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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **EASTERN DIVISION**

13 DANIELLE GAMINO,)
14 individually and on behalf of all)
15 others similarly situated,)
16 *Plaintiff,*)

17 v.)

18 KPC HEALTHCARE HOLDINGS,)
19 INC., *et al.*,)
20 *Defendants,*)

21 and)

22)
23 KPC HEALTHCARE, INC.)
24 EMPLOYEE STOCK)
25 OWNERSHIP PLAN,)
26 *Nominal Defendant*)

Case No.: 5:20-cv-01126-SB-SHK

**CLASS ACTION SETTLEMENT
AGREEMENT**

27

28

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1 **INTRODUCTION**

2 Subject to approval by the United States District Court for the Central
3 District of California, Eastern Division pursuant to Rule 23, this Class Action
4 Settlement Agreement is made and entered into by and among Plaintiff and Class
5 Representative Danielle Gamino (“Plaintiff”), individually and on behalf of the
6 certified Class (the “Class”), and Defendants KPC Healthcare Holdings, Inc.
7 (“KPC”), The Administrative Committee of the KPC Healthcare, Inc. Employee
8 Stock Ownership Plan (“ESOP Committee”), Kali Pradip Chaudhuri, William E.
9 Thomas, Kali Priyo Chaudhuri, Amelia Hippert, and Lori Van Arsdale (all of the
10 foregoing are referred to collectively as the “KPC Defendants”). Plaintiff agrees to
11 settle claims against the KPC Defendants, subject to the terms and conditions
12 below. All capitalized terms will have the meaning ascribed thereto in Section I of
13 this Agreement.

14 **RECITALS**

15 WHEREAS, on June 1, 2020, Plaintiff Danielle Gamino filed a lawsuit,
16 docketed as Case No. 5:20-cv-01126-SB-SHK in the United States District Court
17 for the Central District of California, Eastern Division, asserting claims on behalf
18 of herself and a class of participants and beneficiaries of the ESOP for alleged
19 violations of ERISA;

20 WHEREAS, on August 11, 2021, Plaintiff filed her First Amended
21 Complaint, which is the operative complaint against the KPC Defendants.

22 WHEREAS, on August 6, 2021, and April 5, 2022, the Court granted
23 Plaintiff’s motions for class certification and certified this action as a class action
24 against all Defendants;

25 WHEREAS, on November 1, 2021, the Court denied the KPC Defendants’
26 motion to dismiss all claims in the First Amended Complaint against Dr.
27 Chaudhuri and William E. Thomas, granted the KPC Defendants’ motion to
28

1 dismiss Count XI as to certain KPC Defendants, and denied the motion to dismiss
2 Count XI by Defendant Alerus Financial, N.A.;

3 WHEREAS, on January 21, 2022, the Court consolidated this Action with
4 *Gamino v. SPCP Group, LLC*, Case No. 5:21-cv-01466-SB-SHK;

5 WHEREAS, as part of discovery and prior to the execution of the Settlement
6 Term Sheet, the Parties conducted extensive discovery regarding the merits and
7 potential recoveries for Plaintiff's claims;

8 WHEREAS, Plaintiff and KPC Defendants conducted arms-length
9 negotiations at a mediation session with Robert A. Meyer of JAMS on May 2,
10 2022, reached an agreement in principal as to the settlement amount and certain
11 non-monetary terms during the mediation, continued negotiations regarding the
12 remaining non-monetary settlement terms after the mediation session, and Co-Lead
13 Class Counsel signed a written Settlement Term Sheet with the KPC Defendants
14 on May 26, 2022;

15 WHEREAS, as a result of the factual investigation and legal research
16 conducted by Co-Lead Class Counsel concerning the claims asserted in the Action
17 and discovery, Co-Lead Class Counsel have concluded that the terms of this
18 Settlement are fair, reasonable, adequate and in the best interests of both the Class
19 and the ESOP, and have agreed to settle the Action with the KPC Defendants on
20 the terms set forth herein;

21 WHEREAS, KPC Defendants deny the material allegations asserted in the
22 Action; deny any wrongdoing or liability whatsoever; and state that they are
23 entering into the Settlement solely to avoid the cost, disruption, and uncertainty of
24 litigation;

25 WHEREAS, the Parties desire to promptly and fully resolve and settle with
26 finality all of the claims on the terms set forth herein and subject to the approval of
27 the Court; and
28

1 WHEREAS, each of the undersigned counsel represent that their respective
2 clients have been informed of and consent to the provisions set forth below;

3 NOW, THEREFORE, Plaintiff and the KPC Defendants, in consideration of
4 the promises, covenants and agreements herein described, and for other good and
5 valuable consideration, acknowledged by each of them to be satisfactory and
6 adequate, and without any admission or concession as to any matter of fact or law,
7 and intending to be legally bound, do hereby agree as follows:

8 **I. DEFINITIONS**

9 As used in this Agreement, the following terms have the following
10 meanings, unless a section or subsection of this Agreement specifically provides
11 otherwise. Capitalized terms used in this Agreement, but not defined in this
12 Section I, will have the meaning ascribed to them elsewhere in this Agreement.

13 **A.** “2015 ESOP and Warrant Transactions” means the warrant purchase,
14 warrant redemption, warrant cancellation, and stock purchase transactions that
15 took place on August 28, 2015, through which Defendant Kali Pradip Chaudhuri
16 sold 100% of the stock of KPC Healthcare Holdings, Inc. to the ESOP for
17 \$217,574,000.00, and Defendant William E. Thomas sold pre-existing stock
18 warrants to KPC for cash and other consideration.

19 **B.** “Action” means the class action pending in this Court styled Danielle
20 Gamino, on behalf of herself individually and on behalf of all other similarly
21 situated, v. KPC Healthcare Holdings, Inc., The Administrative Committee of the
22 KPC Healthcare, Inc. Employee Stock Ownership Plan, Kali Pradip Chaudhuri,
23 William E. Thomas, Kali Priyo Chaudhuri, Amelia Hippert, and LoriVan Arsdale
24 (collectively, the “KPC Defendants”), Alerus Financial, N.A. (“Alerus”), and
25 SPCP Group LLC (“SPCP”), Case No. 5:20-cv-01126-SB-SHK. The “Action”
26 includes *Gamino v. SPCP Group, LLC*, Case No. 5:21-cv-01466-SB-SHK, which
27 was consolidated with Case No. 5:20-cv-01126-SB-SHK on January 21, 2022.

28 **C.** “Alerus” means Defendant Alerus Financial, N.A.

1 **D.** “Cash Settlement Amount” means five million dollars
2 (\$5,000,000.00) to be paid by the Insurers for KPC Defendants on behalf of the
3 KPC Defendants, as described in Section III below.

4 **E.** “Class” means “All participants in the KPC Healthcare, Inc.
5 Employee Stock Ownership Plan from August 28, 2015 or any time thereafter
6 through August 31, 2021 (unless they terminated employment without vesting in
7 the ESOP) and those participants’ beneficiaries. Excluded from the class are (a)
8 Defendants in the Action; (b) any fiduciary of the Plan; (c) the officers and
9 directors of KPC Healthcare Holdings, Inc. or of any entity in which one of the
10 individual Defendants has a controlling interest; (d) the immediate family
11 members of any of the foregoing excluded persons; and the legal representatives,
12 successors, and assigns of any such excluded persons.”

13 **F.** “Class Counsel” means Co-Lead Class Counsel.

14 **G.** “Class Data” has the meaning set forth in Section II.7 of this
15 Agreement.

16 **H.** “Class Member” means an individual who is a member of the Class.
17 Where applicable, such as with regard to notice and payment provisions of this
18 Settlement Agreement, this term shall apply to either the former employee
19 participants, the beneficiaries of such participants, or an “Alternate Payee” (within
20 the meaning of IRC § 414(p)) of any of the same, whomever of which is to receive
21 an allocation of the Net Settlement Amount.

22 **I.** “Class Notice” means the form of notice provided to the Class
23 Members that complies with the requirements of Section II in this Agreement,
24 Rule 23, and as approved by the Court.

25 **J.** “Class Period” means August 28, 2015 through August 31, 2021 or
26 another end date approved by the Court.

27 **K.** “Class Representative” means Plaintiff Danielle Gamino.

1 **L.** “Co-Lead Class Counsel” means R. Joseph Barton of Block &
2 Leviton LLP, Daniel Feinberg of Feinberg, Jackson, Worthman & Wasow LLP,
3 and Richard Donahoo of Donahoo & Associates, PC.

4 **M.** “Company” means KPC.

5 **N.** “Complaint” means the First Amended Complaint (ECF No. 179).

6 **O.** “Court” or “District Court” means the United States District Court for
7 the Central District of California, Eastern Division.

8 **P.** “Defendant Releasees” means KPC Releasees.

9 **Q.** “Defense Counsel” means KPC Defendants’ counsel, McDermott
10 Will & Emery LLP.

11 **R.** “Effective Date” means the date on which the Final Order is Non-
12 Appealable.

13 **S.** “ERISA” means the Employee Retirement Income Security Act of
14 1974, as amended.

15 **T.** “Escrow Account(s)” means an account(s) established by Co-Lead
16 Class Counsel in the name of KPC ESOP Litigation Settlement Fund into which
17 the Cash Settlement Amount is to be paid.

18 **U.** “ESOP Committee” means the Administrative Committee of the KPC
19 Healthcare, Inc. Employee Stock Ownership Plan.

20 **V.** “ESOP Plan Administrator” means the Administrator of the KPC
21 ESOP within the meaning of ERISA § 3(16), 29 U.S.C. 1002(16).

22 **W.** “Excluded Persons” means the following persons who are excluded
23 from the Class: (1) Defendants in the Action; (2) any fiduciary of the Plan; (3) the
24 officers and directors of KPC, or of any entity in which one of the individual
25 Defendants has a controlling interest; (4) the immediate family members of any of
26 the foregoing excluded persons (including any person defined as a relative under
27 29 U.S.C. § 1002(15)); and (5) the legal representatives, successors, and assigns of
28 any such excluded persons.

