

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“*Settlement Agreement*” or “*Agreement*”) is entered into between the plaintiff, Adriana O’Donoghue, acting individually and in her representative capacity as Plaintiff on behalf of the proposed class (the “*Plaintiff*”), and Sharecare Health Data Services, LLC f/k/a BACTES Imaging Solutions, LLC (“*Sharecare*”). (The Plaintiff and Sharecare are hereinafter collectively referred to as the “*Parties*”).

RECITALS

A. On or about October 4, 2018, Plaintiff filed an action styled *ADRIANA O’DONOGHUE, on behalf of herself and all others similarly situated v. SHARECARE HEALTH DATA SERVICES, LLC*, Essex Superior Court Civil Action Number 1877-CV-01431 (the “*Action*”) in which she asserted, among other things, that Sharecare was liable under G.L. c. 93A, §9 for including copies of subpoenas, notices of depositions, HIPAA authorization forms, and similar documents when fulfilling requests for medical records and/or bills, and charging per-page copying fees for these documents in alleged violation of G.L. c. 111, §70. Plaintiff brought the Action individually and on behalf of a purported class of similarly situated individuals and entities.

B. The Parties have investigated the facts and have analyzed the relevant legal issues with regard to the claims and defenses asserted in the Action. Based on these investigations, the Named Plaintiff believes the Action has merit, while Sharecare believes the Action has no merit. The Parties have also weighed the uncertainties of trial and the benefits to be obtained under the proposed settlement, and have considered the costs, risks, and delays associated with the continued prosecution of these complex and time-consuming litigations and the likely appeals of any rulings in favor of either the Named Plaintiff or Sharecare.

C. Accordingly, it is now the intention of the Parties and the objective of this Settlement Agreement to avoid the costs of further litigation and trial, and to settle and dispose of, fully and completely and forever, any and all claims and causes of action that were asserted or that could have been asserted in the Action.

AGREEMENT

1. DEFINITIONS

The following section defines terms that are not defined above. Some definitions use terms that are defined later in this section:

1.1 The term “*Class Period*” shall mean the time period from October 4, 2014 through March 24, 2020.

1.2 The term “*Sharecare’s Counsel*” shall mean John G. O’Neill, Esquire of the law firm of Sugarman, Rogers, Barshak & Cohen, P.C., 101 Merrimac Street, Boston, MA 02114.

1.3 The term “*Class Administrator*” or “*Claims Administrator*” means Sharecare or any entity designated by Sharecare to oversee and administer the notice and distribution of settlement proceeds as set forth in the Settlement Agreement, provided that any such designation by Sharecare shall not be effective without the approval of Class Counsel, which approval shall not be unreasonably withheld.

1.4 The terms “*Class Counsel*” or “*Plaintiff’s Counsel*” shall mean Walter H. Jacobs, Esquire and Alexandria A. Jacobs, Esquire of the law firm of W. Jacobs and Associates at Law, L.L.C., 795 Turnpike Road, North Andover, MA 01845.

1.5 The term “*Court*” means Essex Superior Court in Newburyport, Massachusetts, where the Action is pending.

1.6 The term “*Fairness Hearing*” means the hearing at which the Court decides whether to approve this Settlement Agreement as being fair, reasonable, and adequate.

1.7 The term “*Final Order and Judgment*” means an order and judgment approving the settlement of the Action. The Final Order must be substantially similar to the form attached as **Exhibit D**. The Judgment must be substantially similar to the form attached as **Exhibit E**.

1.8 The term “*Final Settlement Date*” means two (2) calendar days after the Final Order and Judgment becomes “final.” For the purposes of this section, “final” means (a) if no appeal from the Final Order and Judgment is filed, the expiration of the time for the filing or noticing of any appeal from the Final Order and Judgment under the Mass. Rules of Appellate Procedure; or (b) if any type of appeal is taken, the time at which any such appellate process has concluded with an affirmance of the Final Order and Judgment (or dismissal of the appeal) and the expiration, if applicable, of any time for seeking further appellate review.

1.9 The term “*KOR Subpoena*” shall mean a Custodian of Records subpoena issued to a hospital or medical facility subject to G.L. c. 111, § 70 and requiring production of patient medical and/or billing records.

1.10 The term “*Long Form Notice*” shall mean the legal notice providing detailed information about the proposed Settlement, as approved by Class Counsel, Sharecare’s Counsel, and the Court, to be provided to Class Members and their representatives via a website pursuant to Section 3.4. The Long Form Notice must be substantially similar to the form attached as **Exhibit C**.

1.11 The term “*Named Plaintiff*” means plaintiff Adriana O’Donoghue only in her individual capacity and not in her representative capacity.

1.12 The term “*Preliminary Approval and Provisional Class Certification Order*” or “*Preliminary Approval Order*” means an order preliminarily approving the Settlement of the Action on the terms set forth in this Settlement Agreement and provisionally certifying the Settlement Class. This order must be substantially similar to the form attached as **Exhibit A**.

1.13 The term “*Publication Notice*” means the legal notice summarizing the proposed Settlement, as approved by Class Counsel, Sharecare’s Counsel, and the Court, to be provided

to Class Members and their representatives by publication pursuant to Section 3.3. The Publication Notice must be substantially similar to the form attached as **Exhibit B**.

1.14 The term “*Qualifying Transaction*” means payment by a Requestor during the Class Period of an invoice issued by Sharecare for responding on behalf of a hospital or medical facility subject to G.L. c. 111, § 70 to a KOR Subpoena requiring production of patient medical and/or billing records. Each Qualifying Transaction shall qualify either the Requestor that paid the invoice or a client that has reimbursed the Requestor for such payment as a member of the Settlement Class. There can be only one Qualifying Transaction per Sharecare invoice paid in the manner described above.

1.15 The term “*Requestor*” means any individual or business entity that (1) issued a KOR Subpoena requiring production of patient medical and/or billing records from an entity subject to the provisions of M.G.L. c. 111, § 70 to which Sharecare responded and (2) paid a Sharecare invoice during the Class Period. The term Requestor includes attorneys who issued a KOR Subpoena and paid for records in the first instance, but who may have been reimbursed by a client at a later date.

1.16 The term “*Settlement*” means the settlement of the Action and any related claims.

1.17 The terms “*Settlement Class*” and “*Settlement Class Members*” shall include the individuals and entities described below:

Any person or entity who, either directly or through his/her agent:

- (a) Served a KOR Subpoena requiring production of patient medical or billing records upon a medical facility subject to the provisions of M.G.L. c. 111, § 70;
- (b) Received an invoice from Sharecare seeking payment for responding to the KOR Subpoena and providing patient medical or billing records, which invoices included per-page copying charges for copies of the KOR Subpoena itself, a notice of deposition, a HIPAA authorization form, and/or similar documents; and
- (c) Paid Sharecare during the Class Period, either directly or through counsel, the per-page charges invoiced for copying the KOR Subpoena, notice of deposition, HIPAA authorization form, and/or similar documents.

The above-described individuals and business entities are referred to as “Settlement Class Members,” and the group is collectively referred to as the “Settlement Class.”

2. SETTLEMENT TERMS

2.1 Modification of Practices. Sharecare agrees to modify certain practices challenged by the Plaintiff in the Action, as set forth more fully below, within 30 days of the execution of this Settlement Agreement. Sharecare’s agreement to modify these practices shall not be construed as an admission that the practices are in any way improper or contrary to any Massachusetts statute or regulation. Nor shall Sharecare’s agreement to modify these

practices create or confer any rights upon any individual or business entity that is not a party to this Settlement Agreement.

Practice to be Modified: Sharecare agrees that in responding to future KOR Subpoenas on behalf of healthcare providers and hospitals subject to G.L. c. 111, § 70, Sharecare will not assess per-page copying fees for copies of KOR Subpoenas, notices of deposition, HIPAA authorization forms, and similar documents except: (a) to the extent a Requestor expressly requests copies of these documents and expressly agrees to pay per-page copying fees for said pages; and (b) as consistent with future Massachusetts decisional law or legislative or regulatory amendments.

