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Attorneys for Plaintiff A. DOE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

A. DOE, individually and on behalf of all  
others similarly situated,

Plaintiff(s),

v.

A.J. BOGGS & COMPANY,

Defendants.

Case No. CGC-18-565456

**CLASS ACTION SETTLEMENT  
AGREEMENT**

Action filed: April 3, 2018

Trial Date: None Set

Assigned For All Purposes To

Hon. Andrew Y.S. Cheng, Department 613

This Settlement Agreement, including all exhibits hereto, subject to all required Court approvals, conditions precedent and other conditions, is made and entered into by and among the following Parties (as defined below): (i) A. Doe, individually and on behalf of the Settlement Class (as defined below), including by and through Lambda Legal Defense & Education Fund, Inc. and Cozen O'Connor; and (ii) A.J. Boggs & Company. The Settlement Agreement is intended by the Parties hereto to fully, finally, and forever resolve, discharge, and settle the "Released Claims" (as defined below), upon and subject to the conditions precedent and the terms and conditions hereof.

WHEREAS, on April 3, 2018, Plaintiff filed a Complaint in San Francisco Superior Court (Case No. CGC-18-565456) and, thereafter, filed a First Amended Class Action Complaint against A.J. Boggs & Company. The Complaint and the First Amended Class Action Complaint each allege causes of action for violation of the California AIDS Public Health Records Confidentiality Act and the California's Confidentiality of Medical Information Act.

WHEREAS, A.J. Boggs & Company provided and administered an enrollment portal for the California Department of Public Health for the California AIDS Drug Assistance Program that was connected to the internet between July 1, 2016 and November 29, 2016.

WHEREAS, the Complaint and First Amended Class Action Complaint each allege that as a result of A.J. Boggs' conduct, security vulnerabilities existed in the California AIDS Drug Assistance Program enrollment portal which were then exploited when unauthorized third parties accessed and viewed Settlement Class Members' private information or protected health records, including their HIV status, sometime between August 16, 2016 and December 7, 2016. The Complaint and First Amended Class Action Complaint each allege that the California AIDS Drug Assistance Program enrollment portal provided and administered by A.J. Boggs & Company was taken offline on November 29, 2016, and never put back online. The Complaint and First Amended Class Action Complaint each further allege that, on April 7, 2017, the California Department of Public Health sent Settlement Class Members a Notice Letter notifying them of the potential breach and the Department's description of certain circumstances, which was attached and incorporated as Exhibit 1 to the Complaint and First Amended Class Action Complaint. The

Complaint and First Amended Class Action Complaint each further allege on or about February 7, 2017, California Department of Public Health determined that the Potential Data Breach (as defined below) had occurred. The Complaint and First Amended Class Action Complaint also each allege that on March 1, 2017, the California Department of Public Health announced that it was cancelling its contract with A.J. Boggs, effective March 31, 2017. The Complaint and First Amended Class Action Complaint also each allege that on March 6, 2017, the California Department of Public Health began processing California AIDS Drug Assistance Program enrollment applications on its own.

WHEREAS, A.J. Boggs & Company denies the Complaint's and First Amended Class Action Complaint's allegations, including but not limited to denying the accuracy of the California Department of Public Health April 7, 2017 Notice Letter's descriptions of certain circumstances related to or concerning the California AIDS Drug Assistance Program enrollment portal, and/or the potential breach, as well as all other allegations of wrong doing or liability. For reference purposes of this Settlement Agreement only, these allegations and descriptions are hereinafter referred to as the "Potential Data Breach."

WHEREAS, the potential or actual impact (if any took place) associated with the Potential Data Breach has been investigated by the California Department of Public Health's expert consultant and then by Plaintiff's Counsel;

WHEREAS, based on these investigations, the potential or actual impact (if any took place) associated with the Potential Data Breach was and is limited to the ninety-three (93) persons who were applying for, had applied for, had enrolled or were enrolled in the California AIDS Drug Assistance Program during the time period A.J. Boggs & Company provided and administered the California AIDS Drug Assistance Program enrollment portal to the California Department of Public Health, and who were then the intended recipients of the California Department of Public Health's Notice Letter, dated April 7, 2017.

WHEREAS, this Settlement Agreement is entered into by the parties to avoid protracted and expensive litigation, and does not constitute an admission by any of the Parties as to the validity or invalidity of any claim or defense raised in the Action, as that term is defined below.

WHEREAS, on March 29, 2019 and August 29, 2019, the Parties participated in mediation before Judge Jeffery S. Ross. Subject to all required conditions and approvals, the Parties have agreed to settle this action on a class basis on the terms and conditions set forth herein.

WHEREAS, the California Department of Public Health has graciously agreed to voluntarily assist the Parties and the Court in connection with this settlement by providing certain assistance set forth herein.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by Plaintiff A. Doe, individually and on behalf of the Settlement Class, including by and through Plaintiff's Counsel (as defined below) and A.J. Boggs, as follows:

**1. Definitions**

As used in this Settlement Agreement and the exhibits hereto, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms have the meanings specified below:

1.1. "Action" means this lawsuit, entitled *A. Doe*, individually and on behalf of all others similarly situated, *v. A.J. Boggs & Company*, San Francisco Superior Court Case No. CGC-18-565456."

1.2. "A.J. Boggs" means defendant A.J. Boggs & Company.

1.3. "A.J. Boggs' Counsel" means Bartko Zankel Bunzel & Miller, a Professional Corporation, One Embarcadero Center, Suite 800, San Francisco, CA 94111.

1.4. "ADAP" means the California AIDS Drug Assistance Program.

1.5. "CDPH" means the California Department of Public Health.

1.6. "Claims Administrator" means Simpluris, who has entered into a separate no-money contract directly with CPDH for the limited purposes of authorizing the Claims Administrator's use of and access to the Settlement Class Member's respective contact information while administering the Settlement as set forth herein, who has executed a Business Associate Agreement with CDPH in the form required by CDPH, and who has taken any other steps or acts as directed by CDPH to comply with applicable law, who will look to A.J. Boggs and its insurer only for payment for the Claims Administrator's services (as defined below) in an

amount not to exceed Nine Thousand Six Hundred Sixty Seven Dollars (\$9,667.00), and who will obtain information needed to respond to questions by any Settlement Class Member (as defined below), directions and any other reasonable information or steps strictly from Settlement Class Counsel (as defined below).

1.7. The “CDPH Notice Letter” or “Notice Letter” means that letter, dated April 7, 2017, from CDPH attached to the Action’s Complaint and First Amended Class Action Complaint as Exhibit 1.

1.8. The “Complaint” means the Complaint in the Action.

1.9. “CMIA” means the entire California Confidentiality of Medical Information Act (California Civil Code section 56, *et seq.*)

1.10. “Court” means the Superior Court of the State of California for the County of San Francisco.

1.11. “Cy Pres Recipients” means, subject to approval by the Court, the two non-profit entities: APLA Health and the San Francisco AIDS Foundation (SFAF).

1.12. “Effective Date” means the first business day after the Final Order and the Judgment has become final and is no longer subject to further appeal, review, or vacatur, whether by exhaustion of any possible appeal, lapse of time or otherwise.

1.13. “Final Approval Hearing” means the hearing to be conducted by the Court to finally determine the fairness, adequacy and reasonableness of this Settlement in accordance with applicable jurisprudence.

1.14. “Final Order” means the order to be entered by the Court following the Final Approval Hearing, approving this Settlement Agreement without material alterations, as fair, adequate and reasonable in accordance with applicable jurisprudence and California Rules of Court Rule 3.769.

1.15. “FACAC” means the First Amended Class Action Complaint in the Action.

1.16. “California AIDS Public Health Records Confidentiality Act” means the entire California AIDS Public Health Records Confidentiality Act, California Health and Safety Code sections 121025-121035.

1.17. “Judgment” means the entry of judgment pursuant to the terms of the Final Order.

1.18. “Notice” refers to the Notice of Pendency and Settlement of Class Action, substantially in the form attached hereto as Exhibit A, which the Claims Administrator has agreed to distribute to Settlement Class Members so as to maintain the confidentiality of the Settlement Class Members.

1.19. “Objection Deadline” shall mean sixty (60) days after the entry of the Preliminary Approval Order (as defined below).

1.20. “Opt-Out” means a Settlement Class Member who submits a timely Request for Exclusion, as defined below.

1.21. “Opt-Outs” means Settlement Class Members who submit timely Requests for Exclusion, as defined below.

1.22. “Opt-Out Date” means the date by which members of the Settlement Class must mail their requests to the Claims Administrator to be excluded from the Settlement Class in order for that request to be effective, which is sixty (60) days after entry of the Preliminary Approval Order.

1.23. “Parties” means, collectively, A.J. Boggs, and Representative Plaintiff (as defined below), individually and on behalf of the Settlement Class.

1.24. “Party” means A.J. Boggs, and/or Representative Plaintiff (as defined below), individually and on behalf of the Settlement Class.

1.25. “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government entity or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, parents, guardians, representatives, and/or assignees.

1.26. “Plaintiff” or “Representative Plaintiff” means Plaintiff A. Doe in this Action.

1.27. “Plaintiff’s Counsel” means collectively, Lambda Legal Defense & Education Fund, Inc. and Cozen O’Connor.

1.28. “Preliminary Approval Order” refers to the order to be entered by the Court preliminarily approving this Settlement Agreement, substantially in the form of Exhibit B, attached hereto.

1.29. “Related Entities” means any past or present director, officer, employee, agent, attorney, predecessor, successor, parent, subsidiary, division and any affiliated entity of A.J. Boggs.

1.30. “Released Claims” means and will include any and all claims that the Settlement Class Member, who is not an Opt-Out, has or may have, including assigned claims, whether known or unknown, asserted or unasserted, latent or patent, that is, has been, could reasonably have been or in the future might be asserted by any Settlement Class Member who is not an Opt-Out either in the Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against the Released Parties, or any of them, based on or arising out of or related to: the Potential Data Breach; A.J. Boggs’ involvement in ADAP; any of the allegations made in or that could have been made in the Complaint; any of the allegations made in or that could have been made in the FACAC; any allegations that A.J. Boggs or any of the other Released Parties failed to secure or protect (i) any “protected health records” pursuant to the California AIDS Public Health Records Confidentiality Act; (ii) “health records” as used in California Health & Safety Code section 121026, (iii) any “medical information” pursuant to CMIA, (iv) any “personal health information” under the federal Health Insurance Portability and Accountability Act, (v) blood test results, and/or (vi) other information or data in the ADAP portal; any other federal or state constitution, act, statute, regulation or document concerning privacy; any alleged failure by A.J. Boggs or any of the other Released Parties to allegedly provide adequate or timely notice of the Potential Data Breach; and/or any other allegations, facts or circumstances described or that could have been described in the Complaint, the FACAC or the Action, including, without limitation, any causes of action under the Information Practices Act of 1977 (California Civil Code § 1798, *et seq.*), the California Unfair Competition Law (California Business & Professions Code § 17200, *et seq.*), the California Consumer Legal Remedies Act (California Civil Code § 1750, *et seq.*),

CMIA, California AIDS Public Health Records Confidentiality Act, the United States Constitution, the California Constitution, and all other acts, statutes, regulations, ordinances and/or documents in effect in California and/or any other state in the United States and/or under federal United States law; right of privacy, negligence, breach of contract, breach of fiduciary duty and unfair competition; breach of contract; breach of implied contract; and including, without limitation, any and all claims for damages, injunctive relief, disgorgement, restitution, declaratory relief, injunctive or other equitable relief, attorneys' fees and expenses, costs, prejudgment interest, post-judgment interest, credit monitoring services, statutory damages, punitive damages, civil penalties, special damages, exemplary damages, and any liability, right, demand, suit, matter, obligation, damage, loss or cost, action or cause of action, of every kind and description.

