MASTER SETTLEMENT AGREEMENT AND RELEASE

Sterner, et al. v. Centura Health Corporation, et al., 2018-cv-34766

This MASTER SETTLEMENT AGREEMENT ("Master Settlement Agreement") is made by and between: (1) Plaintiffs Robert Sterner, Angela Thomas-Graves, and Adam Horning, on behalf of themselves, each individually, and the Settlement Class as defined below (collectively, "Plaintiffs"); and (2) Defendants PorterCare Adventist Health System d/b/a Centura Health-Porter Adventist Hospital (the "Hospital"), Centura Health Corporation, and Porter Adventist Hospital¹ (collectively, "Defendants").

RECITALS

Plaintiffs have asserted various claims against Defendants relating, directly or indirectly, to surgeries provided and related care received at or through the Hospital.

Plaintiffs are represented by Class Counsel.

The Parties have agreed to this Master Settlement Agreement to provide for the complete and final resolution of Settled Claims against Defendants and Releasees subject to the provisions contained herein.

The Master Settlement Agreement is intended to provide for the complete and final resolution, in lieu of further litigation, of the Settled Claims of all Plaintiffs.

Releasees have denied and continue to deny liability or fault based on the Settled Claims. This Master Settlement Agreement shall not be construed as evidence of, or an admission by, the Releasees of any wrongdoing or liability whatsoever.

Recognizing the uncertainty of litigation and its associated expenses, and in order to avoid any further expense of litigation, the Parties wish to enter into this Master Settlement Agreement to provide for the resolution of Settled Claims between Plaintiffs and Releasees in accordance with the terms herein.

COVENANTS

The Parties hereby adopt and incorporate the above recitals as though set forth in full herein. Further, the Parties agree, and covenant as follows:

1. **DEFINITIONS**

As used in this Master Settlement Agreement, the following definitions shall apply:

¹ "Porter Adventist Hospital" was named in the complaint but does not refer to a distinct legal entity independent from Portercare Adventist Health System d/b/a Centura Health-Porter Adventist Hospital.



- 1.1. **"Advent Health"** means and refers to Advent Health System Sunbelt Healthcare Corporation and all of its direct or indirect subsidiaries, affiliates, or parent organizations.
- 1.2. "Attorneys' Fees and Expenses" means the amount of any attorneys' fees and reimbursement of litigation expenses awarded to Class Counsel.
- 1.3. "**Centura**" means and refers to Centura Health Corporation and all of its direct or indirect subsidiaries, affiliates, or parent organizations.
- 1.4. **"Class Benefit**" means the one-time payment representing Settlement Class Member's share of the Common Fund.
- 1.5. "Class Counsel" means counsel for Plaintiffs.
- 1.6. "Class Notice" refers to the notice approved by the Court on March 29, 2022, and which was distributed to Plaintiffs via U.S. mail.
- 1.7. "Common Fund" refers to the total sum of \$6,500,000 that Defendants will collectively deposit into the Zonies Law, LLC Trust Account, for the payment of Settlement Class Members' claims and any other costs and expenses associated with Settlement, including without limitation, administrative and notice expenses, the payment of Class Counsel's Attorneys' Fees and Expenses as approved by the Court, the payment of any incentive awards to the Named Plaintiffs as approved by the Court, and the payment of Class Benefits to Plaintiffs. Defendants shall not have any financial obligation in relation to the Settlement other than to create the Common Fund through the nonrefundable contribution of a total of \$6,500,000. This Common Fund does not include any separate monetary consideration for any terms related to confidentiality, any terms related to non-disparagement, or any claims for which punitive damages could have been awarded by a jury.
- 1.8. "**Court**" refers to the District Court for the City and County of Denver.
- 1.9. "**Defendants**" refers to the Hospital and Centura, as defined above and below.
- 1.10. **"Hospital**" means and refers to Defendant PorterCare Adventist Health System d/b/a Centura Health-Porter Adventist Hospital.
- 1.11. "Lawsuit" means the action entitled *Sterner, et al. v. Centura Health Corporation, et al.*, Case No. 2018-cv-034766 (District Court for the City and County of Denver).
- 1.12. "**Master Settlement**" refers to the Parties' agreement to completely and finally resolve, in lieu of further litigation, the Settled Claims of all Plaintiffs, as memorialized in this Master Settlement Agreement.
- 1.13. "**Plaintiffs**" means Robert Sterner, Angela Thomas-Graves, and Adam Horning, each individually, and the Settlement Class, as defined below.
- 1.14. "Parties" refers to Plaintiffs and Defendants collectively.