2.2 Acknowledgement That Inadvertent Errors May Occur. Sharecare has agreed to modify its practices, and will revise its business systems and procedures in order to carry out the agreed-upon modifications discussed in Section 2.1. While Sharecare believes in good faith that the revisions to its systems and procedures will effectuate the agreed-upon modifications, the Parties acknowledge that there may be occasional instances where, due to human mistake or oversight, inadvertent errors may occur. In the event that Sharecare is advised or becomes aware of repeated errors suggesting that one or more of its revisions may not be effective, it will undertake to review the errors in order to ascertain whether they were the result of inadvertence or a systemic cause. If Sharecare determines that the errors were attributable to a systemic cause, it shall take reasonable steps to correct the business system or procedure causing the error.

2.3 Class Relief. Sharecare has conducted a search of its electronic records to identify all Qualifying Transactions during the Class Period. Class Counsel has received the information provided by Sharecare and has conducted discovery into the accuracy of the information provided by Sharecare, as well as the identities and claimed damages of the Settlement Class Members. Based upon this information and discovery, and after evaluating the strengths and weaknesses of the various claims and defenses, Class Counsel has determined that a settlement of the Settlement Class Members' claims in the sum of \$38,434.00 is fair, reasonable, and adequate. The \$38,434.00 figure represents full reimbursement of all of the allegedly improper charges during the Class Period.

(a) Sharecare will pay \$38,434.00 (the "Settlement Fund") in full and final settlement of all claims that were, or could have been, asserted in the Action, including, without limitation, any and all claims for damages, reimbursement, disgorgement, and/or any other amounts sought by Plaintiff or the Settlement Class Members in connection with the Action.

(b) Each Settlement Class Member shall have an Allowed Claim equal to the amount of the allegedly improper per-page copying charges paid in connection with each Qualifying Transaction involving the Class Member *less* (1) a pro-rata share of any incentive award to the Named Plaintiff and (2) any other costs or expenses (such as additional forms of notice beyond the Publication Notice) that are to be paid out of the Settlement Fund. For purposes of this calculation, any allegedly improper copies are priced at the lowest per-page copying charge permissible based upon the overall number of pages in the record set. For example, for a record set consisting of 125 pages, of which three (3) pages are allegedly improper copies, the three (3) pages are priced at the lower per-page rate

applied under M.G.L. c. 111, § 70 (as adjusted) for copies after the first 100 pages of records.

2.4 Payment of Allowed Claims to *Cy Pres* Designees. In recognition of the fact that (a) the Allowed Claims involve very small sums (on average, \$3.26 per Qualifying Transaction), (b) such amounts would be of minimal value to recipients, and (c) it would be exceedingly labor-intensive and expensive to ascertain the identity of each of the potential 11,787 Settlement Class Members in order to distribute the Settlement Fund, the Parties have agreed that payments for the Allowed Claims described in Section 2.3 above will not be distributed to individual Settlement Class Members but will instead be distributed to one or more *Cy Pres* Designee(s) listed in Section 2.6 below.

2.5 Incentive Award to Named Plaintiff. Sharecare agrees not to oppose any application by Named Plaintiff O'Donoghue for an incentive award of up to \$5,000, subject to Court approval. The Named Plaintiff agrees to not petition the Court for an incentive award of more than \$5,000. If the Court approves the Settlement of the Action and an incentive award within the limit set forth above, such incentive award shall be paid out of the Settlement Fund within thirty (30) days after (a) the Final Settlement Date, or (b) the Named Plaintiff provides Sharecare's Counsel with a full and complete Form W-9, whichever is later. In the event that the Court rejects or reduces the incentive award requested by the Named Plaintiff, any unpaid amounts shall instead be distributed, in equal shares, to the *Cy Pres* Designee(s) listed in Section 2.6 below.

2.6 *Cy Pres* Designees. The Parties have agreed that the following non-profit entities are appropriate *cy pres* designees (the "***Cy Pres* Designees**"):

1. Greater Boston Legal Services, 197 Friend Street, Boston, MA 02114 <http://www.gbls.org/>.
2. Massachusetts Legal Assistance Corporation, 7 Winthrop Square, 2nd floor, Boston, MA 02110-1245 <http://www.mlac.org/>.

2.7 Attorneys' Fees and Costs. Sharecare agrees not to oppose an application for attorneys' fees and costs to Plaintiff's Counsel up to \$15,000, subject to Court approval. Such application shall be made by Class Counsel. Plaintiff agrees that Class Counsel will not petition the Court for more than \$15,000 for attorneys' fees and costs. Class Counsel will file any papers supporting its request for attorneys' fees and costs with the Court prior to the deadline for Settlement Class Members to object to the Settlement, as such deadline is defined in Section 3.9 below. If the Court approves the Settlement of the Action and an award of attorneys' fees and costs to Plaintiff's Counsel, Sharecare agrees to pay the attorneys' fees and costs approved by the Court up to \$15,000 within thirty (30) days after (a) the Final Settlement Date, or (b) Plaintiff's Counsel provides Sharecare's Counsel with a full and complete Form W-9, whichever is later.

2.8 Settlement Implementation Costs. Sharecare will pay the costs of providing Publication Notice of the proposed settlement, hosting a website that displays the Long Form Notice and other documents, and distributing the settlement funds as set forth in this Agreement.

In the event that the Court requires the Parties to provide other forms of notice to potential Settlement Class Members, the Parties shall discuss an allocation of the costs associated with such notice, if possible. If the Parties cannot reach agreement, then this Settlement Agreement will terminate in accordance with Section 3.9.

2.9 Severability of Ruling on Incentive Awards and/or Attorneys' Fees. The Parties agree that the rulings of the Court regarding the Named Plaintiff's applications for incentive awards and/or Class Counsel's application for attorneys' fees and expenses are to be decided separately from the remaining matters to be considered at the Fairness Hearing. A reduction by the Court or by an appellate court of any of the incentive awards and/or attorneys' fees and litigation costs sought by the Named Plaintiff and Class Counsel shall not operate to terminate or cancel any other provision of this Settlement Agreement, including the releases and covenants not to sue in Sections 4.2-4.4. Nor shall any such reduction affect the validity and enforceability of the Final Order and Judgment, or prevent the Final Settlement Date from occurring in accordance with the provisions herein.

2.10 Plaintiff's Waiver of Right to Appeal. The Plaintiff on behalf of herself and her counsel waives her right to appeal or otherwise attack any order by this Court awarding the Named Plaintiff and Class Counsel less than the amounts agreed upon by the Parties in Sections 2.5 and 2.7.

3. CLASS SETTLEMENT PROCEDURES

3.1 Settlement Administration. The Parties, Class Counsel, and Sharecare's Counsel shall work together to ensure that all obligations under this Agreement are fulfilled. Class Counsel may, from time to time, make reasonable inquiries through Sharecare's Counsel as to the progress of the administration of the Settlement, and Sharecare shall respond promptly to such inquiries.

3.2 Preliminary Approval and Provisional Class Certification. As soon as practicable after this Settlement Agreement is signed, Plaintiff must apply for preliminary approval of the class action settlement and provisional class certification. The application must request the Court to:

- (a) preliminarily approve this Settlement Agreement as being fair, reasonable, and adequate;
- (b) preliminarily approve the form, manner, and content of the Publication Notice described in Section 3.3, and attached as **Exhibit B**;
- (c) preliminarily approve the form, manner, and content of the Long Form Notice described in Section 3.4, and attached as **Exhibit C**.
- (d) set the date and time of the Fairness Hearing for sixty (60) days after entry of the Preliminary Approval Order, subject to the Court's availability;
- (e) provisionally certify the Settlement Class under Rule 23 of the Massachusetts Rules of Civil Procedure for settlement purposes only;
- (f) stay all proceedings in the Action against Sharecare until the Court renders a final decision on approval of the Settlement;

- (g) appoint the Named Plaintiff as a class representative of the Settlement Class for settlement purposes only; and
- (h) appoint the law offices of Walter H. Jacobs and Associates at Law, L.L.C. as Class Counsel for the Settlement Class for settlement purposes only.