1.31. "Released Parties" or "Released Party" means A.J. Boggs and each of its parent entities, associates, affiliates, subsidiaries, predecessors, successors and assigns, other Related Entities and each and all of their respective past, present or future officers, directors, stockholders, agents, representatives, employees, contractors, vendors, security providers, attorneys, business associates, financial or investment advisors, other advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, insurers, co-insurers and/or reinsurers, heirs, executors, trustees, general and/or limited partners and/or partnerships, limited liability companies, members, heirs, executors, personal and/or legal representatives, estates, and/or administrators, together with their respective predecessors, and successors and/or assigns.

1.32. "Request for Exclusion" is the written communication that must be received by the Claims Administrator before the Opt-Out Date if a Settlement Class Member wishes to be excluded from the Settlement Class.

1.33. "Settlement" or "Settlement Agreement" means this settlement, including all exhibits hereto, subject to all required Court approvals, condition precedent and other conditions.

1.34. "Settlement Class" refers to the class to be conditionally certified, for settlement purposes only, consisting of the ninety-three (93) individuals who were the specific intended recipients of the CDPH Notice Letter.



1.35. “Settlement Class Counsel” means collectively, Lambda Legal Defense & Education Fund, Inc. and Cozen O’Connor.

1.36. “Settlement Class Member” means any Person who is included in the Settlement Class.

## 2. **A.J. Boggs’ Settlement Position**

2.1. A.J. Boggs denies each and every claim and contention alleged against it in the Action, the Complaint, the FACAC, CDPH’s Notice Letter, and all other charges of wrongdoing or liability alleged against it, including, but not limited to, in the pending consolidated federal action entitled: *John Doe*, individually and on behalf of all others similarly situated *v. A.J. Boggs & Company; and Does 1-100*, defendants, Case No. 1:18-CV-01454 AWI BAM. A.J. Boggs contends that, at all relevant times, it complied with applicable standards of care and contractual obligations, and that the Action should only be certified as a class action for settlement purposes. A.J. Boggs also contends that Health & Safety Code section 121025(d)’s prohibitions, the predominance of individualized issues, A.J. Boggs’ due process right to present unique defenses, the lack of manageability and the lack of superiority make it likely that, if litigated, no class action could be certified. Nonetheless, A.J. Boggs has concluded that it is desirable that the Action be fully and finally settled in the manner and upon the conditions precedent, terms and other conditions set forth in this Settlement Agreement. A.J. Boggs has also taken into account the expense, distraction, uncertainty and risks inherent in any litigation, including in putative class action cases such as this Action. A.J. Boggs has therefore determined that it is desirable that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

## 3. **Representative Plaintiff’s Settlement Position**

3.1. Representative Plaintiff believes the claims asserted in the Action have merit. However, Representative Plaintiff and Plaintiff’s Counsel recognize and acknowledge that the expense and length of continued proceedings necessary to prosecute the Action against A.J. Boggs through motion practice, trial, and potential appeals is considerable and uncertain, and that resolution is an appropriate and reasonable means of ensuring that the Settlement Class is afforded

important benefits as expeditiously as possible. Plaintiff believes that this Settlement Agreement will confer a substantial benefit upon the Settlement Class. Based upon Plaintiff's evaluation of all these factors, Plaintiff determined that this Settlement Agreement is in the best interests of the Settlement Class and is fair and reasonable.

3.2. Representative Plaintiff, with the advice of counsel, believes that the Settlement confers substantial benefits upon the Settlement Class, and has determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class in that the potential or actual impact (if any took place) of any unauthorized viewing, access, disclosure or release (if any took place) of "confidential protected health record or records" as used and defined respectively in California Health & Safety Code sections 121025 and 121035(c) or of "medical information" as defined in California Civil Code section 56.05(j) or "protected health information" under the federal Health Insurance Portability and Accountability Act ("HIPAA") or other information or other data in the ADAP portal due to the alleged security vulnerabilities in the ADAP portal was and is limited to the ninety-three (93) persons who were in the process of applying for, had applied for, or had enrolled in ADAP during the time period A.J. Boggs was involved with ADAP and who were the specific intended recipients of the CDPH Notice Letter.

#### 4. **Conditional Class Certification For Settlement Purposes Only**

4.1. Neither the fact of, nor any provision contained in this Settlement Agreement or its exhibits, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiff in this Action or by any individual in any other action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of A.J. Boggs or any of the other Released Parties or admission by A.J. Boggs or any of the other Released Parties of any claim or allegation made in this Action or in any other action.

4.2. Certification for Settlement Purposes. For the sole and limited purpose of the Settlement only, the Parties stipulate to and request that the Court certify the Settlement Class, which stipulation is contingent upon the occurrence of the conditions precedent, the other

conditions, Final Order Approving Settlement, the Judgment and the Effective Date. Subject to Court approval and for settlement purposes only, Defendant consents to the appointment of Lambda Legal Defense & Education Fund, Inc. and Cozen O'Connor as Settlement Class Counsel, and to the appointment of Plaintiff as Representative Plaintiff for the Settlement Class. Preliminary certification of the Settlement Class shall not be deemed a concession by A.J. Boggs that certification of this class is appropriate, nor is A.J. Boggs precluded from challenging class certification in further proceedings in this Litigation if the Settlement is not finalized or finally approved. A.J. Boggs is also not precluded from challenging class certification in any other action.

4.3. This Settlement Agreement is without prejudice to the rights of A.J. Boggs to: (i) oppose class certification in this Action should this Settlement Agreement not be approved or implemented for any reason; (ii) oppose certification in any other proposed or certified class action; or (iii) use the certification of the Settlement Class to oppose certification of any other proposed or existing class arising out of or related to the Released Claims.

4.4. Absent the Court's certification of the Settlement Class, the conditions precedent having been met, and the Court's final approval of this Settlement Agreement, nothing herein shall create any obligation or duty on the part of A.J. Boggs, or any of the other Released Parties. If for any reason the Settlement is not consummated, or should the Settlement be terminated pursuant to its terms or should a court of competent jurisdiction at any level deny or reverse certification of the Settlement Class, the parties shall be returned to the litigation positions they had before the date of this Settlement Agreement, and this Settlement Agreement and all related settlement documents, discussions, stipulations and procedures shall be inadmissible pursuant to Evidence Code sections 1119 and 1152 for any reason. The Parties further agree to work cooperatively to effectuate this Settlement Agreement, including in attempting to obtain the support of other interested parties, and in obtaining stays as needed in any pending litigation.

## **5. Judicial Determination**

5.1 It is a material term of the Parties' Settlement that as part of its fairness determinations and findings before the Preliminary Approval Order is entered, the Court make an

express determination and finding that the potential or actual impact (if any took place) of any unauthorized viewing, access, disclosure or release (if any took place) of “confidential protected health record or records” as used and defined respectively in California Health & Safety Code sections 121025 and 121035(c) or of “medical information” as defined in California Civil Code section 56.05(j) or “protected health information” under the federal Health Insurance Portability and Accountability Act (“HIPAA”) or other information or other data in the ADAP portal due to the alleged security vulnerabilities in the ADAP portal was and is limited to the ninety-three (93) persons who were in the process of applying for, had applied for, or had enrolled in ADAP during the time period A.J. Boggs was involved with ADAP and who were the specific intended recipients of the CDPH Notice Letter. Such a determination and finding shall be set forth in the Preliminary Approval Order and also in the Final Approval Order and Judgment.

**6. Settlement Benefits**

**6.1. Claims-Made Monetary Payment.**

(i) Without any admission of fault or liability, and in compromise and settlement, A.J. Boggs or its insurer shall by twenty-one (21) business days after the Effective Date fund a payment for each of the ninety-three (93) Settlement Class Members who is not an Opt-Out, of up to Four Thousand Dollars (\$4,000.00) in full and final satisfaction of each such Class Member’s claim of loss or any type of damages arising from, concerning, or in connection with the Potential Data Breach, which payment CDPH has agreed to facilitate via the Claims Administrator as described below.

(ii) Due to the limitations of California Health & Safety Code section 121025, including but not limited to Health & Safety Code section 121025(d), the limited size of the ninety-three (93) member class, and the litigation costs that will be avoided by the Settlement, and for purposes only of this Settlement with the ninety-three (93) Settlement Class Members, as part of the consideration given for the Settlement, A.J. Boggs agrees to waive any requirement that each of the Settlement Class Members submit documentation to establish that the member actually incurred damages of four thousand dollars (\$4,000.00), and agrees that, as a result of this waiver, each of the ninety-three (93) Settlement Class Members who is not an Opt-Out, or the Cy Pres

Recipients in lieu of the Settlement Class Member who is not Opt-Out but elected to not receive or otherwise will not receive the Settlement Monetary Payment (as hereinafter defined), in accordance with the timing and process after the Effective Date as set forth in Sections 6.2, 8.1 and 8.2 herein, will be paid the flat sum of four thousand dollars (\$4,000.00), payable in two installments of Two Thousand Dollars (\$2,000.00) each, with one \$2,000.00 payment anticipated to be made in 2022 and one \$2,000.00 payment anticipated to be made in 2023 (collectively, the “Settlement Monetary Payment”) through the Claims Administrator.

(iii) For any Settlement Class Member who is not an Opt-Out but elected to not receive or otherwise will not receive the Settlement Monetary Payment, the Settlement Class Member’s Settlement Payment will be paid by the Claims Administrator to the Cy Pres Recipients with half of the Settlement Class Member’s Settlement Payment going to each of the two Cy Pres Recipients for their respective use exclusively for state-wide HIV/AIDS advocacy work.