1 **X.** “Expense Award” will have the meaning set forth in Section VIII of
2 this Agreement.

3 **Y.** “Fee Award” will have the meaning set forth in Section VIII of this
4 Agreement.

5 **Z.** “Final Approval Hearing” has the meaning set forth in Section X of
6 this Agreement.

7 **AA.** “Final Approval Motion” means the motion to be filed by Co-Lead
8 Class Counsel requesting that the Court grant final approval of the Settlement
9 pursuant to Fed. R. Civ. P. 23(e).

10 **BB.** “Final Order” means the Order and Final Judgment, substantially in
11 the form of an Order described in Section X below.

12 **CC.** “KPC” means Defendant KPC Healthcare Holdings, Inc.

13 **DD.** “KPC 401k Plan” or “401k Plan” means the KPC 401(k) Plan (as the
14 same may be amended from time to time).

15 **EE.** “KPC 401k Plan Administrator” means the Administrator of the KPC
16 401k Plan within the meaning of ERISA § 3(16), 29 U.S.C. 1002(16).

17 **FF.** “KPC Defendants” means KPC Healthcare Holdings, Inc.; The
18 Administrative Committee of the KPC Healthcare, Inc. Employee Stock
19 Ownership Plan; Kali Pradip Chaudhuri; William E. Thomas; Kali Priyo
20 Chaudhuri; Amelia Hippert; and Lori Van Arsdale.

21 **GG.** “KPC ESOP”, “ESOP” or the “Plan” means the KPC Employee Stock
22 Ownership Plan (as the same may be amended from time to time).

23 **HH.** “KPC Releasees” means the KPC Defendants, their parents,
24 subsidiaries, affiliates, shareholders and members, and each and all of the
25 respective past, present, and future officers, directors, employees, attorneys,
26 agents, or insurers of any of them, and their respective predecessors, successors
27 and assigns, both individually and in their capacities as directors, officers,
28

1 fiduciaries, administrators, shareholders, members, employees, agents, insurers
2 and attorneys other than the Non-Releasees.

3 **II.** “Net Settlement Fund” or “Net Settlement Amount” means the
4 Settlement Fund or Cash Settlement Amount minus all Court-approved reductions
5 such as the Fee Award, Expense Award, Service Award or approved settlement
6 administration expenses.

7 **JJ.** “Non-Appealable” means an order entered by the Court that is no
8 longer subject to appeal, which will occur when: (i) if no appeal is taken
9 therefrom, on the date on which the time to appeal therefrom (including any
10 extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date
11 on which all appeals therefrom, including any petitions for rehearing or re-
12 argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or
13 any other writ, or any other form or review, have been finally disposed of, such
14 that the time to appeal therefrom (including any extension of time) has expired, in
15 a manner resulting in an affirmance of the Final Order.

16 **KK.** “Non-Releasees” means Alerus, SPCP, and their respective parents,
17 subsidiaries, affiliates, shareholders, partners, investors and members, and each
18 and all of the respective past, present, and future officers, directors, employees,
19 attorneys, agents, or insurers of any of them, and their respective predecessors,
20 successors and assigns, individually or in their capacities as directors, officers,
21 fiduciaries, administrators, shareholders, partners, investors, members, employees,
22 agents, insurers and attorneys.

23 **LL.** “Plaintiff” means Danielle Gamino.

24 **MM.** “Plaintiff’s Counsel” means Co-Lead Class Counsel and Major Khan
25 of MK LLC Law.

26 **NN.** “Plan of Allocation” means the plan for distribution of the proceeds of
27 the Cash Settlement Amount as proposed by Co-Lead Class Counsel that is
28 subject to approval by the Court.

1 **OO.** “Preliminary Approval Motion” means the Motion to be filed by Co-
2 Lead Class Counsel requesting that the Court enter the Preliminary Approval
3 Order.

4 **PP.** “Preliminary Approval Order” means the “Order Preliminarily
5 Approving Settlement, Approving Form of Notice, and Setting Final Approval
6 Hearing” in this Action, substantially in the form described in Section X.

7 **QQ.** “Released Claims” means any and all present, or past claims,
8 demands, debts, damages, losses, offsets, obligations, liabilities, warranties, costs,
9 fees, penalties, expenses, rights of action, suits, and causes of action of every kind
10 and nature whatsoever, whether under federal, state, local, or foreign law, whether
11 based on contract, tort, statute, regulation, ordinance, the common law, or another
12 legal or equitable theory of recovery, whether known or unknown, suspected or
13 unsuspected, existing or claimed to exist, asserted or unasserted, foreseen or
14 unforeseen, actual or contingent, liquidated or unliquidated, in law or in equity,
15 that Plaintiff or the Class has that:

16 **1.** are asserted against the KPC Defendants in the First Amended
17 Complaint (ECF No. 179);

18 **2.** are based on or arise out of the facts alleged or the claims
19 asserted in the First Amended Complaint, including, but not limited to, the
20 following:

21 a. breach of duties or obligations (including fiduciary duties
22 and obligations) under ERISA to the Plan, to Named Plaintiff, to the
23 Class in connection with the acquisition of KPC stock in 2015 or the
24 sale or cancellation of warrants by any of the KPC Defendants in
25 2015;

26 b. participation in a transaction with the Plan prohibited by
27 ERISA in connection with the acquisition of KPC stock in 2015 or the
28

1 sale or cancellation of warrants by any of the KPC Defendants in
2 2015;

3 c. failure to provide an ERISA-compliant SPD dated 2017;

4 d. failure to file a timely Form 5500 annual report for the
5 2018 Plan Year;

6 e. failure to provide documents in response to Named
7 Plaintiff's February 19, 2019 written request pursuant to ERISA §
8 104(b);

9 f. failure to appoint, remove and/or adequately monitor the
10 Plan's fiduciaries, and any ongoing or continuing violation of the duty
11 to monitor the Plan's fiduciaries, in connection with or relating to the
12 2015 ESOP and Warrant Transactions, the provision of the 2017 SPD,
13 and the failure to file a timely Form 5500 annual report for the 2018
14 Plan Year;

15 g. knowing of an ERISA breach of fiduciary duty or
16 prohibited transaction relating to KPC or the Plan, and participating in
17 or enabling such ERISA breach of fiduciary duty or prohibited
18 transaction, or knowing of such ERISA breach of fiduciary duty or
19 prohibited transaction and failing to remedy it;

20 3. would be barred by principles of *res judicata* had the claims
21 asserted in the Action been fully litigated and resulted in a final judgment or order;

22 or

23 4. are claims for attorneys' fees, costs or expenses (except as
24 provided herein) or sanctions against the KPC Defendants relating to or arising out
25 of the claims in this litigation whether such claim arises under ERISA or any
26 federal law, state law, foreign law, common law doctrine, rule, regulation or
27 otherwise.

1 **RR.** “Released Parties” means any person who receives a release from
2 another party under this Settlement Agreement.

3 **SS.** “Service Award” will have the meaning set forth in Section VIII of
4 this Agreement.

5 **TT.** “Settled Claims” means all claims released pursuant to this
6 Settlement.

7 **UU.** “Settled Class Claims” means the claims that the Class will release
8 pursuant to this Settlement as provided in Section XIII.

9 **VV.** “Settlement” means the settlement and compromise of this Action as
10 provided for in this Settlement Agreement.

11 **WW.** “Settlement Administrator” means the person whom Co-Lead Class
12 Counsel may hire, subject to Court approval, who will be responsible for, among
13 other things, providing Class Notice to Class Members and/or otherwise assisting
14 with the administration of the Settlement including as set forth in Section VII.

15 **XX.** “Settlement Agreement” means this Class Action Settlement
16 Agreement and any accompanying Exhibits, including any subsequent
17 amendments thereto and any Exhibits to such amendments.

18 **YY.** “Settlement Fund” means the Cash Settlement Amount plus any
19 earnings and interest thereon, minus any Court-approved deductions and expenses.

20 **ZZ.** “Settlement Term Sheet” means the agreement fully executed on May
21 26, 2022, signed by Co-Lead Class Counsel on behalf of Plaintiff and KPC
22 Defendants’ Counsel on behalf of the KPC Defendants.

23 **AAA.** “Settling Parties” or “Parties” means Plaintiff, on behalf of herself and
24 the Class, and the KPC Defendants. It does not mean Alerus or SPCP.

25 **BBB.** “SPCP” means Defendant SPCP Group, LLC.

26 **CCC.** “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs,
27 imposts, and other charges of any kind (together with any and all interest,
28 penalties, additions to tax and additional amounts imposed with respect thereto)

1 imposed by any governmental authority, including income tax and other taxes and
2 charges on or regarding franchises, windfall or other profits, gross receipts,
3 property, sales, use, capital stock, payroll, employment, social security, workers'
4 compensation, unemployment compensation, or net worth; taxes or other charges
5 in the nature of excise, withholding, *ad valorem*, stamp, transfer, value added or
6 gains taxes; license, registration and documentation fees; and customs' duties,
7 tariffs, and similar charges.

8 **II. CLASS NOTICE**

9 **1. Provision of Class Notice.** Upon the Court's preliminary approval of
10 this Settlement Agreement or by the date specified by the Court, the Settlement
11 Administrator will be responsible for providing Class Notice to the Class
12 Members.

13 **2. Contents.** The Class Notice will contain a brief description of the
14 claims advanced by the Class, a summary of the terms of the Settlement
15 Agreement, information on the attorneys' fees and costs sought by Class Counsel,
16 describe the proposed Plan of Allocation of the Settlement Fund to the Class, and
17 provide information about the Final Approval Hearing, in the form approved by the
18 Court.