- 1.15. "**Named Plaintiffs**" means Plaintiffs Robert Sterner, Angela Thomas-Graves, and Adam Horning.
- 1.16. "**Releasees**" means all Defendants and Advent Health, their officers and executives, including but not limited to their past, present and direct or indirect parent organizations, holding companies, subsidiaries, divisions, affiliated entities, and their present members, managers, partners, owners, officers, shareholders, directors, trustees, administrators, executors, attorneys, representatives, employees, insurers, reinsurers, agents and/or independent contractors, and each of their successors and assigns individually and in their official capacities.
- 1.17. "Settlement" means the settlement provided for in this Master Settlement Agreement.
- 1.18. "Settled Claim" means and refers to any claims, causes of action, demands, damages, costs, expenses, liabilities or other losses, whether in law or in equity, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future that each Settlement Class Member or any of the Settlement Class Member's children, parents, spouses, domestic partners, heirs, beneficiaries, wards, successors, representatives or assigns, has, claims to have, or may have now or in the future, arising out of or in any way relating to the Class Members' surgeries provided at or through the Hospital between July 21, 2016 and April 5, 2018, and related care received at or through the Hospital, as alleged in the Lawsuit, with the exception of any claim for emotional distress for individuals identified on Amended Exhibit A and Exhibit B to the May 31, 2022 Addendum to the Tolling Agreement dated October 27, 2021 or any amendments thereto.
- 1.19. "**Settlement Class**" means all individuals who were sent the Class Notice and did not opt-out.
- 1.20. "**Settlement Class Member**" means any person who is a member of the Settlement Class.
- 1.21. **"Term Sheet**" refers to the Settlement term sheet the Parties executed on October 3, 2022 to memorialize certain material terms of this Settlement.

2. COMPENSATION TO SETTLEMENT CLASS MEMBERS

- 2.1. **Compensation to Settlement Class Members**. Settlement Class Members will be entitled to a Class Benefit representing their share of the Common Fund.
- 2.2. **Distribution of Common Fund**. The Common Fund shall be applied as follows:
 - a. to pay Class Counsel's Attorneys' Fees and Expenses, if and to the extent allowed by the Court;
 - b. to pay the Named Plaintiffs' incentive awards, if and to the extent allowed by the Court;
 - c. to pay all the costs and expenses reasonably and actually incurred in connection with providing Class Notice, settlement notice, locating

Settlement Class Members, administering and distributing the Common Fund, and paying escrow fees and costs, if any; and

d. to distribute the balance of the Common Fund to Settlement Class Members.

3. SETTLEMENT NOTICE AND ADMINISTRATION

Class Counsel and Defendants shall work cooperatively to prepare a proposed form of settlement notice, subject to Court approval as provided in Section 4. All decisions regarding the settlement administration procedures shall be made solely by Class Counsel.

