Service Payment Award, to be requested by the Settlement Class Representatives, not to exceed Five Thousand Dollars per Class Representative (\$30,000 in Total).

5. HOW DO I RECEIVE A BENEFIT?

If you are an eligible Settlement Class Member and you do not exclude yourself from the Settlement, and if you wish to receive a payment from the Settlement, then you must make a valid claim by [REDACTED], 2020. (Notice + 12 Months)

Claims must be filed online at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) by [REDACTED], 2020. If you cannot file your claim online, you may contact the Claims Administrator toll-free at 1-877-514-0829 to request that a Claim Form be mailed to you.

Claims for distribution submitted after [REDACTED], 20__ will not be paid.

If the Settlement is approved by the Court after the Final Approval Hearing and if you have timely submitted a valid claim for lost time and/or document expenses by the deadline of [REDACTED], 2020, you will be sent a Settlement payout for the value of your share of the Settlement, as set forth herein.

If the Settlement is approved by the Court after the Final Approval Hearing and if you have timely submitted a valid claim for two (2) years of additional credit monitoring, you will be sent instructions on how to enroll for this Settlement benefit from Identity Guard.

6. HOW WILL I RECEIVE PAYMENTS?

The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim, including any documentation that may be necessary to

QUESTIONS? CALL TOLL-FREE 1-877-514-0829

reasonably support the expenses claimed; and (3) if the information submitted could lead a reasonable person to conclude that the alleged expenses plausibly arose from the Security Incident (collectively, “Facially Valid”). The Claims Administrator may, at any time, request from the claimant in writing additional information (“Claim Supplementation”) as the Claims Administrator may reasonably require in order to evaluate the claim, information regarding the claimed losses, available insurance and the status of any claims made for benefits, and claims previously made for identity theft and the resolution thereof.

Upon receipt of an incomplete or unsigned claim or a claim that is not accompanied by sufficient documentation to determine whether the claim is Facially Valid, the Claims Administrator shall request Claim Supplementation and give the claimant 30 days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of the filing of such claim or thirty (30) days from the Effective Date, whichever comes latest. If the defect is not cured, the claim will be deemed invalid and there shall be no obligation to pay the claim.

Following receipt of additional information requested as Claim Supplementation, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is Facially Valid, either in whole or in part, then the claim shall be paid in accordance with the Settlement Agreement, to the extent that the Claims Administrator finds the claim to be valid. If, however, the Claims Administrator determines that the claim is not Facially Valid, the Claims Administrator shall submit the claim to Proposed Class Counsel (one Plaintiffs’ Counsel shall be designated to fill this role for all Plaintiffs) and counsel for Banner. If Class Counsel and counsel for Banner Health cannot reach an agreement in good faith or do not agree with the claimant, then the claim shall be submitted to an agreed-upon third party neutral at Banner’s cost.

Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination. If the final determination is approved by the claimant, then the approved amount shall be paid.

7. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

You have the right to exclude yourself from (i.e., “opt out” of) the Class. If you exclude yourself, you will be giving up the right to receive any payment and the right to object, but you will not be releasing the claims that are released in the Settlement.

To exclude yourself from the Class, you must inform the Claims Administrator in writing of your name, address, and your intention to be excluded. All requests for exclusion must be submitted, signed, and mailed to the Claims Administrator and postmarked no later than **[NOTICE + 60 DAYS]**. If you return a late request for exclusion, the request will be deemed invalid and you will remain a member of the Class and will be bound by all of the terms of the Settlement.

YOU CANNOT EXCLUDE YOURSELF BY TELEPHONE OR BY SENDING AN EMAIL.

QUESTIONS? CALL TOLL-FREE 1-877-514-0829

DO NOT SUBMIT BOTH A CLAIM FORM AND A REQUEST FOR EXCLUSION. IF YOU SUBMIT BOTH A CLAIM FORM AND A REQUEST FOR EXCLUSION, THE REQUEST FOR EXCLUSION WILL BE DISREGARDED.