19 **3. Method of Providing Class Notice.** Class Notice will be provided to
20 each individual Class Member (a) by either electronic notification (if available and
21 approved by the Court) to all Class Members, or, if unavailable or not approved by
22 the Court, by mailing via first class US Mail to all Class Members, and (b) by
23 posting the Class Notice on websites maintained by Co-Lead Class Counsel and
24 the Settlement Administrator.

25 **4. Additional Information Provided with the Class Notice.** Along
26 with the Class Notice or at the same time as Class Notice is sent, every Class
27 Member will be provided with:
28

1 (a) instructions and other information necessary to electronically
2 request a distribution or rollover of the Class Member's allocation of the
3 proceeds from the Net Settlement Amount credited to the Class Member's
4 account under the KPC 401k Plan to the extent eligible for a distribution
5 under the terms of the KPC 401k Plan; and

6 (b) any other information necessary for the Class Member to
7 electronically provide instructions to the KPC 401k Plan Administrator
8 regarding the manner by which the Class Member's allocation of the
9 proceeds from the Net Settlement Amount credited to the Class Member's
10 account under the KPC 401k Plan should be invested in accord with the
11 KPC 401k Plan's participant directed investment program as in effect from
12 time to time. Any Class Member will be entitled to request and receive from
13 the KPC 401k Plan Administrator the information necessary to elect a
14 distribution or investment of his or her share of the Net Settlement Amount.

15 **5. Cooperation with Settlement Administrator.** KPC Defendants and
16 Defense Counsel will reasonably cooperate with the Settlement Administrator to
17 facilitate providing the Class Notice and other settlement-related communications
18 and administering the Settlement. KPC Defendants will cooperate with the
19 Settlement Administrator and Co-Lead Class Counsel to facilitate providing the
20 Class Notice and other settlement-related communications by providing any known
21 email addresses and mailing addresses for all Class Members, to the extent such
22 information is reasonably available in the records of KPC Defendants.

23 **6. Undeliverable Notices.** In the event that a Class Notice sent by email
24 or by U.S. Mail is returned as undeliverable, the Settlement Administrator will
25 make reasonable efforts to obtain a valid mailing address and promptly resend the
26 Class Notice to the Class Member by U.S. Mail.

27 **7. Class Data.** Within 21 days after this Settlement Agreement is
28 executed, KPC Defendants will, to the extent not already disclosed, provide Co-

1 Lead Class Counsel and the Settlement Administrator with the following (the
2 “Class Data”):

3 (a) Contact information in electronic form for each person
4 previously identified as a Class Member which shall include, to the extent
5 such information is reasonably available in Defendants’ files: (1) name; (2) a
6 street mailing address; (3) telephone number(s); (4) e-mail address(es); (5)
7 Social Security number; (6) sufficient information identifying the
8 beneficiary Class Member (including any persons who has a qualified
9 domestic relations order on file with the Company) for each participant
10 Class Member (including any known contact or other identifying
11 information); (7) the number of KPC shares allocated to the Class Member’s
12 account under the ESOP, including the number that were vested, forfeited
13 and/or liquidated under or distributed from the ESOP at any time between
14 August 28, 2015 and the end of the Class Period; (8) for any participant who
15 terminated with unvested shares, whether the person was voluntarily or
16 involuntarily terminated, and (9) information sufficient to link any newly
17 provided data to previously provided data about the Class.

18 (b) Sufficient information to identify the Excluded Persons by
19 name and the number of KPC shares allocated to the Excluded Person’s
20 account under the ESOP which were vested, forfeited and/or liquidated
21 under or distributed from the ESOP at any time between August 28, 2015
22 and the most updated information as of end date of the Class Period for this
23 settlement approved by the Court.

24 (c) Other information reasonably requested by Co-Lead Class
25 Counsel or the Settlement Administrator.

26 **8. Internet/Website Publication:** Class Counsel and/or the Settlement
27 Administrator will establish a website dedicated and designed to provide
28 information about the Action and the Settlement to Class Members. Among other

1 information, this website will contain the Class Notice, the First Amended
2 Complaint, the Order on the Motions to Dismiss, the Orders on the Motions for
3 Class Certification, the Settlement Agreement, Preliminary Approval Motion,
4 Preliminary Approval Order, proposed Plan of Allocation, Final Approval Motion,
5 Motion for Attorneys' Fees, Expenses and Service Award, the summary plan
6 description for the KPC 401k Plan, any forms or other information necessary for a
7 Class Member to either electronically request a distribution of the Class Member's
8 allocation of the Net Settlement Amount from the 401k Plan or electronically
9 provide instructions to the KPC 401k Plan Administrator as to how to invest the
10 Class Member's allocation of the Net Settlement Amount under the 401k Plan's
11 directed investment program, as in effect from time to time, and other agreed-upon
12 documents relevant to the Action and Settlement.

13 **9. Class Notice Costs and Expenses.** All costs and expenses for the
14 Class Notice and the Settlement Administrator will be paid from the Settlement
15 Fund.

16 **10. Declaration Regarding Class Notice.** Within 30 days after the date
17 on which the Class Notice is required to be sent, the Settlement Administrator will
18 file a declaration with the Court confirming that the Class Notice and related
19 information was sent in accordance with the Preliminary Approval Order.

20 **III. SETTLEMENT FUND**

21 **1. Payment of Cash Settlement Amount into Escrow Account.** KPC
22 Defendants will cause their Insurers to pay \$5,000,000.00 into the Escrow Account
23 within 30 days after entry of the Preliminary Approval Order or the establishment
24 of the Escrow Account, whichever is later.

25 **2. Payment of Cash Settlement Amount Sole Payment Obligation of**
26 **KPC Defendants.** Except as specified in this Agreement, the payment of the Cash
27 Settlement Amount shall be the sole, total, and only payment obligations of the
28 KPC Defendants or any KPC Releasee in the Settlement of the Action.

1 **3. Custody of Settlement Fund.** The Settlement Fund held in the
2 Escrow Account will be deemed to be in the custody of the Court and will remain
3 subject to the jurisdiction of the Court and will be administered in accordance with
4 the terms of this Settlement Agreement and the Orders of the Court. Except as
5 provided herein, the Settlement Fund will not be released from the Escrow
6 Account until the Final Order becomes Non-Appealable or the Settlement is
7 terminated in accordance with this Agreement.

8 **4. Management of the Settlement Fund.** Until the Final Order becomes
9 Non-Appealable or until the Settlement is terminated in accordance with this
10 Agreement, the Settlement Fund will be held in the Escrow Account established by
11 Co-Lead Class Counsel, for which an escrow agent (the “Escrow Agent”) will act
12 pursuant to the terms of the escrow agreements (the “Escrow Agreements”) or as
13 ordered by the Court. After the Final Order becomes Non-Appealable, Co-Lead
14 Class Counsel will have the sole right and duty to manage the Settlement Fund in
15 compliance with the terms of the Final Order. At no time will KPC Defendants
16 have any duty or authority to hold, manage, or invest any portion of the Settlement
17 Fund prior to the receipt by the KPC ESOP of the Net Settlement Amount. After
18 receipt of the Net Settlement Amount by the KPC ESOP, the Net Settlement
19 Amount will be transferred to the KPC 401k Plan where it will be held, managed,
20 and invested consistent with this Agreement. Any earnings or interest earned by
21 the Settlement Fund will become part of the Settlement Fund.

22 **5. Qualified Settlement Fund.** The Settlement Fund is intended by the
23 Settling Parties to be a “qualified settlement fund” for federal income tax purposes
24 under Treas. Reg. § 1.468B-1 at the earliest date possible.

25 **IV. DISTRIBUTIONS FROM THE SETTLEMENT FUND**

26 **1. Expenses Before the Effective Date.** Until the Final Order becomes
27 Non-Appealable or the Settlement is terminated in accordance with this
28 Agreement, Class Counsel will be authorized to pay from the Settlement Fund

1 upon notice to Counsel for the Defendants (a) any actual or estimated taxes on any
2 income earned on the Settlement Fund, (b) all costs and expenses related to the
3 preparation of such tax filings or payments and (c) all costs and expenses incurred
4 in connection with the Class Notice and administration of the Settlement. Any
5 dispute regarding the reasonableness of any expense incurred, paid, or owing will
6 be adjudicated by the Court, but in no event will such a dispute require Class
7 Counsel to cause or allow the Settlement Fund to fail to make a tax payment in a
8 timely manner.

9 **2. Attorneys' Fees, Expenses/Costs, and Service Awards.** Pursuant to
10 any deadline set by the Court, Class Counsel may file any motion with the Court
11 requesting the payment of attorneys' fees, reimbursement of litigation expenses
12 and costs, and/or Service Award out of the Settlement Fund. Any amounts so
13 awarded by the Court will be paid from the Settlement Fund as directed by Class
14 Counsel before Distribution to the Class

15 **3. Tax Reserve After the Effective Date:** Upon the Final Order
16 becoming Non-Appealable, Class Counsel will be authorized to establish a reserve
17 from the Settlement Fund to pay any taxes that are or will be owed (but not yet
18 due) and for expenses related to payment of taxes or filing of tax returns or to the
19 extent that there are other costs of administration of the Settlement.