4. PROCEDURES FOR SETTLEMENT APPROVAL

- 4.1. The Parties shall use their best efforts to effectuate this Master Settlement Agreement, including cooperating in drafting the preliminary approval documents and securing the prompt, complete, and final dismissal, with prejudice, of the Lawsuit.
- 4.2. Preliminary Approval
 - 4.2.1. Class Counsel shall file a motion with the Court for preliminary approval of the Settlement and authorization to disseminate a settlement notice to all Settlement Class Members. The motion for preliminary approval shall include: (A) a proposed preliminary approval order; (B) proposed forms of the settlement notice and methods for its dissemination; (C) proposed date of dissemination of the settlement notice to the Settlement Class Members; and (D) a proposed schedule through final approval of the Master Settlement Agreement.
 - 4.2.2. The deadlines established in the preliminary approval order are:
 - 4.2.2.1. Within fifteen (15) days after entry of a preliminary approval order: Defendants shall collectively make a deposit of \$6,500,000 into the Common Fund.
 - 4.2.2.2. Within thirty (30) days after entry of a preliminary approval order: Class Counsel shall mail a settlement notice that the Parties have agreed upon.
 - 4.2.2.3. Within forty-five (45) days after entry of a preliminary approval order: Class Counsel shall file with the Court a declaration of compliance with the preceding paragraph (4.2.2.2) and shall file the fee application.
 - 4.2.2.4. Within sixty (60) days after entry of a preliminary approval order: any objectors shall file objections, together with all supporting memoranda and other material, with the Court and serve that filing on Class Counsel and Defendants and any person or attorney seeking to appear at the fairness hearing must file with the Court and serve on Class Counsel and Defendants an

entry of appearance in the Lawsuit and notice of intention to appear at the Court's fairness hearing.

- 4.2.2.5. Within seventy-five (75) days after entry of a preliminary approval order: Class Counsel shall file their reply, if any, in support of their fee application and a final approval order and memorandum in support of the final approval order.
- 4.2.2.6. Approximately ninety (90) days after a preliminary approval order, Class Counsel shall request a fairness hearing with the Court, and request such hearing to be scheduled within ninety (90) days after the preliminary approval order.

4.3. Final Approval

- 4.3.1. At the fairness hearing, the Parties will jointly request the Court to enter a final approval order, which: (1) grants final approval to the Settlement and this Master Settlement Agreement as fair, reasonable, and adequate to the Settlement Class; (2) provides for the release of all Settled Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Settled Claims in the future; (3) orders the dismissal with prejudice of all claims alleged in the Lawsuit and incorporates the releases and covenant not to sue stated in this Master Settlement Agreement, with each Party to bear its, his, or her own costs and attorney fees in accordance with this Master Settlement Agreement; (4) authorizes the payment from the Common Fund of Settled Claims, in accordance with the terms of this Master Settlement Agreement; (5) provides a deadline for assessing and a mechanism for distributing any residual funds remaining in the Common Fund, in accordance with Colorado Rule of Civil Procedure 23(g); and (6) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of the Master Settlement Agreement.
- 4.3.2. In addition, Class Counsel will move the Court for entry of a separate order approving Attorneys' Fees and Expenses to Class Counsel and approving incentive payments to the Named Plaintiffs consistent with this Master Settlement Agreement.

5. COSTS OF NOTICE AND CLAIMS ADMINISTRATION

Any administration and notice expenses, including the cost of any publication notice required by law or this Master Settlement Agreement, shall be paid from the Common Fund. Defendants' sole financial responsibility in relation to this Settlement shall be to fund the Common Fund.

6. FEES AND COSTS FOR SETTLED CLAIMS

6.1. Class Counsel's reasonable Attorneys' Fees and Expenses shall be paid from the Common Fund. Class Counsel shall have the authority to determine and make an

allocation of Attorneys' Fees and Expenses to any counsel representing any of the Settlement Class Members who claims an entitlement to any fees or costs from any allocation for their client(s) approved by the Court from the Common Fund. The Court shall resolve any disputes regarding such allocation.

6.2. Except as otherwise provided, the Parties shall bear their own attorneys' fees and costs, including but not limited to, any costs or fees associated with claims administration, escrow accounts and settlement funds, lien searches and satisfaction, allocation, and any court filings related to court approvals. Releasees are released from any and all liability to any Settlement Class Member, Class Counsel, or other persons relating to attorneys' fees for all Settled Claims.