The Preliminary Approval and Provisional Class Certification Order entered by the Court must be substantially similar to the form attached as **Exhibit A**. Class Counsel must draft the application papers and provide Sharecare's Counsel with drafts of the application and proposed order to review at least seven (7) calendar days before the filing date. Sharecare shall be permitted, but not required, to file its own brief or statement of non-opposition in support of Preliminary Approval and Provisional Class Certification.

3.3 Notice. Subject to the Court granting Preliminary Approval of the Class Settlement and Provisional Class Certification, the Parties agree that the Claims Administrator will provide the Class with notice of the proposed settlement by the following method.

- (a) **Publication Notice.** Unless otherwise ordered by the Court, starting no later than fourteen (14) calendar days after entry of the Preliminary Approval Order, the Claims Administrator will arrange for the Publication Notice to be published in *Massachusetts Lawyer's Weekly* and in *The Boston Globe*. The Publication Notice will be substantially similar to the form attached as **Exhibit B**.
- (b) **Best Notice Practicable.** The parties acknowledge that while Sharecare has information about Requestors and Qualifying Transactions, it does not have any information as to whether Requestors or their clients qualify as Settlement Class Members. Because full information regarding who may qualify as a Settlement Class Member is unavailable, the Parties agree that it is appropriate to provide notice of the Settlement by publication. The Parties further agree that the procedures described in section (a) above constitute the best notice practicable under the circumstances and shall constitute due and sufficient notice to potential Settlement Class Members of the pendency of the Action, the provisional certification of the Settlement Class, the terms of the Settlement Agreement, and the Fairness Hearing, and shall satisfy the requirements of the Massachusetts Rules of Civil Procedure, the Constitution of the Commonwealth of Massachusetts, the United States Constitution, and any other applicable law.

3.4 Long Form Notice. Unless otherwise ordered by the Court, starting no later than ten (10) calendar days after the entry of the Preliminary Approval Order, the Claims Administrator will arrange for copies of the Long Form Notice, the First Amended Complaint, and this Settlement Agreement to be displayed on a website referenced in the Publication Notice. The Claims Administrator shall maintain the site for at least 100 calendar days thereafter.

3.5 Proof of Notice. No later than seven (7) calendar days prior to the Fairness Hearing, the Claims Administrator shall serve an affidavit on Class Counsel confirming that it has provided the Class with notice of the proposed Settlement in accordance with Sections 3.3 and 3.4.

3.6 Disputed Claims. In the event that any dispute arises regarding the Settlement Class, including, without limitation, disputes over whether a particular entity or individual qualifies as a member of the Settlement Class and/or the computation of a Class Member's Allowed Claim, Class Counsel and Sharecare's Counsel shall confer in an effort to resolve such dispute. In the event that counsel for the Parties are unable to resolve the dispute, it shall be submitted on an expedited basis for resolution by the Court.

3.7 Objections. Any individual or entity wishing to object to the approval of this Settlement, and/or to oppose the Fee and Expense Application, shall notify Class Counsel in writing (an "Objection") of its intent to so object or oppose within thirty (30) days, or such number of days as the Court shall specify, after entry of the Preliminary Approval Order. To be considered, any Objection must contain: (1) a heading which refers to the Action (*Adriana O'Donoghue, on behalf of herself and all others similarly situated v. Sharecare Health Data Services, LLC*, Essex Superior Court Civil Action Number 1877-CV-01431); (2) the name, address, telephone number and signature of the individual or entity filing the objection; (3) a statement of the legal and factual bases for each and every objection; (4) a statement whether the objector intends to appear at the Fairness Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address and phone number; and (5) a list of any witnesses, along with the expected testimony of each such witness, and photocopies of any exhibits which the objector intends to introduce at the Final Approval Hearing. Class Counsel shall promptly forward a copy of any Objection received to Sharecare's Counsel and file a copy of such Objection with the Court.

3.8 Final Approval Order and Judgment. Before the Fairness Hearing, Plaintiff must apply for Court approval of a proposed Final Order and Judgment, substantially similar to the forms attached as **Exhibits D and E**, respectively. Class Counsel must also draft the application papers and give Sharecare's Counsel drafts of the application and proposed order to review at least seven (7) calendar days before the filing deadline. Sharecare shall be permitted, but not required, to file its own brief in support of the Final Order and Judgment.

3.9 Action Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Judgment upon any modifications to the proposed forms of those documents or of this Settlement Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or enter the Final Order and Judgment, or if the Final Settlement Date does not occur for any reason, then this Settlement Agreement will be deemed null and void *ab initio*. In that event, (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Settlement Class, conditional appointment of Plaintiff as class representative and conditional appointment of Plaintiff's counsel as Class Counsel, (b) the Action will revert to the status that existed before the Settlement Agreement's execution date, and (c) no term or draft of this Settlement Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement or enter the Final Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Sharecare shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Settlement

Agreement or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action.

3.10 Settlement Fund Distribution. Within thirty (30) calendar days after passage of the Final Settlement Date, Sharecare will distribute in equal shares to the *Cy Pres* Designees a sum consisting of the total amount of the Allowed Claims, i.e., the amount remaining in the Settlement Fund after distribution of any incentive award and any additional expenses to be charged against the Settlement Fund, all as approved by the Court. Sharecare shall send checks to each of the *Cy Pres* Designees and shall provide a copy of the transmittal correspondence and checks to Class Counsel.

4. DISMISSAL OF ACTIONS AND RELEASES

4.1 Judgment and Enforcement. The Parties agree that should the Court grant final approval of the proposed Settlement and enter the Final Order and Judgment, the Judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of this Settlement Agreement.

4.2 Settlement Class Members' Release. Effective upon the Final Settlement Date, the Plaintiff and all Settlement Class Members, and each of their respective successors, assigns, legatees, heirs, and personal representatives release and forever discharge Sharecare and each of its direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of its present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under or in concert with them, or any of them, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages (including punitive or any other form of exemplary damages), charges, fines, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have arising out of any of the acts, omissions or other conduct of Sharecare in fulfilling records requests on behalf of entities subject to M.G.L. c. 111, § 70 and invoicing and receiving payment for its services, including, without limitation, any claims or actions that were or could have been alleged in the Action, and any acts or omissions on the part of Sharecare which allegedly violate M.G.L. c. 111 § 70, the Code of Massachusetts Regulations Chapter 243 section 2:07, M.G.L. c. 93A § 9 and/or 11, and the Code of Massachusetts Regulations Chapter 940 section 3:16(3).

The Plaintiff and the Settlement Class Members fully understand that the facts upon which this Settlement Agreement is executed may be different from the facts now believed by the Plaintiff and the Settlement Class Members and their Counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts. Further, Plaintiff and the Settlement Class Members agree that this waiver is an essential and material term of this release and the Settlement Agreement that underlies it and that without such waiver the Settlement Agreement would not have been accepted.

4.3 Named Plaintiff's General Release. Effective upon the Final Settlement Date, the Named Plaintiff, Adriana O'Donoghue, and each of her successors, assigns, legatees, heirs, and personal representatives release and forever discharge Sharecare and each of its direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under or in concert with them, or any of them, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

Named Plaintiff fully understands that the facts upon which this Settlement Agreement is executed may be different from the facts now believed by Named Plaintiff and Plaintiff's Counsel to be true and expressly accept and assume the risk of this possible difference in facts and agrees that this Settlement Agreement remains effective despite any difference in facts. Further, Named Plaintiff agrees that this waiver is an essential and material term of this release and the Settlement Agreement that underlies it and that without such waiver the Settlement Agreement would not have been accepted.