20 **4. Distribution to KPC ESOP Accounts of the Class:** After the Final
21 Order becomes Non-Appealable, the Settlement Fund (along with any settlement
22 funds paid by any other defendants prior to this Settlement becoming Non-
23 Appealable) will be distributed to Class Members pursuant to the Court-approved
24 Plan of Allocation after payment of the following: (a) any Taxes on the income or
25 earnings by the Settlement Fund, any tax-related expenses, and the creation of any
26 reserve for future expenses (as described above); (b) any expenses incurred in
27 connection with the administration of the Settlement Fund; and (c) any award of
28 attorneys' fees, reimbursement of any litigation expenses and costs to Class

1 Counsel, and/or payment of any Service Award. After deduction of the foregoing,
2 the Net Settlement Amount will be distributed to Class Members in accordance
3 with the Plan of Allocation by remitting the Net Settlement Amount to the KPC
4 ESOP (along with any settlement funds paid by any other defendants prior to this
5 Settlement becoming Non-Appealable) to be allocated by the ESOP Plan
6 Administrator to the ESOP accounts of Class Members based on the instructions of
7 the Settlement Administrator

8 **5. Distributions of the Net Settlement Fund Proceeds to the Class.**

9 Distributions to Class Members who are entitled to receive an allocation from the
10 Settlement Fund will be made as follows:

11 (a) For Class Members who are eligible for an immediate
12 distribution from the ESOP or the KPC 401(k) Plan prior to the Final
13 Approval Hearing and who have submitted a request for an immediate
14 distribution prior to Final Approval (and at least 30 days before the date on
15 which the Final Order becomes Non-Appealable), the KPC ESOP Plan
16 Administrator will make a distribution or rollover as directed by the election
17 form within the later of (i) 30 days of the Final Order becoming Non-
18 Appealable or (ii) 30 days after the KPC ESOP Plan Administrator has
19 received amounts from the Settlement Fund and a direction or approval from
20 Class Counsel or the Settlement Administrator regarding the allocation of
21 any portion of the net proceeds of the Settlement Fund for these Class
22 Members.

23 (b) For Class Members who are not eligible for a distribution from
24 the KPC 401k Plan or for those Class Members who do not make a
25 distribution election prior to Final Approval, their proceeds from the Net
26 Settlement Amount shall be transferred to each Class Member's existing
27 account in the KPC 401k Plan or, if the Class Member does not have an
28 existing KPC 401k Plan account, such an account will be established and the

1 settlement proceeds will be allocated to such account within the later of (i)
2 30 days of the Final Order becoming Non-Appealable or (ii) thirty (30) days
3 after the Plan Administrator has received amounts from the Settlement Fund
4 and a direction from the Settlement Administrator (or Class Counsel)
5 regarding the allocation of any portion of the net proceeds of the Settlement
6 Fund.

7 (c) To make such an election for distribution or rollover from
8 either the KPC ESOP or the KPC 401k Plan, a Class Member will need to
9 complete an election form, which will be valid, unless modified by the Class
10 Member, for 180 days after the election is executed by the Class Member.
11 To the extent that a Class Member executes an election form more than 180
12 days prior to the date the distribution date for that Class Member, the Class
13 Member will need to make a new election to receive their distribution or
14 rollover. To the extent that the election form expires prior to the time that the
15 KPC ESOP Plan Administrator is required to make a distribution of the
16 Settlement Fund under this Agreement, the KPC ESOP Plan Administrator
17 will send a new election form to the Class Member within 10 days of the
18 expiration date.

19 (d) For all Class Members whose Settlement Proceeds are paid into
20 the KPC 401k Plan, all reasonable efforts will be taken to ensure that the
21 distribution complies with ERISA and the relevant provisions of the Internal
22 Revenue Code (and any corresponding state tax provisions) in order to
23 preserve the tax-favored treatment of the amounts distributed to those Class
24 Members.

25 **6. Investment of the Settlement Proceeds:** Class Members whose
26 allocation from this Settlement are transferred to the KPC 401k Plan will be
27 invested as follows:
28

1 (e) For Class Members with an existing KPC 401k Plan Account,
2 the Class Member's settlement proceeds will be invested according to that
3 Class Member's pre-existing investment instructions for contributions in that
4 Class Member's KPC 401k Plan account.

5 (f) For Class Members without an existing KPC 401k Plan
6 Account, the Class Member's settlement proceeds will be invested in the
7 KPC 401k Plan's default investment option.

8 (g) After the initial allocations are made, Class Members will be
9 permitted to direct investment of their proceeds from this Settlement into
10 any of the available investment options in the KPC 401k Plan according to
11 the terms of the KPC 401k Plan and will be able to request and receive
12 distributions from the KPC 401k Plan according to the terms of the KPC
13 401k Plan, and as provided in this Settlement Agreement.

14 **7. Costs and Expenses Related to Settlement Administration.** The
15 KPC Defendants, their insurers, or any Plan sponsored by KPC (or any service
16 provider to such Plan) will not be entitled to reimbursement of any expenses
17 incurred by any of them from the Settlement Amount in connection with the
18 administration of the settlement or distribution of the settlement proceeds. No
19 amounts will be charged by the KPC Defendants (or any Plan sponsored by KPC)
20 to any participants in (or beneficiaries of) the ESOP in connection with the
21 administration or distribution of the proceeds of the Settlement to members of the
22 Class.

23 **8. Restrictions on Administration and Distribution Expenses Charged to**
24 **Class Members.**

25 (a) For any Class Members who, within 120 days after the date on
26 which the 401k Plan Administrator has sent notice to the Class Member that
27 the Net Settlement Amount has actually been credited to Class Members'
28 401k Plan accounts, electronically request a distribution of their allocation of

1 the proceeds from the Net Settlement Amount (and are entitled to a
2 distribution of their proceeds from the Net Settlement Amount under the
3 terms of the 401k Plan), no fees, expenses, costs or other charges will be
4 imposed on Class Members to receive their allocation of the proceeds from
5 the Net Settlement Amount nor will such Class Members (or their ESOP or
6 401k accounts) be charged any administration fees or costs on their
7 allocation of the proceeds from the Net Settlement Amount for the 120-day
8 period of time that the distributions are to be made; rather, to the extent that
9 the distribution of allocations from the Net Settlement Amount to these
10 Class Members involves any charges, such distribution processing costs will
11 be borne by KPC Defendants.

12 (b) For Class Members who do not request a distribution within the
13 120-day period described in (a) above, any administrative costs, including
14 any costs in connection with distribution of allocations of the Net Settlement
15 Amount from the KPC 401k Plan to the Class Members, will be charged to
16 Class Members in accordance with the terms of the KPC 401k Plan.

17 (c) No fees, expenses, costs, or other charges will be imposed on
18 Class Members in connection with any expenses incurred by the KPC
19 Defendants in implementing the terms of this Settlement or in connection
20 with distributing the Settlement proceeds or in connection with the costs of
21 the Independent Fiduciary.

22 **9. Restriction on Investment of the Settlement Proceeds.** In no event
23 will the proceeds from the Net Settlement Amount be invested in KPC stock under
24 either the ESOP or the 401k Plan.

25 **10. Amendment of the KPC ESOP or KPC 401k Plan to Effectuate**
26 **Provisions Related to the Distribution of the Settlement Funds.** KPC will
27 adopt any amendments to the KPC ESOP and 401k Plan necessary to effectuate the
28 Settlement, including amendments consistent with this Settlement Agreement (a)

1 permitting distribution or roll-over of a participant's allocation from the Net
2 Settlement Amount from the 401k Plan to the extent permitted by applicable law,
3 and (b) allowing participants who leave their allocation from the Net Settlement
4 Amount in the 401k Plan to direct the investment of such amounts in accord with
5 the 401k Plan's participant directed investment program, as in effect from time to
6 time. The KPC Defendants will provide Class Counsel with a proposed draft of
7 any Amendment to be adopted by each plan (i.e., the ESOP and 401k Plan) at least
8 30 calendar days prior to the date that the Final Approval Motion is due (except
9 that each proposed Amendment will omit the amount of the Net Settlement
10 Amount that will be allocated among Class Members). In the event of a dispute,
11 the Court will decide whether the language of the proposed Amendment is
12 consistent with the terms of this Settlement Agreement. The KPC Defendants will
13 then adopt the Amendment within the later of 15 days after the Effective Date or
14 after receipt by KPC of instructions from the Settlement Administrator modified
15 only as to how the Net Settlement Amount will be allocated among Class Members
16 by name and amount. The KPC Defendants will provide Class Counsel with a copy
17 of each actual Amendment as adopted within three business days after its adoption.
18 After adoption, each such Amendment may not be rescinded, modified, or
19 eliminated without written notification to Class Counsel at least ten business days
20 before the adoption of any such modification or elimination and the approval of the
21 Court.

22 **11. Tax Liability.** The Settling Parties will not have any liability or
23 responsibility for the payment of any Taxes incurred by or with respect to the
24 Settlement Fund, and any such Taxes will be paid out of the Settlement Fund.

25 **V. PLAN OF ALLOCATION**

26 **1. Proposed Plan of Allocation.** Co-Lead Class Counsel will propose
27 and submit a Plan of Allocation to the Court as to the recommended method of
28 determining and distributing the proceeds of the Settlement Fund (net of any Fee

1 Award, Expense Award, any Service Award approved by the Court and other costs
2 or expenses authorized herein) to Class Members.

3 **2. KPC Defendants' Non-Involvement.** KPC Defendants will have no
4 responsibility for preparing or any right to provide input into and will take no
5 position on the Plan of Allocation except to the extent that (a) the Plan of
6 Allocation would result in adverse tax consequences to the KPC ESOP or the KPC
7 401k Plan or (b) Class Counsel's proposal is inconsistent with Section V.1.

8 **3. Modification of Plan of Allocation.** In the event that the proposed
9 Plan of Allocation is rejected or modified by the Court or on appeal, such rejection
10 or modification will not constitute a material modification of this Settlement
11 Agreement, will not void this Settlement Agreement, and will not provide a basis
12 for any party to withdraw from this Settlement Agreement; however, the Plan of
13 Allocation must prohibit the Excluded Persons from receiving any distribution or
14 allocation from the Settlement Fund.

15 **4. Class Members' Right to Demonstrate Membership and/or**
16 **Submit ESOP Account Data.** Before the Final Approval Hearing and by a
17 deadline to be established by the Court, any person who claims to meet the
18 definition of a Class Member but who has not been identified as a Class Member in
19 the Class Data will be entitled to demonstrate membership in the Class and any
20 person claiming that the Class Data regarding a participant's ESOP account is
21 erroneous will be entitled to demonstrate that such an error will impact the amount
22 allocated to that person under the Plan of Allocation. Such submissions will only
23 be used to determine whether a person qualifies as a Class Member for purpose of
24 this Settlement, subject to Court approval, and to adjust amounts allocated to Class
25 Members, subject to Court approval, under the Plan of Allocation.