6.2. Settlement Procedures, Costs and Funding of Monetary Payments.

(i) CDPH will enter into a separate, no -money contract with the Claims Administrator for the limited purposes of authorizing the Claims Administrator’s use and access to the Settlement Class Member’s respective contact information for the exclusive purpose of administering the Settlement as set forth herein, which contract will include the Claims Administrator executing a Business Associate Agreement with CDPH in the form required by CDPH, and taking any other steps or acts as directed by CDPH to comply with applicable law.

(ii) A.J. Boggs or its insurer agree to pay the reasonable costs charged by the Claims Administrator, including the costs of service of the Notice and costs incurred due to the receipt, redaction and communication of any Request for Exclusion and/or objection, plus the reasonable costs of distribution of the first and second \$2,000.00 settlement checks making up the Settlement Monetary Payment, in an amount not to exceed of \$9,677.00 based on the Claims Administrator’s April 30, 2020 updated proposal. Within twenty-one (21) business days after the Effective Date, A.J. Boggs or its insurer will wire sufficient funds into the Claims Administrator’s settlement bank account, from which the Settlement Monetary Payment will be made to each of the ninety-three (93) Settlement Class Members who is not an Opt-Out, or to the Cy Pres

Recipients in lieu of each Settlement Class Member who is not an Opt-Out but elected to not receive or will not receive the Settlement Monetary Payment. With regard to the Claims Administrator, the Claims Administrator's activities, the Notice and the Settlement Monetary Payment, the roles of A.J. Boggs and its insurer are expressly and strictly limited to paying the amounts called for under this Settlement.

(iii) Settlement Class Counsel will address any questions regarding this Settlement by the Claims Administrator or by any Settlement Class Member posed to the Claims Administrator. Additionally, Settlement Class Counsel will take any other reasonable steps needed or required by the Claims Administrator in order for the Claims Administrator to carry out its services under the Settlement.

(iv) The Claims Administrator has agreed to provide the following services: (i) mail the Notice to each Settlement Class Member, (ii) receive any Request for Exclusion as well as any objections, (iii) for a Settlement Class Member (and any counsel individually retained by the Settlement Class Member) who desires access to documents filed under seal in support of the Motions for Approval of the Settlement: (a) verify the individual is in fact a Settlement Class Member; (b) obtain the written agreement of the Settlement Class Member (and any counsel individually retained by the Settlement Class Member, if counsel is seeking access) to be bound by the Amended Protective Order, dated February 8, 2022; (c) keep copies of all such executed written agreements to be bound by the Amended Protective Order and provide such written agreement(s) to CDPH or its counsel upon request; and (d) after receiving the executed written agreement of the Settlement Class Member (and any counsel individually retained by the Settlement Class Member, if counsel is seeking access) to be bound by the Amended Protective Order, provide an access code and secondary authentication information to the Settlement Class Member (and individual counsel) so that the documents filed under seal may be viewed on the secure portion of the settlement website; (iv) establish and maintain a settlement website that contains: (1) a publicly accessible portion that hosts copies of the Settlement Notice, the Settlement, the Order Granting Preliminary Approval, and Order Granting Final Approval, deadline dates and payment schedule, including any updates to the deadline dates and payment

schedule; and (2) a secure portion that requires multifactor authentication and hosts copies of the documents filed under seal in support of Plaintiff's Motion for Preliminary Approval as well as Plaintiff's Motion for Final Approval; and (v) for each of the ninety-three (93) Settlement Class Members who is not an Opt-Out, distribute the Settlement Monetary Payment to the Settlement Class Member pursuant to the timing and procedure set forth in Sections 6 and 8 or to the Cy Pres Recipients in lieu of each Settlement Class Member who is not an Opt-Out but elected to not receive or otherwise will not receive the Settlement Monetary Payment.

(v) Beginning five (5) business days from the Claims Administrator's receipt of the settlement funds, which are to be held in a separate account established by the Claims Administrator (the "Settlement Account"), the Claims Administrator will begin issuing the first \$2,000.00 settlement check to each of the ninety-three (93) Settlement Class Members who is not an Opt-Out, which check will remain payable for a period of one hundred eighty (180) days, unless the Claims Administrator's receipt of the Settlement Funds is less than 45 days prior to the 31st day of the month of December in which case the Claims Administrator will issue the first \$2,000 settlement check in the month of January of next year. Thereafter, in the next calendar year during the month of January, the Claims Administrator will issue the second \$2,000 settlement check to each of the ninety-three (93) Settlement Class Members who is not an Opt-Out, which check will remain payable for a period of one hundred eighty (180) days.

(vi) The Parties recognize that some Settlement Class Members may not accept the first \$2,000 settlement check until 2023. The Parties agree that a Settlement Class Member who is not an Opt-Out and who has not already received the first \$2,000 settlement check may elect to receive the first check after December 31, 2022, but before December 15, 2023. In that event, the Claims Administrator will issue a first \$2,000.00 settlement check, which will remain payable for a period of one hundred eighty (180) days in accordance with the dates listed below in Subparagraph 6.2(vi)(b) and that Settlement Class Member may then receive the second \$2,000.00 settlement check in January of 2024, which will remain payable for a period of one hundred eighty (180) days.

(vii) The Parties further agree that:

(a) Settlement checks issued in calendar year 2022 must be issued no later than December 22, 2022.

(b) Settlement checks issued in calendar year 2023 must be issued no later than December 22, 2023.

(c) Settlement checks issued in calendar year 2024 must be issued no later than January 31, 2024.

(d) In the event that a Settlement Class Member who is not an Opt-Out has not requested the first Settlement Monetary Payment by December 15, 2023, and has not been issued the first Settlement Monetary Payment by December 22, 2023, the Settlement Monetary Payment corresponding to such Settlement Class Member will be distributed by the Claims Administrator to the two Cy Pres Recipients with half of the total sum in a single payment going to each of the two Cy Pres Recipients.

(viii) One hundred ninety (190) days after the final deadline on January 31, 2024 for the Claims Administrator to issue any second settlement check in 2024 (August 8, 2024), the funds associated with any uncashed settlement checks and any other funds remaining in the Settlement Account will be distributed by the Claims Administrator to the two Cy Pres Recipients with half of the total sum in a single payment going to each of the two Cy Pres Recipients.

(ix) The information to be included on the outside of the envelope used by the Claims Administrator to send the Notice and to send each of the settlement checks must receive prior approval from CDPH's counsel and should not make any reference to nor include A.J. Boggs, ADAP, or the Settlement. The envelope used by the Claims Administrator to send the Notice and each of the settlement checks should not include a clear or translucent window of any type.

## 7. **Preliminary Approval**

7.1. As soon as practicable after the execution of the Settlement Agreement, Settlement Class Counsel shall submit this Settlement Agreement to the Court and apply for entry of the Preliminary Approval Order, substantially in the form attached as Exhibit B hereto, which order by its terms shall:



- (i) Appoint Plaintiff A. Doe as the representative of the Settlement Class;
- (ii) Appoint Plaintiff's Counsel as Settlement Class Counsel;
- (iii) Conditionally certify the Settlement Class under Section 382 of the California Code of Civil Procedure for settlement purposes only;
- (iv) Preliminarily approve this Settlement Agreement for purposes of issuing the Notice;
- (v) Approve the form and contents of the Notice and method of its dissemination to Settlement Class Members; and
- (vi) Satisfy the Judicial Determination required by Section 5.1.

**8. Provision of Notice and Process for Objections, Opt-Outs and Settlement Payment**

8.1. Given the limitations of Health & Safety Code section 121025(d), other privacy prohibitions or rights, and the Parties' desires to protect the Settlement Class Members' respective confidential information, including but not limited to name, social security number, address, employer, protected health record, medical information, health record, protected personal health information, or other information that may directly or indirectly lead to the identification of the Settlement Class Member (hereinafter collectively, the "Confidential Information"), CDPH has agreed to assist with implementing the Settlement by directly entering into a separate no -money contract and executing a Business Associate Agreement with the Claims Administrator, and taking any other required steps, so as to be in compliance with applicable laws, subject to Court approval.

8.2. In compliance with applicable laws, CDPH has agreed to provide to the Claims Administrator the most up-to-date contact information in CDPH's records for the Claims Administrator to use to provide the Notice and, consistent with Sections 6 and 8 to distribute the applicable Settlement Monetary Payment to Settlement Class Members who are not Opt-Outs or to the Cy Pres Recipients. The Notice will be provided by email or mail by the Claims Administrator beginning no later than 10 days after entry of the Order Granting Preliminary Approval of the Settlement. In accordance with Sections 6 and 8, if any Notice or settlement check is returned to the Claims Administrator as undeliverable, reasonable and appropriate steps will be taken to locate a valid address and/or email to resend the Notice or to locate an address to

send the settlement check. The Claims Administrator will also establish a settlement website that will contain copies of the Settlement Notice, the Settlement, the Order Granting Preliminary Approval, and Order Granting Final Approval, deadline dates and payment schedule, including any updates to the deadline dates and payment schedule.

8.3. In accordance with Sections 9 and 10, the Claims Administrator will receive any Requests for Exclusion and any objections. Also in accordance with Sections 9 and 10, without revealing any Confidential Information, the Claims Administrator will then provide all necessary information regarding the total number of Opt-Outs and, additionally, copies of the redacted notices of objection to the Parties so that counsel in this case may keep the Court apprised of Settlement progress in accordance with all legal obligations.

8.4. No Person shall have any claim against the Released Parties or Settlement Class Counsel based on distributions of benefits made substantially in accordance with the Settlement Agreement and/or further order(s) of the Court.

## 9. **Opt-Out Procedures**

9.1. Each Settlement Class Member desiring to opt out of the Settlement Class shall individually sign and timely submit a written Request for Exclusion to the Claims Administrator at the address in Section 18 below. The information on the outside of the envelope containing the written Request for Exclusion should not make any reference to nor include A.J. Boggs, ADAP, or the Settlement. The envelope containing the written Request for Exclusion should not contain a clear or translucent window of any type. The written Request for Exclusion inside of the envelope must clearly manifest the intent to be excluded from the Settlement Class and must clearly set forth the full legal name and address of the Person wishing to be excluded from the Settlement Class. If legally incapacitated, the signature of the duly authorized representative (along with documentation setting forth such legal incapacitation and representation) must be on the Request for Exclusion and a request to act as the individual's guardian ad litem in the Action. To be effective, the individually signed Request for Exclusion also must be postmarked by the Opt-Out Date and sent, by first class United States mail or by an express service carrier (e.g., UPS or Federal Express), to the Claims Administrator. No mass opt-outs are permitted.

9.2. All Settlement Class Members who submit valid and timely Requests for Exclusion, as set forth in Section 9.1 above, shall be Opt-Outs and shall not receive any benefits of, and shall not be bound by the terms of, this Settlement Agreement. Settlement Class Members who do not request to be excluded from the Settlement Class in the manner set forth in Section 9.1 above, except as otherwise ordered by the Court, shall be bound by the terms of this Settlement Agreement and the Final Order and Judgment entered thereon.