4.4 Covenant Not to Sue. The Plaintiff and all of the Settlement Class Members covenant that they will not institute or prosecute, against Sharecare or any of the other parties released in Sections 4.2 or 4.3 above, any action, suit, or other proceeding based in whole or in part upon any of the released matters.

5. ADDITIONAL PROVISIONS

5.1 Sharecare's Denial of Wrongdoing. This Settlement Agreement reflects the Parties' compromise and Settlement of the disputed claims. Its provisions, and all related drafts, communications and discussions, cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, the proper interpretation of M.G.L. c. 111 § 70, the existence of any alleged violations thereof, and matters respecting class certification) by any person or entity and cannot be offered or received into evidence or requested in discovery in the Action or any other action or proceeding as evidence of an admission or concession.

5.2 Change of Time Periods. All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class.

5.3 Real Parties in Interest. In executing this Settlement Agreement, the Parties warrant and represent that they, including the Plaintiff in her representative capacity on behalf of the Settlement Class, are the only individuals and entities having any interest in the claims asserted in the Action. Neither these claims, nor any part of these claims, have been assigned, granted, or transferred in any way to any other person, firm, or entity.

5.4 Voluntary Agreement. The Parties have executed this Settlement Agreement voluntarily and without duress or undue influence.

5.5 Binding on Successors. This Settlement Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives.

5.6 Parties Represented by Counsel. The Parties acknowledge that: (a) they have been represented by independent counsel of their own choosing during the negotiation of this Settlement and the preparation of this Settlement Agreement; (b) they have read this Settlement Agreement and are fully aware of its contents; and (c) their respective counsel fully explained to them the Settlement Agreement and its legal effect.

5.7 Authorization. Each of the Parties warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Settlement Agreement and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

5.8 Entire Agreement. This Settlement Agreement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Settlement Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement.

5.9 Construction and Interpretation. None of the Parties nor any of the Parties' respective attorneys will be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision in this Settlement Agreement in any judicial or other proceeding that may arise between them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties hereto, so that any rule that construes ambiguities against the drafter will have no force or effect.

5.10 Headings and Formatting of Definitions. The various headings used in this Settlement Agreement are solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

5.11 Exhibits. The exhibits to this Settlement Agreement are integral parts of the Settlement Agreement and the Settlement and are incorporated into this Settlement Agreement as though fully set forth in the Settlement Agreement. A refusal to approve an Exhibit in substantially the same form in which it appears in this document shall constitute a refusal to approve this Settlement Agreement, unless any change to the Exhibit is approved by the Parties in accordance with Section 5.12 below.

5.12 Modifications and Amendments. No amendment, change, or modification to this Settlement Agreement, whether proposed by the Parties or the Court, will be valid unless agreed upon in a writing signed by the Parties or their counsel.

5.13 Governing Law. This Settlement Agreement is governed by Massachusetts law and must be interpreted under Massachusetts law and without regard to conflict of laws principles.

5.14 Further Assurances. The Parties must execute and deliver any additional papers, documents and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

5.15 Agreement Constitutes a Complete Defense. To the fullest extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted or attempted in breach of or contrary to this Settlement Agreement.

5.16 Execution Date. This Settlement Agreement is deemed executed on the date the Settlement Agreement has been signed by all of the undersigned.

5.17 Counterparts. This Settlement Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitute one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Settlement Agreement may be treated as originals.

5.18 Recitals. The Recitals are incorporated by this reference and are part of the Settlement Agreement.

5.19 Severability. If any provision of this Settlement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement or, if that proves unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.

5.20 Inadmissibility. This Settlement Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Settlement Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any Court or tribunal in any state, territory, or jurisdiction. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Order and Judgment.

5.21 No Conflict Intended. Any inconsistency between this Settlement Agreement and the attached Exhibits will be resolved in favor of this Settlement Agreement.

5.22 List of Exhibits: The following Exhibits are attached to this Settlement Agreement:

Exhibit A – [Proposed] Order Granting Preliminary Approval of Class Settlement and Provisional Class Certification

Exhibit B – Publication Notice

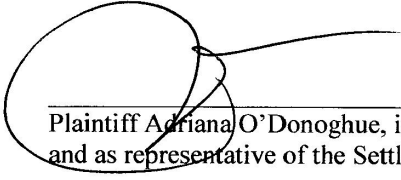
Exhibit C – Long Form Notice

Exhibit D – [Proposed] Final Order Approving Class Action Settlement

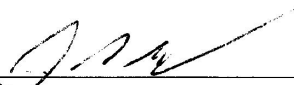
Exhibit E – [Proposed] Final Judgment

[Intentionally blank/Signature pages Follow]

The Parties have agreed to the terms of this Settlement Agreement and have signed below.



Plaintiff Adriana O'Donoghue, individually
and as representative of the Settlement Class



Witness
Print name:

Date: MAY 4, 2020

Daniel Bailey

Defendant Sharecare Health Data Solutions
LLC f/k/a BACTES Imaging Solutions, LLC
By: Daniel Bailey

Witness
Print name:

Date: April 24, 2020

4816-0478-3515, v. 3

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPT.
CIVIL ACTION NO. 1877CV01431

ADRIANA O'DONOGHUE, on behalf of herself
and all others similarly situated,

Plaintiff

v.

SHARECARE HEALTH DATA
SERVICES, LLC,

Defendant

[PROPOSED]
PRELIMINARY APPROVAL ORDER

Named Plaintiff Adriana O'Donoghue in the above-captioned action (the "Action"), having made an unopposed application for a preliminary approval order and for the scheduling of a hearing with respect to a settlement of the Action in accordance with a settlement agreement (the "Settlement Agreement"), which, together with the exhibits attached thereto, sets forth the terms and conditions for the proposed settlement ("Settlement") of the Action, and which provides for the ultimate dismissal of the Action with prejudice; and the Court having considered the Settlement Agreement and accompanying documents; and Named Plaintiff having consented to the entry of this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED this _____ day of _____, 2020, as follows:

1. **Definitions.** Except for terms defined herein (with the definitions to be applicable to both the singular and the plural forms of each term defined if both such forms of such term are used herein), the Court adopts and incorporates the definitions set forth in the Settlement Agreement for purposes of this Order.
2. **Approval of Notice.** The Court approves, in form and content, the Notices to the all members of the Settlement Class of the pendency of the proposed Settlement of the Action in the forms attached as **Exhibit B** and **Exhibit C** to the Settlement Agreement (the “Notices”) and finds that the dissemination and publication of the Notices (a) will adequately satisfy the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure, due process, and applicable law; (b) is the most appropriate notice practicable under the circumstances; and (c) shall constitute due and sufficient notice of the Settlement and Final Approval Hearing (as defined below) and all other matters referred to in the Notice to all Persons entitled to receive such Notice.
3. **Notice Procedures.**
 - A. **Publication Notice.** Unless otherwise ordered by the Court, starting no later than fourteen (14) calendar days after entry of the Preliminary Approval Order, the Defendant will arrange for the Publication Notice to be published in *Massachusetts Lawyer’s Weekly* and in *The Boston Globe*. The Publication Notice will be substantially similar to the form attached as **Exhibit B** to the Settlement Agreement.
 - B. **Internet Posting.** Unless otherwise ordered by the Court, starting no later than ten (10) calendar days after entry of the Preliminary Approval Order, the Claims Administrator will set up an Internet website and post thereon copies of the most recent Complaint, this Settlement Agreement, the Preliminary Approval Order, the Long Form Notice; and within three business days after it is filed, Class Counsel’s fee motion. The website will be active for at least a period of one hundred (100) consecutive Days. The Long Form Notice will be substantially similar to the form attached as **Exhibit C** to the Settlement Agreement.