26 **5. Excluded Persons Prohibited From Receiving Settlement Funds.**
27 None of the Excluded Persons will either directly or indirectly through allocations
28 to their KPC ESOP or KPC 401k Plan accounts receive any of the proceeds from

1 this Settlement. Defendants Kali Pradip Chaudhuri, William E. Thomas, Kali Priyo
2 Chaudhuri, Amelia Hippert, and Lori Van Arsdale acknowledge that they will not
3 receive any allocation of any amount from this Settlement, and further agree to
4 obtain, if necessary, an agreement from any immediate family members who are
5 participants or beneficiaries in the ESOP (including a spouse) necessary to forego
6 any such allocation of any amount from this Settlement.

7 **6. No Claim Based on Distribution in Accordance with the Plan of**
8 **Allocation.** The Class and its members will not have any claim against Plaintiff,
9 KPC Defendants, Class Counsel, Defense Counsel, the Settlement Administrator,
10 or the Independent Fiduciary, including any of the individuals involved in the
11 distribution under the Plan of Allocation, based on any distributions of the
12 Settlement Fund or allocations of the Net Settlement Amount made substantially in
13 accordance with this Settlement Agreement, the Plan of Allocation, or as
14 authorized by the Court. Additionally, Class Members will be barred from
15 asserting any claims against KPC Defendants or KPC Releasees either arising out
16 of calculations, distributions, or allocations performed by the Settlement
17 Administrator or based on actions by KPC Defendants or KPC Releases that were
18 consistent with the Plan of Allocation, the Settlement Agreement, the applicable
19 plan (ESOP or 401k Plan), an order of the Court, or the direction of the Settlement
20 Administrator or Class Counsel.

21 **VI. NON-MONETARY CONSIDERATION**

22 **1. Summary Plan Description.** The ESOP Committee will issue a
23 revised Summary Plan Description (“SPD”) that is compliant with ERISA.
24 Defendants will provide a draft of the proposed SPD to Co-Lead Class Counsel at
25 least 30 days before the Final Approval Hearing and, to the extent necessary, will
26 make any other corrective disclosures at issue in Count V of the First Amended
27 Complaint that are approved by counsel for the ESOP Committee. To the extent
28 that Class Counsel and Defendants cannot agree upon the final version of the SPD,

1 or the corrective disclosures, the Court will determine whether the proposed
2 revised SPD and the corrective disclosures comply with ERISA. The ESOP
3 Committee will provide the revised SPD to all participants in the ESOP within 30
4 days after the Final Approval Order is Non-Appealable. KPC Defendants will file
5 an affidavit with the Court averring that KPC has issued the revised SPD to all
6 participants 30 days after the revised SPD is sent and that it has made the
7 corrective disclosures.

8 **2. KPC Defendants' Continued Cooperation in this Litigation.** In

9 accordance with the Settlement Term Sheet, the KPC Defendants agree to
10 continue to cooperate with Class Counsel for purposes of Plaintiff's litigation of
11 claims against Alerus and SPCP by doing the following:

12 (a) At the request of Class Counsel, each of the KPC Defendants
13 will appear at trial upon reasonable advance notice; and

14 (b) Each of the KPC Defendants agree that counsel for the KPC
15 Defendants is authorized to accept a subpoena for their trial testimony.

16 **VII. SETTLEMENT ADMINISTRATION**

17 **1. Appointment of Settlement Administrator.** A Settlement

18 Administrator who will be approved by the Court will be appointed to administer
19 the Settlement and will report to Co-Lead Class Counsel and the Court. The
20 Settlement Administrator will have experience providing notice to Class Members
21 in employment or employee benefit class action settlements, and in supervising
22 and administering large and complex settlement funds.

23 **2. Settlement Administrator's Responsibilities.** The Settlement

24 Administrator will undertake the following tasks to administer this Settlement
25 consistent with the terms of this Settlement, the Plan of Allocation, and the Orders
26 of the Court and such other procedures required by the Court or as directed by Co-
27 Lead Class Counsel:

1 (a) Print and email and/or mail the Class Notice to the Class
2 Members in accordance with this Settlement Agreement and any order of the
3 Court and undertake to trace and re-mail all undeliverable Class Notices or
4 other reasonable steps to locate missing Class Members;

5 (b) Provide Class Counsel and Defense Counsel with copies of all
6 written objections to the Settlement (to the extent such objections are not
7 filed with the Court), and all challenges to the Class Data, including all
8 information submitted in support of each challenge, and/or any request for
9 exclusions from the Class;

10 (c) Respond to questions from Class Members or refer Class
11 Members to Class Counsel for response;

12 (d) Maintain and staff a toll-free phone number and a web site until
13 at least six (6) months after distributions of the Net Settlement Fund have
14 been made to Class Members' KPC ESOP accounts;

15 (e) File with the Court a declaration confirming compliance with
16 the procedures approved by the Court for providing notice to the Class;

17 (f) Determine for purposes of allocation of the Net Settlement
18 Amount, subject to the approval by the Court, whether Class Members
19 claiming to have sufficiently established either their status as members of the
20 Class or that their account data differs from the Class Data and send notice
21 of determinations or adjudications to those persons;

22 (g) Calculate the amount of the Net Settlement Amount to be
23 allocated to each Class Member entitled to payment from the Net Settlement
24 Amount by name and amount;

25 (h) Instruct the ESOP Plan Administrator, consistent with
26 instructions from Class Counsel and the court-approved Plan of Allocation,
27 as to how the Net Settlement Amount is allocated among the Class and into
28 the KPC ESOP accounts of individual Class Members;

1 (i) Monitor the Settlement Fund and file all informational and
2 other tax returns or other tax filings necessary or advisable with respect to
3 the Settlement or Settlement Fund (including without limitations the returns
4 described in Treas. Reg. Section 1.468B-2(k));

5 (j) Pay the Net Settlement Amount to the KPC ESOP, consistent
6 with instructions from Class Counsel and the court-approved Plan of
7 Allocation; and

8 (k) Any other responsibilities set forth in this Agreement; and any
9 other responsibilities agreed to by the Settling Parties related to
10 administration of the Settlement and consistent with the orders of the Court
11 or any other responsibilities ordered by the Court.

12 **3. KPC ESOP Plan Administrator's Responsibilities.** The KPC ESOP
13 Plan Administrator will (a) allocate the Net Settlement Amount to the Class
14 Members' KPC ESOP accounts pursuant to and consistent with the instructions
15 from the Settlement Administrator to the extent such instructions are not
16 inconsistent with this Settlement Agreement, law and regulations; and (b) once
17 such amounts are allocated into the Class Members' ESOP accounts, transfer the
18 proceeds from the Net Settlement Amount to the KPC 401k Plan consistent with
19 the terms of this Settlement Agreement.

20 **4. KPC 401k Plan Administrator's Responsibilities.** The KPC 401k
21 Plan Administrator will (a) process electronic distribution requests and distribute
22 the Net Settlement Amount to Class Members who make requests for distributions
23 or rollovers as set forth in this Settlement Agreement and to the extent permitted
24 by applicable law; (b) invest the Net Settlement Amount in accord with the 401k
25 Plan's participant directed investment program and the investment instructions by
26 participants provided consistent with that program and consistent with the terms of
27 this Settlement Agreement; and (c) search for and locate any Class Members who
28 are missing participants consistent with Department of Labor regulations.

1 **5. Tax Treatment of the KPC Plans.** Plaintiff, Class Counsel and the
2 KPC Defendants will use their best efforts to ensure that the Settlement will not
3 adversely affect the tax-qualified status of the KPC ESOP or the KPC 401k Plan.
4 KPC Defendants will be responsible for all costs associated with any steps that
5 they undertake to ensure the continued tax qualification of the KPC ESOP or the
6 KPC 401k Plan with respect to the Settlement.

7 **6. Tax Reporting.** The KPC 401k Plan Administrator will be
8 responsible for tax reporting for the KPC 401k Plan. The KPC ESOP
9 Administrator will be responsible for tax reporting for the KPC ESOP. The
10 Settlement Administrator will be responsible for tax reporting for the Settlement
11 Fund, including tax reporting for the payment of any Fee Award to Class Counsel
12 and any Service Award.

13 **VIII. PAYMENT OF FEES, SERVICE AWARDS, AND**
14 **REIMBURSEMENT OF COSTS AND EXPENSES**

15 **1. Attorneys' Fees & Expenses From the Settlement Fund.** Class
16 Counsel will be entitled to file a motion seeking an award of attorneys' fees and
17 reimbursement of expenses and costs from the Settlement Fund. Prior to the
18 deadline for Class Members to object to the Settlement Agreement, Class Counsel
19 will file a motion with the Court for an award from the Settlement Fund of: (a)
20 attorneys' fees (the "Fee Award"), (b) a service award for Danielle Gamino
21 ("Service Award"), and (c) reimbursement of litigation costs and expenses (the
22 "Expense Award"). Any Fee Award, Service Award or Expense Award will be
23 paid solely from the Settlement Fund and is subject to the Court's approval at the
24 Final Approval Hearing.

25 **2. KPC Defendants' Non-Opposition.** KPC Defendants and their
26 counsel will take no position regarding the application for or an award of the Fee
27 Award provided that the application for the Fee Award does not exceed one-third
28 of the Cash Settlement Amount. KPC Defendants and their counsel will not take

1 any position on a requested Service Award for Plaintiff so long as the Service
2 Award does not exceed \$10,000.00.

3 **3. Payment of Fees/Expenses to Co-Lead Class Counsel.** All
4 amounts to be paid pursuant to this Section will be paid into an account designated
5 by Co-Lead Class Counsel to be distributed among Plaintiffs' Counsel as directed
6 by Co-Lead Class Counsel. Neither KPC Defendants nor their Insurers will have
7 any input as to the division of such fees and expenses among Plaintiffs' Counsel.