9.3. No later than seven (7) calendar days after the Opt-Out Date, the Claims Administrator will provide to Settlement Class Counsel and A.J. Boggs' Counsel the number of persons who have timely submitted a Request for Exclusion.

## 10. **Objection Procedures**

10.1. Each Settlement Class Member or other Person desiring to object to the Settlement shall submit a timely written notice of his or her objection inside of an envelope and postmarked by the Objection Deadline (Section 1.19). The information on the outside of the envelope containing the notice of objection should not make any reference to nor include A.J. Boggs, ADAP, or the Settlement. The envelope containing the notice of objection should not contain a clear or translucent window of any type. Such notice inside of the envelope shall state: (1) the objector's full legal name and address; (2) a written statement of all grounds for the objection, accompanied by any factual or legal support for the objection; (3) the identity of all counsel representing the objector, if any; (4) the identity of all counsel representing the objector who will appear at the Final Approval Hearing, if any; (5) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (6) the objector's signature signed under oath and penalty of perjury or, if legally incapacitated, the signature of the objector's duly authorized representative (along with documentation setting forth such legal incapacitation and representation) and a request to act as the objector's guardian ad litem in the Action. To be timely, written notice of an objection must comply with the above postmark and timing requirement and must be addressed and sent to: the Claims Administrator at the address in Section 18.1 below. The Claims Administrator will then: (i) confirm the objection is being made in the name of a Settlement Class Member; (ii) make redactions to the objection and any and all

papers and briefs in support of the objection to preserve the Confidential Information of the Settlement Class Member, including identity, any protected health record, medical information or personal health information; (iii) have CDPH's counsel confirm the necessary redactions have been made sufficient to preserve the Confidential Information of the Settlement Class Member, including identity, any protected health record, medical information or personal health information; and (iv) then provide to the respective counsel for the Parties the redacted copy of the written objection and any and all papers and briefs in support of the objection. The respective counsel for the Parties will be responsible for filing with the Court the redacted copies of the written objection and any and all papers and briefs in support of the objection as well as any response to the objection.

10.2. Settlement Class Members do not have to make a written objection in order to appear at the Final Approval Hearing.

10.3. Settlement Class Members cannot both object to and opt-out of this Settlement Agreement. Any Settlement Class Member who attempts to both object to and opt-out of this Settlement Agreement will be deemed to have opted out and will forfeit the right to object to this Settlement Agreement or any of its terms.

## **11. Release and Released Parties**

11.1. On the Effective Date, each and every Settlement Class Member who is not an Opt-Out, including but not limited to Representative Plaintiff, shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and every one of the Released Parties from any and all Released Claims, regardless of whether the Settlement Class Member filed any claim.

11.2. Each and every Settlement Class Member who is not an Opt-Out expressly waives and releases any and all rights or benefits he or she may now have, or in the future may have, under any law relating to the releases of unknown claims, including, without limitation, California Civil Code section 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

or under any other law or principle of common law of any State or territory of the United States, or of any foreign country, that is comparable or equivalent in substance or intent to California Civil Code Section 1542.

**12. Waiver of Appeal**

12.1. Every Settlement Class Member who is not an Opt-Out shall be deemed to have expressly fully waived the right to appeal the Final Order and Judgment which grants final approval of this Settlement Agreement, unless the Settlement Class Member has either (1) timely intervened in the Action, or (2) timely moved to set aside the Judgment under California Code of Civil Procedure 663 and been denied relief.

**13. Exclusive Remedy**

13.1. The rights and benefits under this Settlement Agreement shall be the sole and exclusive remedy for any and all Released Claims of each and every Settlement Class Member who is not an Opt-Out against any of the Released Parties. No Released Party shall be subject to liability or expense of any kind to any Settlement Class Member who is not an Opt-Out with respect to any Released Claim(s). Upon the Effective Date, each and every Settlement Class Member who is not an Opt-Out shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any Released Party in any court or forum.

13.2. The Parties agree that the Court shall retain exclusive and continuing jurisdiction of the Action, A.J. Boggs, Representative Plaintiff, and each Settlement Class Members who is not an Opt-Out to interpret and enforce the terms, conditions, and obligations under this Settlement Agreement.

13.3. Nothing in this Settlement Agreement, or in the anticipated Final Order and Judgment, shall grant jurisdictional authority to any court over the subject matter alleged in this Action, other than as specifically stipulated to herein. Further, nothing in this Settlement

Agreement affects A.J. Boggs' alleged existing arbitration rights in any jurisdiction with respect to any claim by a Settlement Class Member other than the Released Claims.

**14. Right to Terminate**

14.1. A.J. Boggs shall have the right to withdraw from this Settlement Agreement if any one of the following occurs prior to final approval: (i) the Court sustains any objection to the Settlement Agreement resulting in a change to any material term of the Settlement Agreement or any material increase in the Settlement Monetary Payment of Four Thousand Dollars (\$4,000.00) times ninety-three (93) Settlement Class Members which is Three Hundred and Seventy-Two Thousand Dollars (\$372,000.00); or (ii) the total number of Settlement Class Members who opt out exceeds the percentage or number of Class Members negotiated between Settlement Class Counsel and A.J. Boggs' Counsel. In order to effectuate any such withdrawal, A.J. Boggs must notify Plaintiff's Counsel in writing within ten (10) calendar days of the occurrence of any of the events enumerated in items (i) or (ii) in the preceding sentence. If A.J. Boggs terminates this Settlement Agreement, A.J. Boggs or its insurer agrees to pay the Claims Administrator for all costs and expenses reasonably incurred by the Claims Administrator prior to that termination for work performed pursuant to this Settlement Agreement.

**15. Final Approval Order**

15.1. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of the Final Order and Judgment which grants final approval of this Settlement Agreement in accordance with applicable jurisprudence, and provides the relief specified below, which relief shall be subject to the terms and conditions of this Settlement Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Final Order and Judgment shall:

- A. Decree that neither the Judgment nor this Settlement Agreement constitutes an admission by A.J. Boggs or any of the Released Parties of any liability or wrongdoing whatsoever;

B. Release each and every one of the Released Parties from the Released Claims which any Settlement Class Members who have not opted out have, had, or may have in the future, against such Released Party;

C. Satisfy the Judicial Determination required by Section 5.1.

D. Determine that this Settlement Agreement is entered into in good faith, is reasonable, fair and adequate, and is in the best interest of the Settlement Class; and

E. Preserve the Court's continuing and exclusive jurisdiction over A.J. Boggs and all Settlement Class Members, to administer, supervise, construe, and enforce this Settlement Agreement in accordance with its terms for the mutual benefit of the Parties, but without affecting the finality of the Judgment.

15.2. In the event that the Court or any appellate court enters an order altering this Settlement Agreement in a way that materially and adversely affects any of the Parties, within ten (10) calendar days from the date the Court or appellate court enters such an order, the affected Party may terminate this Settlement Agreement by giving written notice of its intent to do so to the opposing Party's counsel.

15.3. In the event that this Settlement Agreement is not approved by the Court or is otherwise canceled in accordance with its terms, or the settlement set forth in this Settlement Agreement is otherwise canceled or terminated or fails to become effective in accordance with its terms, it shall become null and void and shall have no further force and effect, and neither this Settlement Agreement (including any and all of its provisions and the exhibits hereto), nor any drafts hereof, nor any of the negotiations and proceedings relating hereto: (i) shall be offered, received in evidence or otherwise used in this Action or in any other action or proceedings for any purpose, or (ii) shall prejudice the rights of any of the Parties hereto, who shall be restored to their respective positions immediately prior to the execution of this Agreement.

15.4. Each of the Parties and/or the Released Parties may file and use this Settlement Agreement and/or the Judgment in any action against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement,

mootness, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15.5. In the event that the Settlement Agreement is not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Parties shall be restored to their respective positions in the Action, and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or litigant, which extension shall be subject to the decision of the Court, (ii) the terms and provisions of the Settlement Agreement shall have no further force or effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and (iii) any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, and/or expenses awarded to Settlement Class Counsel shall constitute grounds for cancellation or termination of the Settlement Agreement.

16. **Application for Attorneys' Fees and Expenses and Compensation for Class Representative**

16.1. Except as provided herein, none of the Released Parties shall bear any expenses, costs, damages, or fees alleged or incurred by Plaintiff, by any Settlement Class Member who is not an Opt-Out, or by any of their attorneys, experts, advisors, agents or representatives.

16.2. Settlement Class Counsel represent and warrant that they will not seek an enhancement award or other incentive compensation for Plaintiff acting as Class Representative; and will not seek an award for attorneys' fees and costs award of more than One Hundred Twenty-Five Thousand Dollars (\$125,000.00) and that the amount they seek will be inclusive of all fees, costs and expenses of Settlement Class Counsel, past and future in connection with the Action. A.J. Boggs takes no position as to the proper amount of any attorneys' fees and costs award to Settlement Class Counsel, and agrees that it will not oppose any application by Settlement Class Counsel for attorneys' fees and costs in a total amount of not more than One Hundred Twenty-Five Thousand Dollars (\$125,000.00). The attorneys' fees and costs in the amount awarded by the



Court shall be paid directly to Settlement Class Counsel by A.J. Boggs or its insurer within twenty-one (21) days of the Effective Date. The effectiveness of this Settlement Agreement will not be conditioned upon or delayed by the Court's failure to approve Settlement Class Counsel's request for attorneys' fees and costs, or the Court's award to Settlement Class Counsel of attorneys' fees and costs in an amount less than that sought by Settlement Class Counsel. A.J. Boggs and its insurer shall have no obligation to pay any attorneys' fees or costs to Settlement Class Counsel, separate from any amount awarded by the Court to Settlement Class Counsel.

**17. Termination of the Settlement Agreement**

17.1. This Settlement Agreement shall, without notice, be automatically terminated if the Final Order and Judgment are not entered, if the Judgment is reversed on appeal and the reversal becomes final, or in the event of any Party's withdrawal pursuant to the provisions of this Settlement Agreement. Upon termination, all Parties shall be restored to their respective positions as immediately prior to the date of execution of this Settlement Agreement except as otherwise provided.