4. **Conditional Certification of the Settlement Class.** Solely for the purposes of the Settlement, pursuant to Rule 23 of the Massachusetts Rule of Civil Procedure and G.L. c. 93A, the Court conditionally endorses its certification of a non-opt-out settlement class consisting of:

Any person or entity who, either directly or through his/her agent:

- A. Served a KOR Subpoena requiring production of patient medical or billing records upon a medical facility subject to the provisions of M.G.L. c. 111, § 70;
- B. Received an invoice from Sharecare seeking payment for responding to the KOR Subpoena and providing patient medical or billing records, which invoice included per-page copying charges for copies of the KOR Subpoena itself, a notice of deposition, a HIPAA authorization form, and/or similar documents; and
- C. Paid Sharecare during the Class Period, either directly or through counsel, the per-page charges invoiced for copying the KOR Subpoena, notice of deposition, HIPAA authorization form, and/or similar documents.

5. **Designation of Settlement Class Representative and Settlement Class Counsel.** The Court conditionally designates Named Plaintiff, Adriana O'Donoghue, as the representative of the Settlement Class for the sole purpose of settlement proceedings (the "Class Representative"), and her counsel, Walter H. Jacobs and Alexandria A. Jacobs of the law firm of W. Jacobs and Associates at Law, L.L.C., 795 Turnpike Road, North Andover, MA 01845, as class counsel of the Settlement Class ("Class Counsel").

6. **Preliminary Approval of the Settlement.** The Court preliminarily approves the Settlement Agreement and Settlement set forth therein, as fair, reasonable and adequate, and in the best interest of the Settlement Class, subject to further consideration at the Final Approval Settlement Hearing described below.

7. **Final Approval Hearing.** A hearing (the “Final Approval Hearing”) shall be held before this Court on _____, 2020, at ____:00 __.m., in the Essex County Superior Court, to:

- A. Determine whether, for settlement purposes only, the Court’s conditional certification of the Settlement Class, pursuant to Rule 23 of the Massachusetts Rule of Civil Procedure and M.G.L. c. 93A, should be made final;
- B. Determine whether to grant final approval to this Settlement Agreement;
- C. Consider any timely objections to this Settlement Agreement and all responses to objections by the Parties;
- D. Determine whether judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Action with prejudice;
- E. Rule on Plaintiff’s Fee and Expense Application (“Fee and Expense Application”); and
- F. Hear and determine other matters relating to the proposed Settlement.

8. **Reservation by the Court.** The Court reserves the right to adjourn and reconvene the Final Approval Hearing, including with respect to Plaintiff’s Fee and Expense Application, without further notice to the Class Members other than an oral announcement at the Final Approval Hearing or any adjournment thereof. Papers in support of Final Approval and Plaintiff’s Fee and Expense Application and papers in opposition to any objections, may be filed with the Court and served upon all Parties, and on the Persons filing objections or, if they are represented by an attorney, their attorney, no later than seven (7) days before the Final Approval Hearing. The Court may approve the Settlement at or after the Final Approval

Hearing with such modifications as may be consented to by the Parties and without further notice to the Class Members.

- 9. Appearance at the Final Approval Hearing and Objections to Settlement.** Any Settlement Class Member who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement or the proposed Settlement, or to the attorneys' fees and costs requested by Class Counsel, must deliver a written objection ("*Objection*") to Class Counsel and Defendant's Counsel, and must file such Objection with the Court, no later than sixty (60) Days after entry of the Preliminary Approval Order ("Bar Date").

For purposes of determining whether an objecting Class Member's Objection is timely, the delivery date is deemed to be the date the Objection is deposited in the U.S. Mail as evidenced by the postmark. It shall be the objector's responsibility to ensure receipt of any Objection by the Court, Class Counsel and Defendant's Counsel. Objections must be verified by a declaration under the penalty of perjury or a sworn affidavit and must include: (a) the name and case number of the Action; (b) the full name, address, and telephone number of the person objecting; (c) a statement of each objection; and (d) a written brief detailing the specific reasons, if any, for the Objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the Objection, including an attestation of facts demonstrating that the person objecting qualifies as a Settlement Class Member by reason of having paid one of Defendant's invoices during the Class Period without receiving reimbursement from a client or otherwise.

If a Settlement Class Member makes an Objection through counsel, the Settlement Class Member will be responsible for his or her own attorney's fees.

10. Stay of Proceedings. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement or proceedings in connection with Plaintiff's Fee and Expense Petition, are hereby stayed and suspended until further order of this Court. Pending final determination of whether the Settlement provided for in the Settlement Agreement should be approved, Named Plaintiff and all members of the Class, or any of them, are barred and enjoined from commencing, prosecuting, instigating or in any way participating in the commencement or prosecution of any action asserting any Released Claims against any of the Released Persons.

11. Termination of Settlement. If the Settlement is not approved by the Court or shall not become effective for any reason whatsoever, the Settlement, any Class certification herein and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become null and void and of no further force and effect, except for Sharecare's obligation to provide and pay for any expenses incurred in connection with the Publication Notice as provided for by this Order. In such event, the Parties shall be restored to their respective positions in the Action prior to the execution of the Settlement Agreement and its predecessor memorandum of understanding.

12. No Admissions by the Parties. The provisions contained in the Settlement Agreement shall not be deemed or constitute a presumption, concession, or an admission by any party in the Action of any fault, liability, or wrongdoing or lack of any fault, liability or wrongdoing, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, and shall not be interpreted, construed, deemed, involved, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether

civil, criminal or administrative, except in connection with any proceeding to enforce the terms of the Stipulation.

13. Retention of Exclusive Jurisdiction by the Court. The Court retains exclusive jurisdiction over the Action to consider all further applications arising out of or connected with the Settlement.

Dated: _____

BY THE COURT:

4841-2066-7556, v. 1

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPT.
CIVIL ACTION NO. 1877CV01431

ADRIANA O'DONOGHUE, on behalf of herself
and all others similarly situated,

Plaintiff

v.

SHARECARE HEALTH DATA
SERVICES, LLC,

Defendant

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT
OF CLASS ACTION AND HEARING ON PROPOSED SETTLEMENT

TO: ALL PERSONS WHO PAID A SHARECARE HEALTH DATA SERVICES, LLC INVOICE FOR RESPONDING TO A CUSTODIAN OF RECORDS SUBPOENA FOR MEDICAL RECORDS FROM A MASSACHUSETTS HEALTHCARE FACILITY BETWEEN OCTOBER 4, 2014 AND MARCH 24, 2020.

Named Plaintiff, Adriana O'Donoghue, filed the above-captioned class action litigation against Sharecare Health Data Services, LLC ("Sharecare") on behalf of any person or entity who, either directly or through his/her agent: (A) Served a Custodian of Records Subpoena upon a hospital or medical facility ("KOR Subpoena") requiring production of patient medical or billing records; (B) Received an invoice from Sharecare seeking payment for responding to the KOR Subpoena and providing patient medical or billing records, which invoice included per-page copying charges for copies of the KOR Subpoena itself, a notice of deposition, a HIPAA authorization form, and/or similar documents; and (C) Paid Sharecare during the time period from October 4, 2014 through March 24, 2020 ("Class Period"), either directly or through counsel, the per-page charges invoiced for copying the KOR Subpoena, notice of deposition, HIPAA authorization form, and/or similar documents. The above-captioned lawsuit alleges that Sharecare violated G.L. c. 111, § 70 by imposing excessive copying charges when responding to certain KOR Subpoenas.

The Parties have agreed to settle the litigation on the following terms. Defendant Sharecare will pay \$38,434.00 for the benefit of O'Donoghue and all Settlement Class Members (together totaling 11,787 members) in full and final settlement of all claims that were, or could have been,

asserted in the Action. Each Settlement Class Member shall have an Allowed Claim in the amount of improper per-page copying charges paid in connection with each Qualifying Transaction involving the Class Member, less (1) any incentive award to O'Donoghue, (2) any legal fees and costs awarded by the Court to Class Counsel, (3) any administrative costs and fees that are to be paid to the Settlement Administrator, and (4) any other costs or expenses (such as additional forms of notice beyond the Publication Notice) that are to be paid out of the Common Fund pursuant to the terms of the Parties' Settlement Agreement. Due to the small amount to be paid to each Class Member, and the costs associated with distribution, the parties have proposed that the settlement be distributed to a *cy pres* recipient.