8 **4. Timing of Payment of Attorneys' Fees and Reimbursement**
9 **of Expenses.** Disbursement of any Fee Award, Expense Award or Service Award
10 will be made only upon the Final Order becoming Non-Appealable except that in
11 the event that there is no appeal of the Final Order, but an appeal solely of a Fee
12 Award, Expense Award, or any Service Awards, in which event Class Counsel will
13 be entitled to a disbursement from the Settlement Fund of such amount of the Fee
14 Award or Expense Award as to which there is no appeal.

15 **5. Non-Materiality of Award of Attorneys' Fees,**
16 **Reimbursement of Expenses or Service Award to Settlement.** In the event that
17 the Court refuses to award attorneys' fees, allow reimbursement of expenses/costs
18 or permit a service award, in whole or in part, or any such award is rejected or
19 modified on appeal, such rejection or modification will not constitute a material
20 modification of this Settlement Agreement, will not void this Settlement
21 Agreement, and will not provide a basis for any Settling Party to withdraw from
22 this Settlement Agreement.

23 **6. KPC Defendants' Attorneys' Fees & Expenses.** KPC
24 Defendants and/or their Insurers will bear their own attorneys' fees, expenses and
25 costs. No amount of the attorneys' fees, expenses, or costs of this Action incurred
26 by KPC Defendants or the administration of this Settlement incurred by KPC
27 Defendants will be paid by, or charged to, directly or indirectly, the KPC ESOP
28 account of any Class Member.

1 **IX. NO ADMISSION OF WRONGDOING**

2 **1.** This Settlement Agreement embodies a compromise of disputed
3 claims and nothing in the Settlement Agreement, including the furnishing of
4 consideration in connection with this Settlement Agreement, will be interpreted or
5 deemed to constitute any finding of wrongdoing or admission of wrongdoing by
6 KPC Defendants under ERISA or any other statute, regulation, case law, common
7 law doctrine, or other legal authority, or give rise to any inference of liability in
8 this or any other proceeding. This Settlement Agreement and the payments made
9 consistent with its terms will not be offered or received against KPC Defendants as
10 any admission by any such party with respect to the truth of any fact alleged by
11 Plaintiff or Class Members or the validity of any claim that had been or could have
12 been asserted in the Action or in any litigation, or of admission by any KPC
13 Defendant of any damages, losses, liability, negligence, fault, or wrongdoing of
14 any such party. KPC Defendants expressly deny any liability, wrongdoing,
15 damages, or losses with respect to the matters alleged in the Complaint or First
16 Amended Complaint.

17 **2.** This Settlement Agreement may be used in such proceedings as
18 may be necessary to consummate or enforce this Settlement Agreement or the
19 Final Order, and any Party may file this Settlement Agreement and/or the Final
20 Order in any action that may be brought against it or any of the Released Parties to
21 support a claim, a defense or counterclaim based on principles of res judicata,
22 collateral estoppel, release, good faith settlement, judgment bar, or reduction or
23 any other theory of claim preclusion or issue preclusion or similar defense or
24 counterclaim, or in any action that may be brought to enforce any claim assigned
25 pursuant to this Settlement Agreement. KPC Defendants may use and disclose this
26 Settlement Agreement in connection with any proceeding or claim involving any
27 of their insurers or any governmental agency with respect to the KPC ESOP.

28

1 **X. APPROVAL OF THE SETTLEMENT**

2 **1. Preliminary Approval Order.** Plaintiff will file the Preliminary
3 Approval Motion on or before July 25, 2022. Class Counsel shall give KPC
4 Defendants at least two (2) days to review the Preliminary Approval Motion before
5 filing. The Preliminary Approval Motion will seek an Order in a form agreed upon
6 by the Settling Parties which will provide for, among other things:

7 (a) Request modification of the class definition solely for purposes
8 of settlement of the claims against the KPC Defendants to provide an end
9 date;

10 (b) Preliminary Approval of the Settlement as set forth in this
11 Settlement Agreement, subject to further hearing and determination under
12 Fed. R. Civ. P. 23(e);

13 (c) Approval of the form of Class Notice, substantially in the form
14 agreed-upon by the parties, and the manner of distribution and publication
15 which is consistent with this Agreement, Rule 23 and the requirements of
16 due process;

17 (d) Appoint the Settlement Administrator;

18 (e) Set deadlines by which all objections to the Settlement must be
19 made, or any submissions to the Settlement Administrator regarding Class
20 Members' membership in the Class or challenges regarding information
21 about their ESOP account contained in the Class Data must be made;

22 (f) Schedule a hearing date to determine whether the Settlement
23 Agreement should be finally approved as fair, reasonable and adequate, and
24 whether an Order finally approving the Settlement Agreement should be
25 entered ("Final Approval Hearing");

26 (g) Provide that no objection to the Settlement Agreement will be
27 heard and no papers submitted in support of said objection will be received
28 and considered by the Court at the Final Approval Hearing unless the

1 objection and reasons therefore, along with copies of any supporting papers,
2 are filed with the Clerk of the Court and served on the Parties within forty-
3 five (45) days of the publication and/or distribution of the Class Notice;

4 (h) Provide that the Final Approval Hearing may be continued from
5 time to time by Order of the Court if necessary, and without further notice to
6 the Class;

7 (i) Provide a deadline for filing of a Final Approval Motion and for
8 Class Counsel's application for Fee Award, Service Awards, and Expense
9 Award; and

10 (j) Require KPC Defendants to produce the Class Data required
11 pursuant to Section II.7 of this Agreement, to the extent such Class Data has
12 not already been provided.

13 **2. Final Approval of the Settlement.** If the Court preliminarily
14 approves this Settlement, Class Counsel will file the Final Approval Motion. KPC
15 Defendants will either join in or not oppose the Final Approval Motion. Class
16 Counsel shall give KPC Defendants at least five (5) days to review the Final
17 Approval Motion before filing. The Final Approval Motion will seek entry of a
18 proposed Final Order in a form to be agreed-upon by the Settling Parties and will,
19 among other things:

20 (a) Order Final Approval of the Settlement set forth in this
21 Settlement Agreement;

22 (b) Adjudge that the Settlement is fair, reasonable and adequate to
23 the Class pursuant to Rule 23(e);

24 (c) Dismiss the Action against KPC Defendants with prejudice;

25 (d) Adjudge that Plaintiffs and the Class will be deemed
26 conclusively to have released and waived any and all Settled Class Claims
27 against the Released Parties as provided in this Settlement Agreement;
28

1 (e) Bar and permanently enjoin the Parties and the Class from
2 prosecuting any and all Settled Claims, as provided in this Settlement
3 Agreement, against any Party for whom they have released claims;

4 (f) Determine Class Counsel's request(s) for a Fee Award,
5 Expense Award, and Service Award;

6 (g) Provide that Class Members will be barred from asserting any
7 claims against the KPC Defendants or KPC Releasees arising out of the
8 allocation of the Net Settlement Amount calculated by the Settlement
9 Administrator or based on actions by KPC Defendants or KPC Releasees
10 that were consistent with the Plan of Allocation, the Settlement Agreement,
11 the applicable plan (ESOP or 401k Plan), an order of the Court, or the
12 direction of the Settlement Administrator or Class Counsel; and

13 (h) Retain exclusive jurisdiction, without affecting the finality of
14 the Order entered, with regard to: (i) implementation of this Settlement
15 Agreement; (ii) disposition of the Settlement Fund; and (iii) enforcement
16 and administration of this Settlement Agreement, including the release
17 provisions thereof.

18 **XI. CONDITIONS OF SETTLEMENT**

19 **1. Court Approval.** Each of the following is an express condition of
20 Settlement: (a) the June 2, 2022 Order (ECF No. 282) entered by the Court remains
21 in effect, (b) the Court enters a Preliminary Approval Order substantially in the
22 form as required by this Agreement, (c) the Court enters the Final Order,
23 substantially in the form as required by this Agreement, (d) determination by an
24 Independent Fiduciary that the Prohibited Transaction Class Exemption 2003-39 is
25 met (as set forth in Section XII); (e) the Independent Fiduciary, on behalf of the
26 ESOP, agrees to release and covenant not to sue the KPC Defendants and KPC
27 Releasees from the Released Claims; (f) the Excluded Persons do not receive any
28 allocation from the Settlement, and (g) the litigation as to the KPC Defendants

1 remains stayed consistent with the Court’s Order (ECF No. 282) on June 2, 2022
2 (except as to proceedings related to consideration and approval of this Settlement).

3 **2. Non-Conditional Matters.** Each of the following is not a
4 condition of the Settlement, and none will serve as a basis for any of the Settling
5 Parties to withdraw from this Settlement:

6 (a) Court approval of the Fee Award, Service Award, Expense
7 Award, or the Plan of Allocation are not conditions of the Settlement. No
8 action by the District Court or any courts of appeal related to the Fee Award,
9 the Service Award, the Expense Award, or the Plan of Allocation will
10 prevent the Final Order allowing the approval of the Settlement from
11 becoming Non-Appealable.

12 (b) Court approval or modification of the Plan of Allocation
13 proposed by Class Counsel.

14 **XII. INDEPENDENT FIDUCIARY**

15 **1. Appointment.** KPC Defendants will hire an Independent Fiduciary to
16 evaluate and, if appropriate, to determine whether the Settlement is consistent with
17 Prohibited Transaction Exemption (PTE) 2003-39. If the Settlement meets the
18 requirements of PTE 2003-39, the Independent Fiduciary will release and covenant
19 not to sue KPC Defendants from the Released Claims. The person or entity hired
20 as the Independent Fiduciary by the KPC Defendants will (a) have experience
21 evaluating settlement under PTE 2003-39 and (b) will be acceptable to Co-Lead
22 Class Counsel. In the event of a dispute about the person or entity who should be
23 hired as an Independent Fiduciary, the Court will resolve the dispute and appoint
24 an Independent Fiduciary.