**18. Notice to Parties**

18.1. All notices to the Parties or their counsel required by this Settlement Agreement, shall be made in writing and communicated by facsimile or email and regular mail to the following addresses and facsimile numbers:

If to Plaintiff A. Doe or Plaintiff's Counsel or Settlement Class Counsel:

Kara N. Ingelhart (*pro hac vice*)  
LAMBDA LEGAL DEFENSE &  
EDUCATION FUND, INC.  
65 E. Wacker Place, Suite 2000  
Chicago, IL 60601-7245  
Tel: 312.663.4413  
Email: Kingelhart@lambdalegal.org

and

Andrew M. Hutchison (SBN 289315)  
COZEN O'CONNOR  
101 Montgomery Street, Suite 1400  
San Francisco, CA 94104  
Tel: 415.644.0914  
Fax: 415.644.0978  
Email: ahutchison@cozen.com

If to A.J. BOGGS or A.J. BOGGS's Counsel:

Michael D. Abraham, Esq.  
Bartko Zankel Bunzel & Miller, PLC  
One Embarcadero Center, Suite 800  
San Francisco, CA 94111  
Facsimile: (415) 956-1152  
Email: mabraham@bzbm.com

If to the Claims Administrator:

Simpluris  
Attn: Mike Sutherland  
3194-C Airport Loop Drive  
Costa Mesa, CA 92626  
Tel: 1-800-779-2104  
Email: msutherland@simpluris.com

## 19. **Miscellaneous Provisions**

19.1. This Settlement Agreement, including all exhibits hereto, shall constitute the entire agreement among the Parties with regard to the subject of this Settlement Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of this Settlement Agreement. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in these documents, except as expressly herein provided. This Settlement Agreement is a fully integrated agreement and may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval, the exhibits to this Settlement Agreement may be modified by subsequent agreement of A.J. Boggs and Settlement Class Counsel prior to dissemination to the Settlement Class.

19.2. The Parties intend this settlement to be a final and complete resolution of all disputes, claims, and causes of action by and between them with respect to the Action in any way whatsoever. The settlement compromises claims that are contested and shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. The Parties each agree that the settlement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right

to rebut, in any manner that a Party determines to be appropriate, any contention made in any public forum that the Action was brought or defended in bad faith or without a reasonable basis.

19.3. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all the Parties or their respective successors-in-interest.

19.4. Subject to Court approval, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

19.5. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors and assigns.

19.6. The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual agreement after negotiation, with consideration by and participation of the Parties hereto and their counsel.

19.7. The Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

19.8. No Party or attorney for any of the Parties may make public in any way the existence or the terms of this Settlement Agreement prior to the time the Court approves it and Judgment is entered, other than the filing of this Settlement Agreement with the Court in connection with a motion for preliminary approval of class action settlement. The Parties agree that neither they nor their representatives shall issue any press release or make any other disclosure with intent that the disclosure will directly or indirectly result in notifying the media about this Settlement Agreement or any of its provisions prior to the entry of the Final Order and Judgment. Nothing in this provision shall be interpreted to limit or waive: (i) the attorney-client relationship, the attorney-client communication privilege, or the work product privilege of the respective Parties, A.J. Boggs' counsel, Plaintiff's Counsel or Settlement Class Counsel; or (ii) representations that the Parties or their attorneys may make to the Court to assist it in its evaluation of the Settlement Agreement or proposed settlement; or (iii) to limit the ability of the Parties or the Claims Administrator to distribute the Notice, handle Requests for Exclusion, redact objections, or to carry out any other activity ordered by the Court to effectuate the provisions of

this Settlement Agreement or (iv) to limit Plaintiff’s Counsel’s ability to communicate with Settlement Class Members, regarding the Settlement and the litigation, including, but not limited to, the details included in this Settlement Agreement.

19.9. If for any reason any portion of this Settlement Agreement shall be interpreted or determined to be illegal, invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect, unless this severability provision would deny one or more Parties of the material benefits of this Settlement Agreement, in which case the entire Settlement Agreement shall have no force and effect.

19.10. The waiver by a Party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or breach of this Settlement Agreement.

19.11. This Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the Parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California.

19.12. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Settlement Agreement.

19.13. Each person executing this Settlement Agreement on behalf of any of the Parties hereto hereby warrants that he or she has the full authority to do so.

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IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed individually and by their duly authorized, respective agents.

Dated: 4/28, 2022

By:   
Settlement Class Representative A. Doe

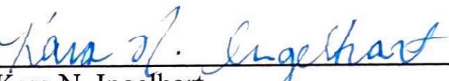
Dated: \_\_\_\_\_, 2022

**COZEN O'CONNOR**

By: \_\_\_\_\_  
Andrew M. Hutchison  
Attorneys for Plaintiff A. Doe and Settlement  
Class


Dated: May 2, 2022

**LAMBDA LEGAL DEFENSE &  
EDUCATION FUND, INC.**

By:   
Kara N. Ingelhart  
Attorneys for Plaintiff A. Doe and Settlement  
Class

**A.J. BOGGS & COMPANY**


Dated: April 29, 2022

By:   
Title: CEO  
Print J. Clarke Anderson

APPROVED AS TO FORM

Dated: April 30, 2022

**BARTKO ZANKEL BUNZEL & MILLER**  
A Professional Law Corporation

By:   
Michael D. Abraham  
Attorneys for Defendant A.J. BOGGS & CO.

**AMENDMENT TO MAY 2022 CLASS ACTION SETTLEMENT AGREEMENT  
BETWEEN THE PLAINTIFF CLASS AND A.J. BOGGS AND COMPANY**

THIS AMENDMENT TO THE MAY 2022 CLASS ACTION SETTLEMENT AGREEMENT BETWEEN THE PLAINTIFF CLASS AND A.J. BOGGS AND COMPANY (“Amendment to Class Action Settlement Agreement”) is made effective as of the 5th day of October, 2022, between Class Representative A. Doe (“Class Representative”) and A.J. Boggs & Co (“A.J. Boggs”) (collectively, the “Parties”).

**BACKGROUND**

WHEREAS, on April 3, 2018, the Class Representative filed a complaint against A.J. Boggs in California Superior Court in San Francisco County, later amended on August 31, 2018;

WHEREAS, between February 10-15, 2022, the Parties executed a settlement agreement to resolve the allegations contained in the original and amended complaints;

WHEREAS, on February 17, 2022, the Plaintiff Class filed an unopposed motion for preliminary approval of the settlement agreement with the Court;

WHEREAS, between-April 29-May 2, 2022, the Parties executed an amended version of the settlement agreement to resolve the allegations contained in the original and amended complaints and to address requests made by the Superior Court (the “May 2022 Class Action Settlement Agreement”);

WHEREAS, on June 14, 2022, the Court granted the Plaintiff Class’s unopposed motion for preliminary approval of the settlement agreement containing a timeline for the Claims Administrator to enter into a data sharing agreement with the California Department of Public Health (“CDPH”), receive the contact information for the Plaintiff Class, and additional other steps to administer the settlement;

WHEREAS, on or about June 23, 2022, the Parties discovered that the Claims Administrator, Simpluris, claimed for the first time it could not meet CDPH’s requirements under CDPH’s proposed data sharing agreement;

WHEREAS, on June 30, 2022, the Parties moved for a 45-day extension of time to identify a new claims administrator who could meet CDPH’s requirements set forth in CDPH’s propose data sharing agreement;

WHEREAS, on June 30, 2022, the Court granted the requested 45-day extension of time for the parties to identify a new claims administrator who could meet CDPH’s requirements set forth in CDPH’s propose data sharing agreement;

WHEREAS, despite diligent efforts, it was on August 8, 2022, that the Parties identified a new claims administrator, Kroll Settlement Administration, LLC (“Kroll”);

WHEREAS, on August 23, 2022, the Parties obtained an estimate of \$35,776.00 from Kroll (the “Kroll August 22, 2022 Estimate”).

WHEREAS, the Parties, the Kroll and CDPH engaged in negotiations to confirm Kroll would agree to meet the requirements of CDPH’s proposed data sharing agreement; and

WHEREAS, A.J. Boggs & Co has obtained approval from its insurer for the Kroll August 22, 2022 Estimate.

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the undersigned, intending to be legally bound, hereby amend the Class Action Settlement Agreement as follows:

1. The Parties mutually agree that as to Section 1.6 of the May 2022 Class Action Settlement Agreement: (i) the word “Simpluris” is deleted and replaced with the phrase “Kroll Settlement Administration, LLC (“Kroll”)”; (ii) the phrase “in an amount not to exceed Nine Thousand Six Hundred Sixty Seven Dollars (\$9,667.00) is deleted and replaced with the phrase “in an amount consistent with Kroll’s August 22, 2022 Estimate of \$35,776.00”; and (iii) the remainder of Section 1.6 is otherwise unchanged and unamended;

2. The Parties mutually agree that Section 6.2(ii) of the May 2022 Class Action Settlement Agreement is hereby amended to read in full as follows:

A.J. Boggs or its insurer agree to pay the reasonable costs charged by the Claims Administrator, including the costs of service of the Notice and costs incurred due to the receipt, redaction and communication of any Request for Exclusion and/or objection, plus the reasonable costs of distribution of the first and second \$2,000.00 settlement checks making up the Settlement Monetary Payment, as set forth in the Kroll August 22, 2022 Estimate. Within twenty-one (21) business days after the Effective Date, A.J. Boggs or its insurer will wire sufficient funds into the Claims Administrator’s settlement bank account, from which the Settlement Monetary Payment will be made to each of the ninety-three (93) Settlement Class Members who is not an Opt-Out, or to the Cy Pres Recipients in lieu of each Settlement Class Member who is not an Opt-Out but elected to not receive or will not receive the Settlement Monetary Payment. With regard to the Claims Administrator, the Claims Administrator’s activities, the Notice and the Settlement Monetary Payment, the roles of A.J. Boggs and its insurer are expressly and strictly limited to paying the amounts called for under this Settlement.

3. The Parties mutually agree that Section 6.2(vi-viii) of the May 2022 Class Action Settlement Agreement is hereby amended to read in full as follows:

(vi) The Parties recognize that some Settlement Class Members may not accept the first \$2,000 settlement check until 2024. The Parties agree that a Settlement Class Member who is not an Opt-Out and who has not already received the first \$2,000 settlement check may elect to receive the first check after December 31, 2023, but before December 15, 2024. In that event, the Claims Administrator will issue a first \$2,000.00 settlement check, which will remain payable for a period of one hundred eighty (180) days in

accordance with the dates listed below in Subparagraph 6.2(vi)(b) and that Settlement Class Member may then receive the second \$2,000.00 settlement check in January of 2025, which will remain payable for a period of one hundred eighty (180) days.

(vii) The Parties further agree that:

(a) Settlement checks issued in calendar year 2023 must be issued no later than December 22, 2023.

(b) Settlement checks issued in calendar year 2024 must be issued no later than December 22, 2024.

(c) Settlement checks issued in calendar year 2025 must be issued no later than January 31, 2025.

(d) In the event that a Settlement Class Member who is not an Opt-Out has not requested the first Settlement Monetary Payment by December 15, 2024, and has not been issued the first Settlement Monetary Payment by December 22, 2024, the Settlement Monetary Payment corresponding to such Settlement Class Member will be distributed by the Claims Administrator to the two Cy Pres Recipients with half of the total sum in a single payment going to each of the two Cy Pres Recipients.