The Essex County Superior Court has preliminarily approved this settlement. A Final Approval Hearing will be held on _____, 2020 at _:00 a.m./p.m., before the Court in Courtroom _____, Essex County Superior Court, 145 High Street, Newburyport, at which time the parties will ask the Court to: (i) determine whether, for settlement purposes only, the Court's preliminary certification of the non-opt-out Class, pursuant to Massachusetts Rule of Civil Procedure 23 and G.L. c. 93A, should be made final; (ii) determine whether the Court should grant final approval of the proposed Settlement on the terms and conditions provided for in the Parties' Settlement Agreement as fair, reasonable, and adequate, and in the best interest of the Class; (iii) determine whether judgment should be entered dismissing the litigation with prejudice; (iv) consider the Named Plaintiff's application for attorneys' fees and reimbursement of expenses; and (v) hear and determine any other matters relating to the proposed Settlement.

Any claims Class Members might have against Sharecare for non-compliance with M.G.L. c. 111, § 70 in connection with Sharecare's processing of medical records requests at any time from October 4, 2014 and March 24, 2020, will be forever released and dismissed as a result of this Settlement and the Court's approval thereof.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL APPROVAL HEARING.

For the full details of the lawsuit, the claims that have been asserted by Plaintiff, and the terms and conditions of the Settlement, you may visit <https://hds.sharecare.com/odonoghuematter>.

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPT.
CIVIL ACTION NO. 1877CV01431

ADRIANA O'DONOGHUE, on behalf of herself
and all others similarly situated,

Plaintiff

v.

SHARECARE HEALTH DATA
SERVICES, LLC,

Defendant

LEGAL NOTICE
PENDENCY AND PROPOSED SETTLEMENT
OF CLASS ACTION AND HEARING ON PROPOSED SETTLEMENT

TO: ALL PERSONS WHO PAID A SHARECARE HEALTH DATA SERVICES, LLC INVOICE FOR RESPONDING TO A CUSTODIAN OF RECORDS SUBPOENA FOR MEDICAL RECORDS FROM A MASSACHUSETTS HEALTHCARE FACILITY BETWEEN OCTOBER 4, 2014 AND MARCH 24, 2020.

**FINAL APPROVAL BY THE ESSEX COUNTY SUPERIOR COURT
FOLLOWING A HEARING TO BE HELD ON _____.**

*This Notice Provides Information About the Proposed Settlement and How It
May Affect the Rights and Obligations of Class Members If It Is Approved*

A settlement (the "Settlement") has been proposed in a class action lawsuit (the "Action") pending in Essex County Superior Court in Newburyport, Massachusetts. The caption for the Action appears above.

The terms of the proposed settlement are set forth in a written settlement agreement (the "Settlement Agreement") that contemplates certification of a settlement class for the Action (collectively, hereinafter referred to as the "Settlement Class"). If the Court gives final approval to the Settlement Agreement, distributions will be issued to one or more *Cy Pres Designee(s)* in accordance with the terms of the Settlement Agreement without further action being required.

YOUR LEGAL RIGHTS ARE AFFECTED EVEN IF YOU DO NOTHING.
PLEASE READ THIS NOTICE CAREFULLY

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

OBJECT	You may submit a written objection to Class Counsel with reasons why you believe the Settlement should not be approved.	Deadline:
OBJECT AND ATTEND THE “FINAL APPROVAL HEARING”	<p>The Court will hold a “Final Approval Hearing” on whether to grant final approval to the Settlement, whether to approve legal fees and expenses requested by Class Counsel, and whether to approve an incentive award to the Plaintiff for her services in connection with the Action.</p> <p>If you file a timely written objection, you may be entitled to speak and present evidence at the Final Approval Hearing. If you wish to be heard at the Final Approval Hearing, you must follow the procedures set forth herein.</p>	Hearing Date:
IF YOU CHOOSE TO DO NOTHING	Upon final approval of the Settlement Agreement, funds will be distributed in accordance with the terms of the Settlement Agreement. Due to the relatively small amounts of the Allowed Claims, and the significant costs associated with distributing these amounts, the Parties intend to distribute the settlement funds to one or more <i>Cy Pres</i> Designee(s).	

- These rights and options—and the deadlines to exercise them—are explained in more detail below.
- The Court in charge of the Action has preliminarily approved the Settlement Agreement and must decide whether to give final approval to the Settlement Agreement. The relief provided, and agreed upon, will be provided only if the Court gives final approval to the Settlement Agreement and, if there are any appeals, after the appeals are resolved in favor of the Settlement Agreement.

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION 3

1. What is this Notice? 3

2. What is the Action about?..... 3

3. Why is this a Class Action? 4

4. Why is there a Settlement? 4

5. How do I know if I am part of the Settlement?..... 4

THE PROPOSED SETTLEMENT..... 4

6.	What relief does the Settlement provide?	4
THE LAWYERS IN THE ACTION AND THE REPRESENTATIVE PLAINTIFF		5
7.	Do I have a lawyer in the Action?	5
8.	How will the lawyers be paid and how will the Representative Plaintiff receive any compensation for bringing the Action?	5
DISMISSAL OF THE ACTION AND RELEASE OF ALL CLAIMS		5
9.	What am I giving up under the Settlement?.....	5
HOW TO OBJECT TO THE SETTLEMENT.....		6
10.	How do I tell the Court that I oppose the Settlement?	6
FINAL APPROVAL HEARING.....		7
11.	What is the Final Approval Hearing?.....	7
12.	When and where is the Final Approval Hearing?.....	7
13.	May I speak at the hearing?.....	7
GETTING MORE INFORMATION.....		7
14.	How do I get more information?	7

BACKGROUND INFORMATION

1. What is this Notice?

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can view a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), please see **Section 14** below.

2. What is the Action about?

On or about October 4, 2018, Named Plaintiff Adriana O’Donoghue filed a putative class action, O’Donoghue, et al. v. Sharecare Health Data Services, LLC, in which she asserted, among other things, that Sharecare was liable under G.L. c. 93A, § 9 for allegedly assessing excessive copying charges when responding to Custodian of Records subpoenas for medical records and/or bills in alleged violation of G.L. c. 111, § 70 (“Class Claims”). Defendant has denied any wrongdoing.

THE ISSUANCE OF THIS NOTICE IS NOT AN EXPRESSION OF THE COURT’S OPINION ON THE MERITS OR THE LACK OF MERITS OF THE CLAIMS IN THE ACTION.

For information about how to learn about what has happened in the Action to date, please see **Section 14** below.

3. *Why is this a Class Action?*

In a class action lawsuit, one or more persons, called a “Representative Plaintiff(s),” sues on behalf of other persons who may have similar claims. The company sued in this case is called the Defendant. The purpose of a class action is to bring forward all similar claims in one judicial proceeding. As part of the proposed Settlement, the Named Plaintiff and the Defendant will ask the Court to certify the Action as a class action solely for purposes of settlement—in other words, to certify a Settlement Class.

4. *Why is there a Settlement?*

The Court has not made any determination regarding whether the Named Plaintiff or Defendant should prevail in the Action. Instead, both Parties have agreed to a Settlement, which permits them to avoid the costs of protracted litigation and provides relief on behalf of the Settlement Class now, rather than years from now, if at all.

5. *How do I know if I am part of the Settlement?*

You may be a member of the Settlement Class if you are a person or entity whose request for medical records from a Massachusetts healthcare facility was fulfilled by Sharecare Health Data Services, LLC between October 4, 2014 and October 4, 2018.