25 **2. Costs.** KPC Defendants or their insurers will pay for the Independent
26 Fiduciary. The cost of the Independent Fiduciary will not be paid out of the
27 Settlement Amount.

1 **3. Deadline.** Within forty-two (42) days after the Court enters its
2 Preliminary Approval Order, the Independent Fiduciary will issue its final opinion.
3 If the Independent Fiduciary issues an opinion that does not approve all aspects of
4 this Settlement Agreement satisfying Prohibited Transaction Exemption 2003-39
5 or does not agree to release and covenant not to sue the KPC Defendants from the
6 Released Claims, KPC Defendants or Co-Lead Class Counsel will have the right,
7 but not the obligation, to withdraw from the Settlement Agreement so long as such
8 right is exercised within seven (7) days of the receipt of the Independent
9 Fiduciary's opinion. If any Party exercises such right under this provision (and the
10 30 days in Section XIV.2 expires without an agreed modification), then the entire
11 Settlement Agreement will be void and the parties will revert to their respective
12 positions in the Action as of May 2, 2022.

13 **XIII. RELEASES**

14 Upon the Final Order becoming Non-Appealable, and provided that each
15 Party has performed all of the respective obligations under this Settlement
16 Agreement to be performed on or prior to such date by such Party:

17 **1. Release and Covenant Not to Sue by Plaintiff and the Class.**

18 (a) Plaintiff on behalf of herself and the Class (including each and
19 all of the foregoing's legal representatives, heirs, executors, administrators,
20 successors, and assigns) will dismiss with prejudice the claims asserted in
21 the First Amended Complaint against KPC Defendants and will forever
22 release and covenant not to sue KPC Defendants, their parents, subsidiaries,
23 affiliates, shareholders and members, and each and all of the respective past,
24 present, and future officers, directors, employees, attorneys, agents, or
25 insurers of any of them, and their respective predecessors, successors and
26 assigns, both individually and in their capacities as directors, officers,
27 fiduciaries, administrators, shareholders, members, employees, agents,
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1 insurers and attorneys other than the Non-Releasees (collectively the “KPC
2 Releasees”) from the Released Claims.

3 (b) The Released Claims do not include any claims against the
4 Non-Releasees (or any other person not included in the definition of KPC
5 Releasees), including any claims for attorneys’ fees, costs or expenses
6 against the Non- Releasees (or any other person not included in the KPC
7 Releasees), and Plaintiff and the Class and the ESOP (by the independent
8 fiduciary) are not agreeing to dismiss, release or agreeing not to sue the
9 Non- Releasees (or any other person not included in the KPC Releasees) for
10 any claims.

11 **2. Release of Plaintiff and the Class and Covenant Not to Sue by the**
12 **KPC Defendants.** KPC Defendants and the KPC Releasees will forever release
13 and covenant not to sue Plaintiff, each Class Member, Class Counsel and
14 Plaintiff’s Counsel from (a) each and every claim that could have been asserted in
15 the Action related to the filing of the Action including any claims for attorneys’
16 fees, costs, expenses or sanctions, that relate to the filing, commencement,
17 prosecution or settlement of the Action whether such Claim arises under ERISA or
18 any federal law, state law, foreign law, common law doctrine, rule, regulation or
19 otherwise; and (b) any claims challenging the correctness of any Class Member’s
20 accounts/benefits.

21 **3. Waiver and Release of Individual Claim.** Conditioned on this
22 Settlement of the Claims by the Class against the KPC Defendants becoming Non-
23 Appealable, Plaintiff will agree to waive and release any amount in addition to the
24 Settlement Amount to settle her individual claim in Count VI of the First Amended
25 Complaint.

26 **4. Correctness of Class Data.** Neither the ESOP, nor any of the KPC
27 Releasees who are fiduciaries of the ESOP or the KPC 401k Plan, will assert any
28 claims on behalf of either Plan that challenge the correctness of any of the Class

1 Data provided by the KPC Defendants for purpose of this Settlement or challenge
2 the prior distributions to Class Members resulting from the 2015 ESOP
3 Transaction or an allocation to any of the Class Members' ESOP accounts that are
4 subject to this Settlement unless that Class Member challenges that data.

5 **5. Non-Released Claims.** Notwithstanding the foregoing or any other
6 language in this Settlement Agreement, the Settling Parties are not releasing claims
7 to enforce this Settlement Agreement or claims concerning the validity of this
8 Settlement Agreement (including any representations upon which the Settlement
9 was based).

10 **6. Release by the ESOP.** The ESOP, by and through the Independent
11 Fiduciary, will forever release and covenant not to sue KPC Releasees from the
12 Released Claims.

13 **7. Waiver of California Civil Code Section 1542.** The Settling Parties,
14 on behalf of themselves and all persons and entities on whose behalf they are
15 providing the releases herein, acknowledge and understand that there is a risk that,
16 subsequent to the execution of this Agreement, they may accrue, obtain, incur,
17 suffer, or sustain claims which in some conceivable way arise out of, are caused
18 by, are connected with, or relate to the facts alleged or claims asserted in the First
19 Amended Complaint, and that such claims are unanticipated at the time this
20 Agreement is signed, or are not presently capable of being ascertained. The
21 Settling Parties further acknowledge that there is a risk that any claims as are
22 known or should be known may become more serious than they now expect or
23 anticipate. Nevertheless, the Settling Parties hereby expressly waive all rights they
24 may have in such unknown consequences or results. The Settling Parties
25 acknowledge that they have had the benefit of and the opportunity to consult with
26 their counsel, understand the import of Civil Code section 1542, and expressly
27 waive the protection of Civil Code section 1542, which provides as follows:

28 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
4 OR RELEASED PARTY.

4 **XIV. EFFECT OF TERMINATION**

5 **1. Termination Notice.** In the event that the Court refuses to grant the
6 Preliminary Approval Order or enter the Final Order, or approval of the Settlement
7 is reversed on appeal or materially altered, or the Independent Fiduciary refuses to
8 release and covenant not to sue Defendants on terms consistent with Paragraph
9 XIII.8 within forty-two (42) days of the Preliminary Approval Order or find that
10 the Settlement meets the PTE 2003-39, either Co-Lead Class Counsel or
11 Defendants may void this Settlement by providing written notice to counsel for all
12 other Parties to the Settlement within seven days (7) days after the event prompting
13 the right to terminate (“Termination Notice”).

14 **2. Effectiveness of Termination Notice.** The Termination Notice will
15 become effective to void the Settlement Agreement only if and after the Settling
16 Parties have failed to reach a written agreement within thirty (30) days of the event
17 triggering the Termination Notice to modify this Settlement Agreement to resolve
18 the issue.

19 **3. Effect of Termination.** In the event that any party to the agreement
20 terminates this settlement pursuant to paragraphs XIV.1 and XIV.2 or any other
21 circumstance occurs which causes the Final Order to not become non-appealable
22 and the parties have not entered into a written modification of the Settlement
23 Agreement within 30 days of such occurrence:

24 (a) the monies in the escrow account (including any interest or
25 earning accrued while in escrow, but less any amount paid or owing for
26 taxes or other expenses reasonably incurred by Class Counselor the
27 Settlement Administrator while in the escrow account in connection with
28 administering the settlement agreement, including any amounts necessary to

1 prepare tax returns or monies paid or owing to the Settlement Administrator
2 or the escrow agent), will be returned to each payor, pro rata according to
3 the amount of its respective payment(s) into the settlement fund upon written
4 request within 10 business days of such written request;

5 (b) the Settling Parties will not be released from the claims asserted
6 in this action notwithstanding anything contained herein to the contrary;

7 (c) the Settlement Agreement and the Settlement Term Sheet will
8 be void *ab initio* except that the following provisions will survive: (i) the
9 amount of the settlement, the terms of the Settlement Term Sheet and the
10 terms of this Settlement Agreement will remain confidential if this
11 Settlement Agreement has not been filed with the Court; and (ii) the
12 requirements of this Section XIV.3 (a)-(e) of this Agreement and Paragraphs
13 18-21 of the Settlement Term Sheet;

14 (d) the respective positions, rights and responsibilities of the
15 Settling Parties will be deemed to have reverted to their respective status in
16 this litigation as of May 2, 2022, and, except as may otherwise be expressly
17 provided herein, the settling parties will proceed in all respects as if the
18 Settlement Agreement and the Settlement Term Sheet never existed (except
19 as provided in this Section XIV.3 (c)); and

20 (e) any discovery, depositions, motions that were held in abeyance
21 or for which a stay applied (in whole or in part) pursuant to the Court's June
22 2, 2022, Order (ECF No. 282) will be completed in accordance with that
23 Order.

24 **XV. MISCELLANEOUS PROVISIONS**

25 **1. Additional Discovery and Information.** KPC Defendants will
26 provide Class Counsel with the following (a) any updated Class Data if necessary;
27 (b) the written instrument (a.k.a. the plan document) for the 401k Plan, the trust
28 agreement for the 401k Plan's trust, the summary plan description for the 401k

1 Plan, and information about any available investment options under the 401k Plan
2 and any applicable fees, costs or charges under the 401k Plan and will provide any
3 updated versions of such documents to Class Counsel for at least 120 days after the
4 Effective Date and (c) other documents reasonably requested by Class Counsel in
5 connection with the Settlement.

6 **2. Tax Advice Not Provided.** No opinion or advice concerning the Tax
7 consequences of the Settlement Agreement has been given or will be given by
8 counsel involved in the Action to the Class, nor is any representation or warranty
9 in this regard made by virtue of this Settlement Agreement. The Tax obligations of
10 the Class and the determination thereof are the sole responsibility of each Class
11 Member, and it is understood that the Tax consequences may vary depending on
12 the particular circumstances of each Class Member.