7. RELEASE

7.1. Plaintiffs and all Settlement Class Members who did not timely exclude themselves from the Settlement Class, for themselves, their heirs, executors, administrators, fiduciaries, successors and/or assigns, knowingly and voluntarily, agree to forever release and discharge, to the full extent permitted by law, the Releasees, jointly and severally, individually, or as part of a class action, of and from any and all claims, causes of action, damages, liabilities, costs, expenses, attorneys' fees, and liabilities related thereto, including but not limited to claims regardless of whether they are now known or unknown, that Plaintiffs and Settlement Class Members have alleged or could allege against Releasees arising out of or related to the Plaintiffs' and Settlement Class Members' surgeries at the Hospital between July 21, 2016 and April 5, 2018.

8. SETTLEMENT SUMS AND PAYMENT

- 8.1. **Releasees not Responsible for Allocation.** Neither the execution of this Master Settlement Agreement nor any payment made pursuant to this Master Settlement Agreement shall be deemed to indicate or mean that Releasees have approved, consented to, or agreed to any settlement amount allocated to any Settlement Class Member. No Releasee shall bear any responsibility or liability for an allocation or division of the Common Fund to or among Settlement Class Members.
- 8.2. No Admission of Liability. The Parties agree and understand that this Master Settlement Agreement and the Common Fund are made solely to effect a compromise of potential and disputed claims; that disputed questions of law and fact remain; and that, notwithstanding those disputed questions, the Parties wish to fully and finally avoid further costs of litigation and to compromise and settle any and all claims, controversies, and disputes between them. The Parties further agree and understand that the fact of this Master Settlement and the payments provided for in this Master Settlement Agreement are not, and shall not, be construed to be, either precedential or an admission of any liability or wrongdoing of any kind on the part of any Releasee, and that Releasees deny any liability or wrongdoing of any kind, and reserve all rights and defenses they may have.
- 8.3. **Satisfaction of Other Liens and Interests.** To the extent applicable, it is solely the Settlement Class Members' responsibility to satisfy liens or other third-party interests (including but not limited to liens, subrogation claims, reimbursement interests, and

interests asserted by government programs such as Medicare and Medicaid). To the extent Defendants reduced, waived, or have not collected any medical expenses or costs from the Class Members regarding any medical treatment which is the subject of this litigation and Master Settlement Agreement, Defendants agree to permanently waive any and all liens, subrogation claims, and reimbursement interests that could be asserted. Defendants agree to notify Class Counsel of any liens or subrogation claims off which Defendants' Directors or Executives are aware the Defendants have received written notice of beyond any notices filed in relation to <u>Sterner, et al. v. Centura</u> <u>Health Corporation, et al., 2018-cv-34766</u>.

9. RETURN OR DESTRUCTION OF CONFIDENTIAL DOCUMENTS

9.1. Named Plaintiffs and Class Counsel agree to secure and to not access, discuss, or refer to, share, or distribute Defendants' confidential documents to any other individuals or entities. This includes, but is not limited to, any documents obtained from the Colorado Department of Health, Courtemanche & Associates, Rose Seavey, or other sources that pertain to any of the Defendants, regardless of whether the documents were obtained before, during, or outside of formal discovery. Nothing in this section shall be construed to interfere with, or limit, Class Counsel's or Defendants' counsel's ethical obligations in connection with the maintenance or provision of client files; however, upon the passage of seven (7) years from the date of execution of this Master Settlement Agreement, and within two (2) weeks of that date, Class Counsel shall confidentially destroy all of Defendants' confidential documents. This section does not apply to discovery obtained to date in the Camp, et al. v. Centura Health Corp. et al., 2019-cv-30252 (District Court for the City and County of Denver) litigation, or any other emotional distress cases subject to the Parties' Tolling Agreement, executed by the Parties on October 27, 2021 and subsequently renewed.

9.2. INTENTIONALLY LEFT BLANK

10. NON-DISPARAGEMENT

The Parties agree and acknowledge that non-disparagement is a material term of the Parties' Settlement negotiated in exchange for the substantial consideration contemplated herein. Named Plaintiffs and Class Counsel agree they will not at any time, directly or indirectly, make, publish, or communicate to any person or entity or in any public forum, any defamatory or disparaging remarks, comments, or statements concerning the Releasees, their officers, owners, executives, business operations, or healthcare services related to the claims and allegations detailed in this Lawsuit. No separate monetary consideration was or will be given to any Class Member for this term, and the term of non-disparagement was not included in the compensation related to the Common Fund.