(viii) One hundred ninety (190) days after the final deadline on January 31, 2025 for the Claims Administrator to issue any second settlement check in 2025 (August 8, 2025), the funds associated with any uncashed settlement checks and any other funds remaining in the Settlement Account will be distributed by the Claims Administrator to the two Cy Pres Recipients with half of the total sum in a single payment going to each of the two Cy Pres Recipients.

4. The Parties mutually agree that as to Section III.C. of the Notice attached as Exhibit A to the May 2022 Class Action Settlement Agreement (i) the name, address and telephone number for the Claims Administrator is changed by deleting the prior name, address and telephone number for Simpluris and replacing it with: "Kroll Settlement Administration, LLC, Attn: Paul Ferruzzi, 2000 Market Street, Suite 2700, Philadelphia, PA 19103 Phone (833) 512-2305; and (ii) Section III.C. of the Notice is otherwise unchanged and unamended.

5. Nothing in this Amendment shall be construed as in any way altering or amending any of the other agreed-upon terms of the May 2022 Class Action Settlement Agreement.

6. This Amendment may be executed in counterparts and sent by e-mail, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same amendment to the May 2022 Class Action Settlement Agreement.

7. The May 2022 Class Action Settlement Agreement, as amended hereby, shall continue in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed effective as of the date first set forth above.



Dated: October 06, 2022

By: A. Doe  
Settlement Class Representative A. Doe

Dated: October 10, 2022

LAMBDA LEGAL DEFENSE & EDUCATION  
FUND, INC.

By: Kara N. Ingelhart  
Kara N. Ingelhart, Attorneys for A. Doe and  
Settlement Class

Dated: October 6, 2022

COZEN O'CONNOR

By: K Kara Kapp  
Kara Kapp, Attorneys for A. Doe and Settlement  
Class

Dated: October   , 2022

A.J. BOGGS & COMPANY

By: \_\_\_\_\_  
J. Clarke Anderson, CEO

APPROVED AS TO FORM

BARTKO ZANKEL BUNZEL & MILLER  
A Professional Law Corporation

\_\_\_\_\_  
Michael D. Abraham, Attorneys for Defendant A.J.  
BOGGS & COMPANY

Dated: October \_\_, 2022

By: \_\_\_\_\_  
Settlement Class Representative A. Doe

Dated: October \_\_, 2022

LAMBDA LEGAL DEFENSE & EDUCATION  
FUND, INC.

By: \_\_\_\_\_  
Kara N. Ingelhart, Attorneys for A. Doe and  
Settlement Class

Dated: October \_\_, 2022

COZEN O'CONNOR

By: \_\_\_\_\_  
Kara Kapp, Attorneys for A. Doe and Settlement  
Class

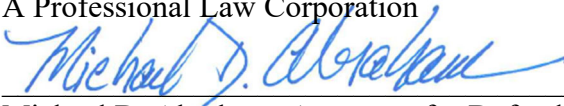
Dated: October 6, 2022

A.J. BOGGS & COMPANY

By:  \_\_\_\_\_  
J. Clarke Anderson, CEO

APPROVED AS TO FORM

Dated: October 6, 2022

BARTKO ZANKEL BUNZEL & MILLER  
A Professional Law Corporation  
 \_\_\_\_\_  
Michael D. Abraham, Attorneys for Defendant A.J.  
BOGGS & COMPANY

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [NAME], declare that:

4 I am  a Settlement Class Member;  counsel for a Settlement Class Member;  an  
5 expert, consultant, or investigator (or member of such person's staff).

6 I have received a copy of the Amended Protective Order in this Action, *A. Doe, individually*  
7 *and on behalf of all others similarly situated v. A.J. Boggs & Company*, San Francisco Superior  
8 Court Case No. CGC18565456. I have carefully read and understand the provisions of this  
9 Amended Protective Order, and I agree to abide by its terms.

10 I will hold in confidence, will not disclose to anyone other than those persons specifically  
11 authorized by the Amended Protective Order, and will not copy or use for purposes other than for  
12 this Action any materials designated "Confidential" or "Highly Confidential" that I receive in this  
13 Action, except to the extent that such material designated "Confidential" [or "Highly  
14 Confidential"] is or becomes public domain information or otherwise is not deemed  
15 "Confidential" or "Highly Confidential" in accordance with the Amended Protective Order.

16 If I receive a copy of any Confidential Materials, I agree that at the conclusion of the  
17 litigation, I will return all Confidential Materials to the party or attorney from whom I received it.

18 I agree to subject myself personally to the jurisdiction of this Court for the purpose of  
19 proceedings relating to my performance under, compliance with, or violation of the Amended  
20 Protective Order.

21 I understand that disclosure of materials designated "Confidential" and "Highly  
22 Confidential" in violation of the Amended Protective Order may constitute contempt of court.

23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct.

25 Executed this \_\_\_\_ day of \_\_\_\_\_, 2022, at \_\_\_\_\_.

26  
27 \_\_\_\_\_  
28 Signature

JUN 14 2022

CLERK OF THE COURT  
BY: Clara Gonzalez  
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 613

A. DOE, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

A.J. BOGGS & COMPANY,

Defendant.

Case No. CGC-18-565456

ORDER GRANTING PRELIMINARY  
APPROVAL

Plaintiff and Defendant have entered into a Class Action Settlement Agreement (“Settlement Agreement”)<sup>1</sup> attached as Exhibit A to Supplemental Declaration of Andrew M. Hutchison in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, Appointment of Plaintiff as Class Representative, Appointment of Plaintiff’s Counsel as Class Counsel, Approval of Notice of Settlement, Approval of Notice Plan, Judicial Determination and Finding, and Setting of Hearing for Final Approval (May 6, 2022), which, if approved, would resolve the class action. Plaintiff has filed a motion for preliminary approval of class settlement. Upon review and consideration of the motion papers and supplemental documents submitted by the parties as requested by

<sup>1</sup> This Order hereby incorporates by reference the definitions of the Settlement Agreement as set forth herein, and all terms used herein shall have the same meaning as set forth in the Settlement.

1 the Court, including the Settlement Agreement and all exhibits thereto, the Court determines and orders  
2 as follows:

3 1. This Court has jurisdiction over this matter and venue is proper.

4 2. This action is provisionally certified as a class action, for settlement purposes only,  
5 pursuant to California Code of Civil Procedure section 382 and California Rules of Court rule 3.763. The  
6 Settlement Class is defined as follows:

7 the ninety-three (93) individuals who were the specific intended recipients of the CDPH Notice  
8 Letter.

9 3. The Court conditionally approves the proposed settlement as within the range of possible  
10 final approval.

11 4. The Court confirms Lambda Legal Defense & Education Fund, Inc. and Cozen O'Connor  
12 as Class Counsel for the Settlement Class.

13 5. The Court confirms named plaintiff "Alan Doe" as Class Representative for the Settlement  
14 Class.

15 6. The Court approves Simpluris as the Claims Administrator and directs Simpluris to carry  
16 out all duties and responsibilities of the Claims Administrator specified in the Settlement Agreement.

17 7. Pursuant to California Rules of Court rule 3.769(f), the Court approves the manner of class  
18 notice set forth in the Settlement Agreement. The Court approves the form and content of Settlement  
19 Notice (attached hereto as **Exhibit A**). The Court finds that the notice procedure as laid out in the  
20 Settlement Agreement constitutes the best notice practicable under the circumstances and is valid, due and  
21 sufficient notice to the Settlement Class of the pendency of the action, preliminary certification of the  
22 Settlement Class, the terms of the Settlement, procedures for objecting to and requesting exclusion from  
23 the settlement, and the time and place of the Final Approval Hearing. The proposed manner of class  
24 notice satisfies the requirement of due process, and complies with applicable law, including California  
25 Code of Civil Procedure section 382 and California Rules of Court rule 3.769. Class Counsel shall  
26 proofread the Short-Form Notice, Long-Form Notice, and Claim Form for typos and fill in all blanks,  
27 including all dates, addresses, and/or websites prior to sending them or posting them on the Settlement  
28 Website.

1           8.     No later than **June 19, 2022 (five (5) calendar days after the entry of this Order)**,  
2 CDPH shall provide the Claims Administrator the most up-to-date contact information for the Class  
3 Members.

4           9.     No later than **June 24, 2022 (ten (10) calendar days after the entry of this Order)**, the  
5 Claims Administrator shall provide Notice by email or mail to all Class Members.

6           10.    No later than **June 24, 2022 (ten (10) calendar days after the entry of this Order)**, the  
7 Claims Administrator will establish a settlement website that will contain copies of the Settlement Notice,  
8 the Settlement, the Order Granting Preliminary Approval, deadline dates and payment schedule, including  
9 any updates to the deadline dates and payment schedule.

10          11.    The deadline by which Class Members must object or request to be excluded shall be  
11 **August 13, 2022 (sixty (60) calendar days)** after the Order Granting Preliminary Approval. Objections  
12 or Requests for Exclusion must be postmarked to the Claims Administrator by this date. All objection  
13 and request for exclusion procedures are set forth in the Settlement Agreement and Notice, and are  
14 summarized below.

15          12.    If a Class Member submits both an opt-out and an objection, then the Class Member will  
16 be deemed to have opted out and will forfeit the right to object.

17          13.    **Opt-Out Procedures:** In order to opt-out of the Settlement, a Class Member must  
18 individually sign and timely submit a written Request for Exclusion to the Claims Administrator by first  
19 class U.S. mail or by an express service carrier (e.g. UPS or Federal Express). The information on the  
20 outside of the envelope containing the written Request for Exclusion should not make any reference to or  
21 include A.J. Boggs, ADAP, or the Settlement. The envelope should not contain a clear or translucent  
22 window of any type. The written Request for Exclusion should state the Class Member's full name and  
23 current address and manifest the intent to be excluded from the Settlement Class.

24          14.    **Objection Requirements:** In order to object to the Settlement, a Class Member can submit  
25 a timely written notice of his or her objection inside of an envelope and postmarked by the Objection  
26 Deadline. ). The information on the outside of the envelope containing the notice of objection should not  
27 make any reference to or include A.J. Boggs, ADAP, or the Settlement. The envelope should not contain a  
28 clear or translucent window of any type. The notice inside the envelope shall state: (1) the objector's full

1 legal name and address; (2) a written statement of all grounds for the objection, accompanied by any  
2 factual or legal support for the objection; (3) the identity of all counsel representing the objector, if any;  
3 (4) the identity of all counsel representing the objector who will appear at the Final Approval hearing, if  
4 any; (5) a statement confirming whether the objector intends to personally appear and/or testify at the  
5 Final Approval Hearing; and (6) the objector's signature under oath and penalty of perjury or, if legally  
6 incapacitated, the signature of the objector's duly authorized representative (along with documentation  
7 setting forth such legal incapacitation and representation) and a request to act as the objector's guardian  
8 ad litem in the Action. In the alternative, a Class Member can appear at the final approval hearing to  
9 object without filing an objection with the Class Administrator.