13 **3. Binding Effect.** This Settlement Agreement will be binding upon, and
14 inure to the benefit of, the successors, assigns, executors, administrators, affiliates,
15 heirs and legal representatives of the Settling Parties and Released Parties,
16 provided, however, that no assignment by any Settling Party will operate to relieve
17 such party of its obligations hereunder.

18 **4. Good Faith.** The Settling Parties: (a) acknowledge that it is their
19 intent to consummate this Settlement; (b) agree to exercise their best efforts and to
20 act in good faith to cooperate to the extent necessary to effectuate and implement
21 all terms and conditions of this Settlement Agreement; and (c) agree to exercise
22 their best efforts and to act in good faith to cooperate to the extent necessary to
23 obtain the fullest possible participation of all Class Members in any Settlement.
24 The Settling Parties and their counsel agree to cooperate fully with one another in
25 seeking entry of the Preliminary Approval Order and final approval of the
26 Settlement. The Settling Parties also agree to promptly execute and/or provide such
27 documentation as may be reasonably required to obtain preliminary and final
28 approval of this Settlement.

1 **5. Exhibits.** Any exhibits attached hereto and identified herein are
2 hereby incorporated by reference as though fully set forth herein.

3 **6. Modification.** This Settlement Agreement may be amended or
4 modified only by written instrument signed by Co-Lead Counsel on behalf of
5 Plaintiffs and the Class and by Defense Counsel on behalf of Defendants or their
6 respective successors in interest and if the Court has already entered a preliminary
7 approval order, only if the Court approves the modification or amendment.

8 **7. Representations.** This Settlement Agreement constitutes the entire
9 agreement among the Settling Parties, and no representations, warranties or
10 inducements have been made to any party concerning this Settlement Agreement
11 or the Settlement Term Sheet, other than the representations, warranties, and
12 covenants contained and memorialized in such documents. In the event of any
13 conflicts between this Settlement Agreement, the Settlement Term Sheet, or any
14 other document (other than a Stipulation and Order by the Court), the Settling
15 Parties agree that this Settlement Agreement will control.

16 **8. Authorization.** Each signatory to this Settlement Agreement
17 represents that he or she is authorized to enter into this Settlement Agreement on
18 behalf of the respective parties he or she represents.

19 **9. Counterparts.** This Settlement Agreement may be executed in one or
20 more original, photocopied, or facsimile counterparts. All executed counterparts
21 and each of them will be deemed to be one and the same instrument.

22 **10. Governing Law.** All terms of this Settlement Agreement will be
23 governed by and interpreted according to the laws of the State of California
24 without regard to its rules of conflicts of law and in accordance with the laws of
25 the United States.

26 **11. Headings.** The headings in this Settlement Agreement are used for
27 purposes of convenience and ease of reference only and are not meant to have any
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1 legal effect, nor are they intended to influence the construction of this Settlement
2 Agreement in any way.

3 **12. Waiver.** The waiver by one party of any breach of this Settlement
4 Agreement by any other party will not be deemed a waiver of any other breach of
5 this Settlement Agreement. The provisions of this Settlement Agreement may not
6 be waived except by a writing signed by the affected party, or counsel for that
7 party, or orally on the record in court proceedings.

8 **13. Continuing Jurisdiction.** The Settling Parties agree to submit to the
9 jurisdiction of the Court and will be bound by the terms of this Settlement
10 Agreement, including, without limitation, disputes related to implementing and
11 enforcing the Settlement embodied in this Settlement Agreement. Any and all
12 disputes related to claims that are not satisfactorily resolved by the Settling Parties
13 will be submitted to the Court for final resolution. The Final Order will provide
14 that the Court will have continuing jurisdiction over this Settlement.

15 **14. Enforcement of this Agreement.** In the event that any Party to this
16 Settlement Agreement believes that another Party to this Settlement Agreement has
17 breached the terms of this Settlement Agreement, that Party will notify the alleged
18 breaching Party and Counsel in writing setting forth the nature of the breach and
19 the requested method to cure the breach at least 14 days prior to filing any
20 litigation to enforce the terms of the Settlement Agreement. In the event that the
21 allegedly breaching Party fails to cure the alleged breach as set forth in the written
22 notification after 14 days, the other Party may then file an action to enforce the
23 Settlement Agreement. A Party who achieves some success on the merits in
24 demonstrating a breach occurred, could have been reasonably cured within 14 days
25 (or a longer time set forth in the written notification) and was not cured within that
26 time, will be entitled to attorneys' fees and expenses consistent with the standards
27 of ERISA § 502(g)(1).

1 **15. No Party Is the Drafter.** The Settlement Agreement is deemed to
2 have been drafted by all Settling Parties hereto, as a result of arm's-length
3 negotiations among the Settling Parties. Whereas all Settling Parties have
4 contributed substantially and materially to this Settlement Agreement, it will not be
5 construed more strictly against one party than another.

6 **16. Extensions.** The Settling Parties reserve the right, subject to the
7 Court's approval, to request any reasonable extensions of time that might be
8 necessary to carry out any of the provisions of this Settlement Agreement.

9 **17. Evidentiary Effect.** Neither this Settlement Agreement nor the
10 Settlement, nor any negotiation, nor act performed, nor document executed, nor
11 proceedings held pursuant to or in forbearance of this Settlement Agreement or the
12 Settlement, even if this Settlement Agreement is cancelled or terminated: (a) is, or
13 may be deemed to be, or may be used as an admission of, or evidence of the
14 validity of any Settled Claim, or of any wrongdoing, negligence,
15 misrepresentation, violation or liability of any Settling Party; (b) is, or may be
16 deemed to be, or may be used as an admission of, or evidence of any infirmity in
17 the Complaint or claims asserted by the Class; or (c) is, may be deemed to be, or
18 may be used as an admission of, or evidence of, any fault or omission of any
19 Settling Party in any civil, criminal or administrative proceeding in any court,
20 administrative agency, or tribunal, including in this Action. However, this
21 Settlement Agreement may be used in such proceedings as may be necessary to
22 consummate or enforce this Settlement Agreement, the Settlement, or the Final
23 Order; and any Settling Party may file this Settlement Agreement and/or the Final
24 Order in any action to support a defense or counterclaim based on principles of res
25 judicata, collateral estoppel, release, good faith settlement, judgment bar, or
26 reduction or any other theory of claim preclusion or issue preclusion or similar
27 defense or counterclaim.

1 **18. Final and Complete Resolution.** The Settling Parties intend this
2 Settlement Agreement to be a final and complete resolution of all disputes between
3 them with respect to this Action. The Settlement compromises claims which are
4 contested and will not be deemed an admission by any Settling Party as to the
5 merits of any claim or defense. The Settling Parties agree that the amount paid to
6 the Settlement Fund and the other terms of the Settlement Agreement were
7 negotiated in good faith at arm's-length by the Settling Parties and reflect a
8 settlement that was reached voluntarily after consultation with competent legal
9 counsel.

10 **19. Interpretation and Construction.** In interpreting this Settlement
11 Agreement, duplicative and/or overlapping release provisions will not be presumed
12 or construed to be intended to release separate claims or have different meanings.
13 Neither prior versions of this Settlement Agreement or the Agreements in
14 Principle, nor the negotiating history of these terms will be used to aid in any
15 interpretation or construction of those terms.

16 **20. Confidential Information.** The Settling Parties will continue to
17 abide by the terms of the Protective Order (ECF No. 74). Additionally, the
18 Settlement Administrator will be entitled to maintain the Class Data for one year
19 after the date of distribution of the Settlement to Class Members or Final
20 Disposition (as defined in the Protective Order), whichever is later.

21 IN WITNESS WHEREOF, the parties hereto, intending to be legally bound
22 hereby have caused this Settlement Agreement to be executed by them or their
23 duly authorized counsel, on the dates set forth below.

24 **[Signature page follows]**
25
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1 DATED: JULY __, 2022

2 Agreed to by Plaintiff Danielle Gamino

3 Signature: _____

4 Agreed to by Class Counsel



6 DATED: JULY 22, 2022

7 R. Joseph Barton (SBN 212340)
8 Colin M. Downes (admitted *pro hac vice*)
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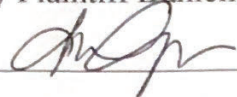
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28 Email: mk@mk-llc.com

On Behalf of Plaintiff and the Class

1 DATED: JULY 21, 2022

2 Agreed to by Plaintiff Danielle Gamino

3 Signature:  _____

4 Agreed to by Class Counsel

5

6 DATED: JULY 21, 2022

7

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On Behalf of Plaintiff and the Class

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Settlement Agreement

1 Agreed to by KPC Healthcare Holdings, Inc.,

2 Dated July 21, 2022

3 Signature: 

4 Printed Name: WILLIAM E. THOMAS

5 Title: SECRETARY

6

7 Agreed to by The Administrative Committee of the KPC Healthcare, Inc.
8 Employee Stock Ownership Plan,

9 Dated July 21, 2022

10 Signature: 

11 Printed Name: WILLIAM E. THOMAS

12 Title: SECRETARY

13

14 Agreed to by Kali Pradip Chaudhuri,

15 Dated July 21, 2022

16 Signature: 

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18 Agreed to by William E. Thomas,


19 Dated July 21, 2022

20 Signature: 

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22 Agreed to by Kali Priyo Chaudhuri,

23 Dated July 21, 2022

24 Signature: 

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1 Agreed to by Amelia Hippert,

2 Dated July __, 2022

3 Signature: _____

4

5 Agreed to by Lori Van Arsdale

6 Dated July 22, 2022

7 Signature: Lori Van Arsdale

8

9 Dated: July __, 2022

Approved as to form and content by

10

11

12

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Attorneys for the KPC Defendants

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Agreed to by Amelia Hippert,

Dated July 22, 2022

Signature: Amelia Hippert


Agreed to by Lori Van Arsdale

Dated July __, 2022

Signature: _____

Dated: July 22, 2022

Approved as to form and content by



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