11. ARMS'-LENGTH NEGOTIATIONS

This Master Settlement Agreement is the product of arms'-length negotiations between the Parties, through their respective counsel. None of the Parties shall be deemed to be the drafter of all or any portion of this Master Settlement Agreement. No presumption shall be deemed to exist in favor of or against any of the Parties as a result of the preparation or negotiation of this Master Settlement Agreement.

12. GOVERNING LAW

This Master Settlement Agreement is being executed and delivered, and is intended to be performed in, the state of Colorado, and with respect to Advent Health, in the state of Florida. The substantive laws of the state of Colorado, irrespective of choice-of-law principles, shall govern the validity, construction, enforcement, and interpretation of this Master Settlement Agreement. This Master Settlement Agreement shall not be the basis of personal jurisdiction as to Advent Health.

13. BINDING EFFECT

This Master Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associations and/or corporations connected with them, including, without limitation, their insurers, sureties, and attorneys.

14. NO REPRESENTATION REGARDING TAX CONSEQUENCES

The Parties make no representation regarding the tax consequences or availability of any public or private benefits to any Settlement Class Member regarding this Master Settlement Agreement or any payments made thereunder.

15. ENTIRETY OF AGREEMENT

This Master Settlement Agreement is the entire agreement between Class Counsel, Releasees, and Defendants' Counsel. No Party has relied on any agreement or promise other than those expressly contained in writing in this Master Settlement Agreement. This Master Settlement Agreement, once executed, supersedes the Term Sheet executed by the parties on October 3, 2022.

16. MODIFICATIONS

This Master Settlement Agreement may not be modified or amended, or assigned in whole or in part, unless the modification, amendment, or assignment is in a writing executed by all Parties.

17. AUTHORITY

Each of the signatories represents and warrants that he or she is authorized to enter into this Master Settlement Agreement on behalf of each of the Parties on whose behalf he or she has executed the Master Settlement Agreement.

18. EFFECTIVE DATE

This Master Settlement Agreement shall be effective only upon execution by all Parties.

19. COUNTERPARTS

This Master Settlement Agreement may be executed in counterparts and transmitted by facsimile or .pdf via e-mail as well as by mail. All executed counterparts shall constitute an

On behalf of Adventist Health System Sunl	oelt Healthcare Corporation:	
Ву:		
Date:		
Title:	-	
Title: Executed in	County, State of Florida.	
On behalf of Centura Health Corporation:		
Ву:	_	
Date:		
Title:	_	
Executed in	County, State of Colorado.	
On behalf of Portercare Adventist Health System d/b/a Centura Health-Porter Adventist Hospital, and Porter Adventist Hospital:		
Ву:		
Date:		
Title:		
Title: Executed in	County, State of	
On behalf of the Class – Robert Sterner:		
On behalf of the Class – Robert Sterner: By: Date:		
Date: 37672023 Executed in	County State of	
On behalf of the Class – Angela Thomas-G	raves:	
By:		
Date:		
Title:		
Executed in	County, State of	
On behalf of the Class – Adam Horning: By:		
Date:		
Title:		
Executed in	County, State of	

On behalf of Adventist Health System Sunbelt Healthcare Corporation:

By:	
Date:	
Title:	
Title:Executed in	County, State of Florida.
On behalf of Centura Health Corporation:	
By:	
Date:	-
Title:	
Executed in	County, State of Colorado.
On behalf of Portercare Adventist Health S Adventist Hospital, and Porter Adventist H	•
By:	
Date:	
Title:	
Executed in	County, State of
On behalf of the Class – Robert Sterner:	

By:______ Date: ______ Executed in ______ County, State of ______.