10 15. Class Members will have **one hundred and eighty (180) calendar days** from the date of  
11 issuance of their settlement checks to negotiate their check. After any settlement checks that have not  
12 been cashed one hundred eighty (180) days after January 31, 2024 shall go into the *Cy Pres* fund.

13 16. All papers filed in support of plaintiff's motion for attorneys' fees and costs and a service  
14 award shall be filed by **July 14, 2022**. This date is at least thirty (30) days prior to the deadline for  
15 submitting objections. Class Counsel shall file their motion for final approval of the Class Action  
16 Settlement and entry of a Final Approval Order and Judgment no later than **August 30, 2022 (16 court**  
17 **days before the Final Approval hearing)**.

18 17. A final approval hearing shall be held on **September 22, 2022, at 2:00 p.m.** in Department  
19 613, San Francisco Superior Court, 400 McAllister Street, San Francisco, California 94102, at which the  
20 Court will determine whether the settlement should be finally approved as fair, reasonable, and adequate  
21 to the Settlement Class; whether the Final Approval Order and Judgment should be entered; whether the  
22 Class Counsel's application for attorneys' fees and costs should be approved; and whether any request for  
23 a service award should be approved.

24 18. The Court reserves the right to modify the date of the Final Approval Hearing and related  
25 deadlines set forth herein. The Final Approval Hearing may be postponed, adjourned, or continued by  
26 Order of the Court without further notice to the Class Members.

27 19. If for any reason the Court does not approve the Settlement, it will be of no force or effect,  
28 and the Parties shall be returned to their original respective positions.

1           20. Pending the final determination of whether the Settlement should be approved, all  
2 proceedings in this Action, except as may be necessary to implement the Settlement or comply with the  
3 terms of the Settlement, are hereby stayed.

4  
5           IT IS SO ORDERED.

6  
7           Dated: June 14, 2022



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8           ANDREW Y.S. CHENG  
9           Judge of the Superior Court



# **EXHIBIT A**

## NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION

*A. Doe*, individually and on behalf of all others similarly situated, *v. A.J. Boggs & Company*, San Francisco Superior Court Case No. CGC-18-565456

TO SETTLEMENT CLASS MEMBER in *A. Doe v. A.J. Boggs & Company*, San Francisco Superior Court Case No. CGC-18-565456.

### **PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE AFFECTS YOUR RIGHTS.**

By Order of the Superior Court of the State of California for the County of San Francisco (the "Court"), YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A class action lawsuit is now pending in this Court. A class action lawsuit is a lawsuit in which one or more persons sue on behalf of other persons who are in a similar situation. This Notice of Pendency and Settlement of Class Action ("Notice") is being sent to you because you are part of this class of plaintiffs (the "Class"). This Notice contains a brief description of this lawsuit and discusses participation as a member of the Class.

### **I. DESCRIPTION OF THE LAWSUIT AND RELATED INFORMATION.**

On April 3, 2018, Plaintiff, represented by Lambda Legal Defense and Education Fund and Cozen O'Connor ("Plaintiff's Counsel"), filed a class action complaint in San Francisco Superior Court Case No. CGC-18-565456 (the "Complaint") and, thereafter, filed a First Amended Class Action Complaint ("FACAC") against A.J. Boggs & Company ("A.J. Boggs"). The lawsuit is hereinafter referred to in this Notice as the "Action."

In the Action, the Complaint and FACAC each allege that a security vulnerability in the California Aids Drug Assistance Program ("ADAP") enrollment portal existed and that, due to the security vulnerability, unauthorized third parties accessed certain enrollees' confidential medical information. The Complaint and FACAC each allege as a result of this Potential Data Breach, the ADAP enrollment portal provided by A.J. Boggs was taken offline on November 29, 2016 and never put back online. The Complaint and FACAC each further allege, attach and incorporate as Exhibit 1, the California Department of Health's ("CDPH") Notice Letter, dated April 7, 2017, (the "CDPH Notice Letter"), which sets forth CDPH's description of the circumstances related to or concerning the ADAP enrollment portal. The Complaint and FACAC each allege that this CDPH Notice Letter was sent to ninety-three (93) ADAP enrollees whose personal information was allegedly potentially accessed. The Complaint and the FACAC each allege causes of action for violation of the California AIDS Public Health Records Confidentiality Act (California Health & Safety Code section 121025) and the California's Confidentiality of Medical Information Act (Civil Code section 56, *et seq.*), seeking statutory damages, actual damages, civil penalties, attorneys' fees, costs and other relief as deemed appropriate by the Court.

A.J. Boggs denies each and every claim and contention alleged against it in the Action, the Complaint, the FACAC, and CDPH's Notice Letter, denies the potential data breach, and denies all other charges of wrongdoing or liability alleged against it, including, but not limited to, in the pending consolidated federal action entitled: *John Doe*, individually and on behalf of all others similarly situated *v. A.J. Boggs & Company*; and *Does 1-100*, defendants, Case No. 1:18-CV-01454

AWI BAM. A.J. Boggs further contends that, at all relevant times, it complied with applicable standards of care and contractual obligations. Only for reference purposes of this Notice and the Settlement (as defined below), these allegations, charges and description are hereinafter referred to as the “Potential Data Breach.”

The “Settlement Class” is defined as: the class to be conditionally certified, for settlement purposes only, consisting of the ninety-three (93) individuals who were the specific intended recipients of the CDPH Notice Letter.

No Court has ruled that A.J. Boggs did anything wrong nor has any Court decided whether any liability exists.

The Court has determined that the potential or actual impact (if any took place) of any unauthorized viewing, access, disclosure or release (if any took place) associated with the Potential Data Breach was and is limited to the ninety-three (93) individuals who were the specific intended recipients of the CDPH Notice Letter.

The Action was mediated with a highly skilled mediator. Upon final approval of the settlement by the Court, the Court will make and enter judgment consistent with the terms of the settlement, and will retain jurisdiction to enforce the terms of the judgment.

By Order dated \_\_\_\_\_, 2022, the Court in the Action has determined that Plaintiff’s Counsel, for settlement purposes only, are counsel for the Settlement Class (“Settlement Class Counsel”).

Plaintiff and Settlement Class Counsel have concluded that settling with A.J. Boggs pursuant to the terms of the Settlement Agreement (the “Settlement”) is in the best interests of the Settlement Class.

By Order dated \_\_\_\_\_, 2022, the Court has preliminarily approved the Settlement, which affects your legal rights, and you now have a choice to exercise these rights.

To preserve your confidentiality and at the request of the Parties and CDPH, a claims administrator (the “Claims Administrator”) has entered into a separate contract with CDPH that preserves your confidentiality. Under the process for this Notice and the payment process under the Settlement, Plaintiff, Plaintiff’s Counsel, Settlement Class Counsel, A.J. Boggs and A.J. Boggs’ counsel have not been and will not be provided with your identity, contact information or information that may directly or indirectly lead to your identity. This Notice is being sent to you by the Claims Administrator.

**AS A MEMBER OF THE SETTLEMENT CLASS, YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. READ THIS NOTICE CAREFULLY.**

## **II. SUMMARY OF THE PROPOSED CLASS SETTLEMENT.**

The proposed Settlement provides for:

1. Without any admission of fault or liability, and in compromise and settlement, provided the Settlement Agreement is finalized and has received final, non-appealable approval

by the Court and is not subject to vacatur, A.J. Boggs or its insurer shall fund two (2) payments to each member of the ninety-three (93) Settlement Class who is not an Opt-Out, payable in installments of Two Thousand Dollars (\$2,000.00) each, with one \$2,000.00 payment anticipated to be made in 2022 and one \$2,000.00 payment anticipated to be made in 2023, for a total combined settlement payment of Four Thousand Dollars (\$4,000.00) (the "Settlement Monetary Payment") in full and final satisfaction of each such Settlement Class Member's claim of loss arising from, concerning or in connection with the Potential Data Breach, which payment shall be made through the Claims Administrator in order to preserve the confidentiality of the Settlement Class Member. In the event a Settlement Class Member is not located or does not come forward to accept payment until 2023, such Settlement Class Members may elect to receive one \$2,000.00 payment in 2023 and a second \$2,000.00 payment in 2024, provided that such Settlement Class Member requests payment of the first \$2,000 installment no later than December 15, 2023.

2. There is no requirement that each of the Settlement Class Members submit documentation to establish that the Member actually incurred damages of four thousand dollars (\$4,000.00) because A.J. Boggs is waiving this otherwise applicable requirement as part of the consideration provided for the settlement. Each Settlement Class Member who is not an Opt-Out will receive the Settlement Monetary Payment unless, for any reason, the Settlement Class Member elects to not take or otherwise will not receive the Settlement Monetary Payment, in which case the Settlement Monetary Payment will be distributed pursuant to the Settlement's *cy pres* provisions.
3. What is *Cy Pres* Distribution of the Settlement Funds? When it is difficult for all Settlement Class Members to receive individual shares of the recovery or when there are unclaimed class member settlement funds, under the legal doctrine known as *cy pres* and/or California Code of Civil Procedure section 384(b), courts may approve the distribution of the settlement funds to support public or non-profit activities to address the injury alleged in a lawsuit instead of distributing funds directly to the allegedly affected party. In this case, the recipients of any settlement funds distributed pursuant to the Settlement's *cy pres* are the non-profit entities: APLA Health and the San Francisco AIDS Foundation (SFAF) for their respective use exclusively for state-wide HIV/AIDS advocacy work.
4. Releases by each Settlement Class Member regarding the Released Claims, including any claims brought or that could have been brought in the Action or related to the Potential Data Breach, and releasing A.J. Boggs and the other Released Parties under the Settlement.
5. Continuing Court jurisdiction over the Action to enforce the terms of the Settlement.
6. No payment of an enhancement or incentive award to Plaintiff; and payment to Settlement Class Counsel of up to \$125,000.00 in legal fees, expenses and costs subject to approval by the Court.

The above is a summary of the basic terms of the Settlement. For the precise terms of the Settlement, you are referred to the detailed Settlement Agreement, which will be on file with the

Clerk of the Court and also available on the website located at:  
[www.AJBoggsCompanySettlement.com](http://www.AJBoggsCompanySettlement.com).

### **III. WHAT ARE YOUR OPTIONS AS A MEMBER OF THE SETTLEMENT CLASS?**

Your options as a member of the Settlement Class (“Settlement Class Member”) are as follows:

#### **A. You Can Remain A Member Of The Settlement Class By Doing Nothing And Receive \$4,000.00.**

If you wish to remain a member of the Settlement Class, you do not need to do anything. Your interests as a Settlement Class Member will be represented by Settlement Class Counsel. You will be bound by the terms of the Settlement and any final judgments that may be entered by the Court, and you will be deemed to have released claims against A.J. Boggs and the other Released Parties related to the Potential Data Breach as described in Section IV below.