8. HOW DO I OBJECT TO THE SETTLEMENT?

If you do not exclude yourself, you have the right to object to the Settlement if you wish. To object, you must file a written statement with the Clerk of the United States District Court for the District of Arizona, Sandra Day O'Connor U.S. Courthouse, Suite 522, 401 West Washington Street, SPC 50, Phoenix, AZ 85003-2153, no later than **[NOTICE + 60 DAYS]**. You must also mail a copy of your objection to the following four places postmarked no later than **[NOTICE + 60 DAYS]**:

COURT	CLASS COUNSEL	BANNER'S COUNSEL
United States District Court for the District of Arizona Sandra Day O'Connor U.S. Courthouse, Suite 522 401 West Washington Street SPC 50 Phoenix, AZ 85003-2153	Andrew S. Friedman William F. King BONNETT FAIRBOURN FRIEDMAN & BALINT, P.C. 2325 E. Camelback Road Suite 1100 Phoenix, Arizona 85016	Casie D. Collignon Paul Karlsgodt BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, CO 80202

Your objection must include: (i) your full name, address, telephone number, and e-mail address (if any); (ii) information identifying you as a Settlement Class Member; (iii) a written statement of all grounds for the objection, accompanied by any legal support you would like to submit; (iv) the identity of all lawyers (if any) representing you; (v) the identity of any lawyer who will appear at the Final Fairness Hearing on your behalf; (vi) a list of all persons who will be called to testify at the Final Fairness Hearing in support of your objection; (vii) a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing; and (viii) your signature or the signature of your duly authorized lawyer or other duly authorized representative (along with documentation setting forth such representation). In addition to the foregoing, objections should also provide the following information: (i) a list, by case name, court, and docket number, of all other cases in which you (directly or through a lawyer) filed an objection to any proposed class action settlement within the last three (3) years; (ii) a list, by case name, court, and docket number, of all other cases in which your lawyer (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last three (3) years; and (iii) a list, by case number, court, and docket number, of all other cases in which you have been a named plaintiff in any class action or served as a lead plaintiff or class representative.

You will not be excluded from the Settlement by filing an objection.

QUESTIONS? CALL TOLL-FREE 1-877-514-0829

9. DO I HAVE A LAWYER IN THE CASE?

For purposes of this settlement, the Settlement Class Representatives and the Settlement Class are represented by Andrew S. Friedman and William F. King of BONNETT FAIRBOURN FRIEDMAN & BALINT, P.C., 2325 E. Camelback Road, Suite 1100, Phoenix, Arizona 85016, and Paul L. Stoller of DALIMONTE RUEB STOLLER, LLP, 2425 E. Camelback Road, Suite 500, Phoenix, Arizona 85016. You will not be personally charged for their work on the case (which is being paid out of the Total Settlement Amount). If you want to be represented by your own lawyer, you may hire one at your own expense.

10. IS THERE A RELEASE OR WAIVER OF CLAIMS?

Yes. Unless you affirmatively exclude yourself, you will agree to the “Release” of claims as described in Section V of the Settlement Agreement. That means that you cannot sue, continue to sue, or be part of any other lawsuit against Banner Health or other Released Parties for any of the Released Claims. It also means that the Court’s orders will apply to you and legally bind you. You may view the Settlement Agreement for the full language of the legal claims you will give up if you remain in the Settlement by requesting a copy from the Claims Administrator.

11. WILL THERE BE A HEARING?

The Court will hold a Final Approval Hearing for the Settlement on **[DATE AND TIME]** in the **United States District Court for the District of Arizona, Sandra Day O’Connor U.S. Courthouse, Suite 522, 401 West Washington Street, SPC 50, Phoenix, AZ 85003-2153**. If objections have been received, the Court will consider them during this hearing. The Final Approval Hearing may be rescheduled to a later time, which time will be listed at the Court’s website and on the Settlement Website. If there are no objections, the Settlement will become final shortly after the Court grants final approval. If there are objections, the Settlement will become final after the Court grants final approval and either the time to appeal has expired or any appeal filed has been resolved.

You Are Not Required To Attend The Final Approval Hearing. However, you may appear or may hire your own attorney at your own expense to speak at the Final Approval Hearing.

12. REMINDER OF IMPORTANT SETTLEMENT DATES AND DEADLINES

The following are important dates and deadlines under the proposed Settlement:

Last Day to Submit Request for Exclusion:	[Notice + 60 DAYS]
Last Day to File and Serve Objections:	[Notice + 60 DAYS]
Last Day to File a Claim Form:	[Notice + 12 Months]
Final Approval Hearing:	[DATE]

QUESTIONS? CALL TOLL-FREE 1-877-514-0829

EXHIBIT C

FILED UNDER SEAL