If you are still not sure whether you are a Class Member, you can contact Plaintiff’s Counsel for help. The address and phone number are as follows:

Walter H. Jacobs and Alexandria A. Jacobs
W. Jacobs & Associates at Law, LLC
795 Turnpike Street
North Andover, MA 01845
(978) 688-0900

THE PROPOSED SETTLEMENT

6. *What relief does the Settlement Provide?*

Defendant will pay \$38,434.00 (the “Common Fund”) for the benefit of the Named Plaintiff and all Settlement Class Members (together totaling 11,787 members) in full and final settlement of all claims that were, or could have been, asserted in the Action.

Each Settlement Class Member shall have an Allowed Claim equal to the amount of the allegedly improper per-page copying charges paid in connection with each Qualifying Transaction involving the Class Member *less* a pro-rata share of: (1) any incentive award to the Named Plaintiff and (2) any other costs or expenses (such as additional forms of notice beyond the Publication Notice) that are to be paid out of the Common Fund pursuant to the terms of the Settlement Agreement.

The Parties have agreed that payments for the Allowed Claims will not be distributed to individual Settlement Class Members but will instead be distributed to one or more of the following non-profit *Cy Pres* Designees:

1. Greater Boston Legal Services, 197 Friend Street, Boston, MA 02114 <http://www.gbls.org/>.
2. Massachusetts Legal Assistance Corporation, 7 Winthrop Square, 2nd floor, Boston, MA 02110-1245 <http://www.mlac.org/>.

THE LAWYERS IN THE ACTION AND THE REPRESENTATIVE PLAINTIFF

7. *Do I have a lawyer in the Action?*

The Court has ordered that the law firm of W. Jacobs & Associates at Law, LLC (“Class Counsel”) is to represent the interests of all Class Members. You will not be separately charged for the services of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

8. *How will the lawyers be paid and how will the Representative Plaintiff receive compensation for bringing the Action?*

In accordance with the terms of the Settlement Agreement, Named Plaintiff will apply to the Court for an Incentive Award for the Named Plaintiff and an Award of Costs and Fees for Class Counsel. Plaintiff’s application for an incentive award shall not exceed \$5,000.00 and for counsel fees shall not exceed \$15,000.00. The Court will be asked to act on this application at the Final Approval Hearing. The Court will ultimately make the final decision as to the amount to be paid to Class Counsel and to the Named Plaintiff at the Final Approval Hearing.

DISMISSAL OF THE ACTION AND RELEASE OF ALL CLAIMS

9. *What am I giving up under the Settlement?*

If the Court approves the proposed Settlement Agreement, you will be releasing your claims against Defendant for the practices described herein. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Defendant with respect to the Defendant’s fulfillment of KOR Subpoenas or any other claims that are the subject of the Action. For the full details of the lawsuit, the claims that have been asserted by the Named Plaintiff, and the terms and conditions of the Settlement Agreement, you may refer to the papers on file with the Court in the Action or contact Class Counsel. You or your attorney may examine the Court’s files during regular business hours of each business day at the Civil Clerk’s Office, Essex County Superior Courthouse, 145 High Street, Newburyport, Massachusetts, 01950.

HOW TO OBJECT TO THE SETTLEMENT

10. *How do I tell the Court that I oppose the Settlement?*

At the date, time, and location stated below, the Court will hold a Final Approval Hearing to

determine if the Settlement is fair, reasonable, and adequate, and to also consider Named Plaintiff's application for an award of attorneys' fees and costs as well as an incentive award to the Named Plaintiff.

If you wish to present objections to the Settlement or the Agreement at the Final Approval Hearing, you must do so in writing, mailed or faxed to the Court and Class Counsel:

W. Jacobs & Associates at Law, LLC
795 Turnpike Street
North Andover, MA 01845
Phone: (978) 688-0900/Fax: (800) 595-1745

Any Objections must be mailed or faxed within 45 days of the publication of the Notice (_____, ____ 2020) but no later than 60 days from the entry of the Preliminary Approval Order in this Action (_____, ____ 2020), and must contain:

- (A) the name and case number of the Action;
- (B) the full name, address, and telephone number of the person objecting;
- (C) a statement of each objection; and
- (D) a written brief detailing the specific reasons, if any, for the Objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the Objection, including an attestation of facts demonstrating that the person objecting qualifies as a Settlement Class Member by reason of having paid one of Defendant's invoices during the Class Period without receiving reimbursement from a client or otherwise. If a Settlement Class Member makes an Objection through counsel, the Settlement Class Member will be responsible for his or her attorney's fees and costs.

The objection, to be effective, must be sent by the objector or a legally authorized representative only on an individual basis and not as part of a group, class or subclass.

Any Settlement Class Member who fails to timely file such a written statement of his/her or its intention to object shall be foreclosed from making any objection to this Settlement Agreement or to the Fee and Expense Application, except as permitted by the Court.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL APPROVAL HEARING.

If you file and serve an Objection, you may appear at the Final Approval Hearing, either in person or through personal counsel hired at your expense, to object to the Settlement Agreement. You are not required, however, to appear.

FINAL APPROVAL HEARING

11. *What is the Final Approval Hearing?*

The Court has preliminarily approved the Settlement Agreement and will hold a hearing to decide whether to give final approval to the Settlement Agreement. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement Agreement should be approved as fair, reasonable, adequate, and in the best interest of the Settlement Class, as well as to consider the application for a representative stipend and attorneys' fees and expenses.

12. *When and where is the Final Approval Hearing?*

On _____, _____ 2020, the Final Approval Hearing will be held on the proposed Settlement. At the hearing, the Court will be available to hear any Objections and arguments concerning the fairness of the proposed Settlement. The hearing will take place at: **The Essex County Superior Courthouse**, 145 High Street, Newburyport, Massachusetts.

The hearing may be postponed to a different date or time or location without notice. Please check with the Court or Class Counsel for any updates about the Settlement generally or the Final Approval Hearing specifically. If the date or time of the Final Approval Hearing changes, the new date and/or time will be posted on the Court's Online Docket, which can be found at: <https://www.masscourts.org>.

13. *May I speak at the hearing?*

At that hearing, the Court will entertain Objections concerning the Settlement and other issues as described herein. You may attend, but you do not have to. You may speak at the Final Approval Hearing only if you have timely served and filed an Objection in accordance with the terms set forth herein.

GETTING MORE INFORMATION

14. *How do I get more information?*

For the full details of the lawsuit, the claims that have been asserted by the Named Plaintiff, and the terms and conditions of the Settlement Agreement, you may:

1. View the pleadings, settlement documentation, and long-form notice on the claim administrator's Website: [INSERT]; and/or
2. You may examine the complete file in connection with the Action during regular business hours of each business day at the Civil Clerk's Office, Essex County Superior Courthouse, 145 High Street, Newburyport, Massachusetts.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE

LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

4811-8786-4740, v. 1

EXHIBIT D

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPT.
CIVIL ACTION NO. 1877CV01431

ADRIANA O'DONOGHUE, on behalf of herself and
all others similarly situated,

Plaintiff

v.

SHARECARE HEALTH DATA
SERVICES, LLC,

Defendant

[PROPOSED] FINAL ORDER APPROVING CLASS ACTION SETTLEMENT

The Court, having reviewed the motions and the supporting papers, including the Settlement Agreement and Release (“Settlement Agreement”) and any written objections to the Settlement Agreement, as well as having considered the oral arguments of counsel for the Parties and any objectors who gave notice of their intention to appear at the Fairness Hearing, makes the findings presented below and, based on its review and findings, the Court finds good cause to approve the Parties’ proposed class action settlement.