On behalf of the Class – Adam Horning:		
By:	TANALA AND A TIME OF	
Date:		
Title:		
Executed in	County, State of	

On behalf of Adventist Health System Sunbelt Healthcare Corporation:

By:	
Date:	-
Title:	
Executed in	County, State of Florida.
On behalf of Centura Health Corporation:	
Ву:	
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Title:	
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On behalf of Portercare Adventist Health S Adventist Hospital, and Porter Adventist H	•
By:	
Date:	
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Executed in	County, State of
On behalf of the Class – Robert Sterner: By:	
Date:	
Executed in	County, State of
On behalf of the Class – Angela Thomas-G By: Date: Title:	
Title: Executed in	County State of
On behalf of the Class – Adam Horning: By: Laam Horwing Date: 3/8/2023	
Date: 3/8/2023	
Title:	
Executed in	County, State of

On behalf of Adventist Health System Sunbelt Healthcare Corporation:		
By:	County, State of Florida.	
By: Date:		
Title:Executed in		
On behalf of Portercare Adventist Health System d/b/a Centura Health-Porter Adventist Hospital, and Porter Adventist Hospital:		
By: Date: Title: Executed in		
On behalf of the Class – Robert Sterner: By:		
Date: Executed in		
On behalf of the Class – Angela Thomas-G By: Date: Title:		
Title: Executed in	County, State of	
On behalf of the Class – Adam Horning: By: Date: Title:		
Title: Executed in	County, State of	

On behalf of Adventist Health System Sunbelt Healthcare Corporation:

By:	
Date:	
Title:	-
Executed in	County, State of Florida.
On behalf of Centura Health Corporation: By: tin luthic he Date: 3/10/2023	
Title: Comsel Executed in Aragahoe	County, State of Colorado.
Executed in	_ County, State of Colorado.
On behalf of Portercare Adventist Health S Adventist Hospital, and Porter Adventist H By: Kin Walchich Date: 3/10/2023 Title: Coursel Executed in Acapahoe	lospital:
On behalf of the Class – Robert Sterner: By:	
Date:	
Executed in	County, State of
On behalf of the Class – Angela Thomas-G By: Date: Title:	
Executed in	County, State of .
On behalf of the Class – Adam Horning: By: Date: Title:	
Executed in	County, State of

As to Form:

On behalf of McConnell Van Pelt, LLC

3/10/2023 Date

Traci L. Van Pelt Attorney for Adventist Health System Sunbelt Healthcare Corporation; Portercare Adventist Health System, d/b/a Centura-Health Porter Adventist Hospital, and Porter Adventist Hospital

On behalf of Wheeler Trigg O'Donnell LLP

Michele O. Choe Attorney for Centura Health Corporation Date

On behalf of Wahlberg, Woodruff, Nimmo & Sloane, LLP

Daniel A. Sloane Attorney for the Class Date

On behalf of Zonies Law LLC

Joe Zon for the Class Attorney

3/9/23

As to Form:

On behalf of McConnell Van Pelt, LLC

Date

Traci L. Van Pelt Attorney for Adventist Health System Sunbelt Healthcare Corporation; Portercare Adventist Health System, d/b/a Centura-Health Porter Adventist Hospital, and Porter Adventist Hospital

On behalf of Wheeler Trigg O'Donnell LLP

Michele O. Choe Attorney for Centura Health Corporation Date

3-9-23

On behalf of Wahlberg, Woodruff, Nimmo & Sloane, LLP

Daniel A. Sloane Attorney for the Class

On behalf of Zonies Law LLC

Joe Zonies Attorney for the Class Date

As to Form:

On behalf of McConnell Van Pelt, LLC

Traci L. Van Pelt Attorney for Adventist Health System Sunbelt Healthcare Corporation; Portercare Adventist Health System, d/b/a Centura-Health Porter Adventist Hospital, and Porter Adventist Hospital

On behalf of Wheeler Trigg O'Donnell LLP

3/10/2023

Date

Date

Date

Michele O. Choe Attorney for Centura Health Corporation

On behalf of Wahlberg, Woodruff, Nimmo & Sloane, LLP

Daniel A. Sloane Attorney for the Class

On behalf of Zonies Law LLC

Joe Zonies Attorney for the Class Date