Findings

1. Unless otherwise specified, defined terms, which are capitalized, have the same definition herein as they have in the Settlement Agreement.
2. This Court has jurisdiction over the subject matter of this action, all parties to this action, and all members of the Settlement Class.
3. Notice was provided to Class Members in compliance with Section 3.3 of the Settlement Agreement, due process, and Rule 23 of the Massachusetts Rules of Civil

Procedure. The notice: (i) was disseminated in the most appropriate manner practicable under the circumstances, (ii) fully and accurately informed Settlement Class members about this action and the Settlement; (iii) provided sufficient information so that Settlement Class members were able to decide whether to accept the benefits offered or object to the Settlement; (iv) provided procedures for Settlement Class members to file written objections to the Settlement, to appear at the hearing, and to state objections to the Settlement; and (v) provided the time, date and place of the Fairness Hearing.

4. For the reasons stated in the Order Granting Preliminary Approval of Class Settlement and Provisional Class Certification, and having found nothing that would disturb these previous findings, this Court finds and determines that the proposed Settlement Class, as defined below, meets all of the legal requirements for class certification, for settlement purposes only, under Massachusetts Rule of Civil Procedure 23.

5. The Parties adequately performed their obligations under the Settlement Agreement.

6. Upon review of the record, the Court hereby finds that the terms and provisions of the Settlement Agreement have been entered into in good faith and are fair, reasonable, and adequate as to, and in the best interest of, each of the Settlement Class Members, and in full compliance with all applicable requirements of the Massachusetts Rules of Civil Procedure, the Rules of the Court, due process, and any other applicable law. With respect to the determination that the Settlement Agreement is fair, reasonable, and adequate, the Court specifically notes that there was uncertainty as to whether the Plaintiff and the Settlement Class would prevail on their claims in this action, the Settlement Agreement was reached through

negotiations with experienced and informed counsel, and the terms of the Settlement reflect substantial benefits to the Settlement Class in light of the circumstances of this action.

8. An award of \$_____ in attorneys' fees and \$_____ in costs to Plaintiff's Counsel is fair and reasonable in light of the nature of this case, Counsel's experience and efforts in prosecuting this action, and the benefits obtained for the Settlement Class.

9. An incentive award to Named Plaintiff Adriana O'Donoghue in the amount of \$_____ is fair and reasonable in light of: (a) the risks (including financial, professional, and emotional) undertaken in commencing the action as class representative; (b) the time and effort spent by Plaintiff in litigating the action as class representative; and (c) the Plaintiff's public interest service.

ACCORDINGLY, IT IS ORDERED THAT:

1. Settlement Class and Settlement Class Members. The Court certifies the Settlement Class for settlement purposes only. The Settlement Class shall be a non-opt-out class consisting of members as defined below, subject to the exclusions set forth in the remainder of this section.

(a) The **Settlement Class** includes all individuals and business entities who either directly or through an agent:

- i. Served a KOR Subpoena requiring production of patient medical or billing records upon a medical facility subject to the provisions of M.G.L. c. 111, § 70;
- ii. Received an invoice from Sharecare Health Data Services, LLC ("Sharecare") seeking payment for responding to the KOR Subpoena and providing patient medical or billing records, which invoices included per-page copying charges for copies of the KOR Subpoena itself, a notice of deposition, a HIPAA authorization form, and/or similar documents; and
- iii. Paid Sharecare during the Class Period, either directly or through counsel, the per-page charges invoiced for copying the KOR Subpoena, notice of deposition, HIPAA authorization form, and/or similar documents.

2. Binding Effect of Order. This order applies to all claims or causes of action settled under the Settlement Agreement, and binds the Named Plaintiff and all Settlement Class Members.

3. Release. The Named Plaintiff and all Settlement Class Members are deemed to have released and discharged Sharecare from all claims that were or could have been asserted in the Consolidated Actions and all claims released under the Settlement Agreement. The full terms of the release described in this paragraph are set forth in Sections 4.2 and 4.3 of the Settlement Agreement and are specifically incorporated herein by reference.

4. Class Relief.

(a) Sharecare will pay \$38,434.00 (the “Settlement Fund”) in full and final settlement of all claims that were, or could have been, asserted in the Action, including, without limitation, any and all claims for damages, reimbursement, disgorgement, and/or any other amounts sought by Named Plaintiff or the Settlement Class Members in connection with the Action.

(b) Each Settlement Class Member shall have an Allowed Claim equal to the amount of the allegedly improper per-page copying charges paid in connection with each Qualifying Transaction involving the Class Member Member *less* (1) a pro-rata share of any incentive award to the Named Plaintiff and (2) any other costs or expenses (such as additional forms of notice beyond the Publication Notice) that are to be paid out of the Settlement Fund.. For purposes of this calculation, any allegedly improper copies are priced at the lowest per-page copying charge permissible based upon the overall number of pages in the record set. For example, for a record set consisting of 125 pages, of which three (3) pages are allegedly improper copies, the three (3) pages are priced at the lower per-page rate applied under M.G.L. c. 111, § 70 (as adjusted) for copies after the first 100 pages of records.

5. Distribution of Settlement Fund. In accordance with the provisions of Sections 2.4. 2.6 and 3.10 of the Settlement Agreement, the Settlement Fund shall be distributed equally between the *Cy Pres* Designees after payment of incentive awards. The total amount distributed to the Designees shall consist of the total amount of the Settlement Fund after distribution of any

incentive award, as approved by the Court. Sharecare shall send checks to each of the *Cy Pres* Designees and shall provide a copy of the transmittal correspondence and checks to Class Counsel.

6. Attorney's Fees and Costs. Plaintiff's Counsel is awarded \$_____ in fees and \$ _____ costs. Payment shall be made in accordance with the provisions of Section 2.7 of the Settlement Agreement.

7. Incentive Award. Named Plaintiff Adriana O'Donoghue is awarded \$_____ as an incentive award. Payment shall be made in accordance with the provisions of Section 2.5 of the Settlement Agreement.

8. Court's Jurisdiction. Pursuant to the Parties' request, the Court will retain jurisdiction over this action and the Parties until final performance of the Settlement Agreement.

So Ordered this ____ day of _____ 2020

, Justice

EXHIBIT E

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPT.
CIVIL ACTION NO. 1877CV01431

ADRIANA O'DONOGHUE, on behalf of herself and
all others similarly situated,

Plaintiff

v.

SHARECARE HEALTH DATA
SERVICES, LLC,

Defendant

[PROPOSED]
FINAL JUDGMENT

1. Unless otherwise specified, defined terms, which are capitalized, have the same definition herein as they do in the Settlement Agreement.

2. In the Final Order Approving Class Action Settlement, the Court found that the Settlement Agreement was fair, reasonable and adequate, and that prospective Settlement Class Members were given notice of the Settlement Agreement in compliance with due process and Massachusetts Rule of Civil Procedure 23. The Court granted certification, for settlement purposes only, of the Settlement Class (as that term is defined in the Settlement Agreement).

3. All individuals and business entities that fall within the definition of the Settlement Class are bound by this Final Judgment, by the Final Order Approving Class Action Settlement and by the terms of the Settlement Agreement.

4. Plaintiffs' Counsel is awarded \$_____ in fees and \$_____ in costs, with payment to be made in accordance with the provisions of Paragraph 2.7 of the Settlement Agreement.

5. Named Plaintiff Adriana O'Donoghue is awarded \$_____ as an incentive award, with payment to be made in accordance with the provisions of Section 2.5 of the Settlement Agreement.

4. Sharecare Health Data Services, LLC ("Sharecare") shall distribute the Settlement Class Allowed Claims in accordance with the provisions of Sections 2.6 and 3.10 of the Settlement Agreement.

8. The Court hereby dismisses this action with prejudice.

9. Without affecting the finality of this Final Judgment, the Court reserves jurisdiction over the implementation, administration and enforcement of this Final Judgment and the Settlement Agreement, and all matters ancillary thereto.

10. The Court finds that no reason exists for delay, and hereby directs the Clerk, pursuant to Massachusetts Rule of Civil Procedure 58, to enter this Final Judgment forthwith.

So Ordered this ____ day of _____ 2020,

, Justice