As a Member of the Settlement Class, if the Settlement is approved and provided the Settlement Agreement is finalized and has received final, non-appealable approval by the Court and is not subject to vacatur, you will receive the Settlement Monetary Payment in the total amount of \$4,000.00, payable in (2) installments of \$2,000.00, with one \$2,000.00 payment anticipated to be made in 2022 and one \$2,000.00 payment anticipated to be made in 2023, which payment will be made through the Claims Administrator in order to preserve the confidentiality of Settlement Class Members. These payment dates may change due to developments in the Action. To determine if there has been any change in payment schedule, please go online to the website located at: [www.AJBoggsSettlementCompany.com](http://www.AJBoggsSettlementCompany.com).

To the extent you elect to receive the first Settlement Monetary Payment of \$2,000.00 after December 31, 2022 and no later than December 15, 2023, you will receive the first \$2,000 installment by check issued no later than December 22, 2023, which will remain payable for a period of one hundred eighty (180) days. In that event, such Settlement Class Member may then receive a second \$2,000.00 settlement check in January of 2024, which will remain payable for a period of one hundred eighty (180) days. If you do not request the first \$2,000.00 installment of Settlement Monetary Payment funds by December 15, 2023, and have not been issued a check for the first \$2,000.00 installment by December 22, 2023, any Settlement Monetary Payment corresponding to you will be distributed pursuant to the Settlement’s *cy pres* provisions. Additionally, any settlement checks that remain uncashed one hundred eighty (180) days after January 31, 2024 will be distributed pursuant to the Settlement’s *cy pres* provisions. To determine if there are any changes to these dates, please see the website located at: [www.AJBoggsSettlementCompany.com](http://www.AJBoggsSettlementCompany.com).

**RECEIPT OF SETTLEMENT MONETARY PAYMENTS MAY POTENTIALLY IMPACT YOUR QUALIFICATIONS FOR BENEFITS UNDER CERTAIN GOVERNMENTAL PROGRAMS, INCLUDING BUT NOT LIMITED TO, ADAP. YOU SHOULD CAREFULLY CONSIDER WHETHER ACCEPTING THE SETTLEMENT PAYMENTS WITH ONE \$2,000.00 PAYMENT ANTICIPATED TO BE MADE IN 2022 AND ONE \$2,000.00 PAYMENT ANTICIPATED TO BE MADE IN 2023 (BUT IN ANY EVENT, NO LATER THAN JANUARY 31, 2024), FOR A TOTAL COMBINED SETTLEMENT PAYMENT OF \$4,000.00, WILL IMPACT YOUR QUALIFICATION FOR BENEFITS.**

**IF YOU HAVE ANY QUESTIONS REGARDING THE POTENTIAL IMPACT ON YOUR ELIGIBILITY FOR BENEFITS UNDER ANY GOVERNMENTAL PROGRAMS, INCLUDING BUT NOT LIMITED TO ADAP, BASED ON RECEIVING THE SETTLEMENT PAYMENT, YOU SHOULD CONTACT YOUR ADAP CASE MANAGER OR OTHER LOCAL PROGRAM CONTACT PERSON TO DETERMINE THE IMPACT, IF ANY, ON YOUR ELIGIBILITY FOR BENEFITS PRIOR TO DETERMINING WHETHER TO ELECT TO RECEIVE THE SETTLEMENT PAYMENT.**

You can elect to remain a Settlement Class Member, but not take the Settlement Monetary Payment, in which case the Settlement Monetary Payment will be distributed pursuant to the Settlement's *cy pres* provisions.

**B. You Can Object To The Terms Of The Settlement.**

You may object to the Settlement before final approval if you remain in the Settlement Class. However, if the Court rejects your objection, you will be bound by the terms of the Settlement. To object, you may submit a written notice of objection and any and all papers and briefs in support of your objection to the Claims Administrator: Simpluris, 3194-C Airport Loop Drive, Costa Mesa, CA 92626. The information on the outside of the envelope containing the notice of objection should not make any reference to nor include A.J. Boggs, ADAP, or the Settlement. The envelope containing the notice of objection should not contain a clear or translucent window of any type. The Claims Administrator will then: (i) confidentially confirm the objection is being made in the name of a Settlement Class Member; (ii) make redactions to the objection and any and all papers and briefs in support of your objection to preserve the confidentiality of the Settlement Class Member and any protected information; (iii) have CDPH's counsel confirm the necessary redactions have been made; and (iv) then provide to the respective counsel for the Parties the redacted copy of the written notice of objection and any and all papers and briefs in support of your objection. Counsel for the respective Parties will file with the Court the redacted copy of your written notice of objection and any and all papers and briefs in support of your objection, which will preserve the confidentiality of your identity and the confidentiality of any protected information.

Any objections sent to the Claims Administrator must state: (1) the objector's full legal name and address; (2) a written statement of all grounds for the objection, accompanied by any factual or legal support for the objection; (3) the identity of all counsel representing the objector, if any; (4) the identity of all counsel representing the objector who will appear at the Final Approval Hearing, if any; (5) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (6) the objector's signature signed under oath and penalty of perjury or, if legally incapacitated, the signature of the objector's duly authorized representative (along with documentation setting forth such legal incapacitation and representation) and a request to act as the objector's guardian ad litem in the Litigation. Objections to approval of the Settlement must be

submitted to the Claims Administrator and postmarked no later than \_\_\_\_\_, 2022, (which deadline is sixty (60) days after the entry of the order granting preliminary approval). Class Members or their counsel may alternatively appear at the Final Approval Hearing to make an oral objection without also having to submit a written objection. Class Members or their counsel do not have to file a written objection in order to appear at the Final Approval Hearing.

If you elect to remain a Member of the Settlement Class for purposes of the Settlement, but do not wish to be represented by Settlement Class Counsel, you may personally enter an appearance or appear through your own attorney. To do so, you must file an Entry of Appearance with the Clerk of the Court and deliver copies to the attorneys listed below. You or your counsel may apply to the Court for permission to have the Entry of Appearance use a fictitious name, or be filed under seal, in order to preserve your confidentiality. You will then continue as a Settlement Class Member. However, if you hire your own attorney to represent you, unless the Court orders otherwise, you will be solely responsible for the fees, expenses and costs of your attorney.

### **C. You Can Opt-Out From The Settlement Class.**

You can exclude yourself from the Settlement Class. To exclude yourself from the Settlement Class, you must mail a written Request for Exclusion from the Settlement Class to the Claims Administrator:

Simpluris  
Attn: Mike Sutherland  
3194-C Airport Loop Drive  
Costa Mesa, CA 92626  
Tel: 1-800-779-2104

Inside of the envelope, your Request for Exclusion from the Settlement Class must be signed by you personally. If legally incapacitated, the signature of the duly authorized representative must be on the Request for Exclusion (along with documentation setting forth such legal incapacitation and representation) and a request to act as the individual's guardian ad litem in the Action. Your written Request for Exclusion inside of the envelope must state your full name and current address. In order to be effective, your written Request for Exclusion also must be postmarked on or before \_\_\_\_\_, 2022 (which deadline is sixty (60) days after the entry of the order granting preliminary approval) and sent by first class mail or by an express service carrier (e.g., UPS or Federal Express) to the Class Administrator. The information on the outside of the envelope containing the Request for Exclusion should not make any reference to nor include A.J. Boggs, ADAP, or the Settlement. The envelope containing the Request for Exclusion should not contain a clear or translucent window of any type.

## **IV. WHAT DO YOU GIVE UP UNDER THE SETTLEMENT?**

The Settlement is intended to settle and release all claims that any of the Settlement Class Members have alleged or could have alleged ("Released Claims") against A.J. Boggs and the other Released Parties in any way based on the Potential Data Breach.

"Released Claims" means and will include any and all claims that the Settlement Class Member (other than those that opt out) has or may have, including assigned claims, whether known or unknown, asserted or unasserted, latent or patent, that is, has been, could reasonably have been or in the future might be asserted by any Settlement Class Member (other than those that opt out) either

in the Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against the Released Parties, or any of them, based on or arising out of or related to: the Potential Data Breach; A.J. Boggs' involvement in ADAP; any of the allegations made in or that could have been made in the Complaint; any of the allegations made in or that could have been made in the FACAC; any allegations that A.J. Boggs or any of the other Released Parties failed to secure or protect (i) any "protected health records" pursuant to H&S Code section 121025; (ii) "health records" as used in California Health & Safety Code section 121026, (iii) any "medical information" pursuant to CMIA, (iv) any "personal health information" under the federal Health Insurance Portability and Accountability Act, (v) blood test results or other information or other data in the ADAP portal, and/or (vi) any other federal or state constitution, act, statute, regulation or document concerning privacy; any alleged failure by A.J. Boggs or any of the other Released Parties to allegedly provide adequate or timely notice of the Potential Data Breach; and/or any other allegations, facts or circumstances described or that could have been described in the Complaint, the FACAC or the Action, including, without limitation, any causes of action under the Information Practices Act of 1977 (California Civil Code § 1798 *et seq.*), the California Unfair Competition Law (California Business & Professions Code § 17200 *et seq.*), the California Consumer Legal Remedies Act (California Civil Code § 1750 *et seq.*), CMIA, H&S Code section 121025, the United States Constitution, the California Constitution, and all other acts, statutes, regulations, ordinances and/or documents in effect in California and/or any other state in the United States and/or under federal United States law; right of privacy, negligence, breach of contract, breach of fiduciary duty and unfair competition; breach of contract; breach of implied contract; and including, without limitation, any and all claims for damages, injunctive relief, disgorgement, restitution, declaratory relief, injunctive or other equitable relief, attorneys' fees and expenses, costs, prejudgment interest, post-judgment interest, credit monitoring services, statutory damages, punitive damages, civil penalties, special damages, exemplary damages, and any liability, right, demand, suit, matter, obligation, damage, loss or cost, action or cause of action, of every kind and description in any way related to the Potential Data Breach.

"Released Parties" means A.J. Boggs and its parent entities, associates, affiliates, subsidiaries, predecessors, successors and assigns, other Related Entities and each and all of their respective past, present or future officers, directors, stockholders, agents, representatives, employees, contractors, vendors, security providers, attorneys, business associates, financial or investment advisors, other advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, insurers, co-insurers and/or reinsurers, heirs, executors, trustees, general and/or limited partners and/or partnerships, limited liability companies, members, heirs, executors, personal and/or legal representatives, estates, and/or administrators, together with their predecessors, successors and/or assigns.

If you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this Settlement and to have settled and released, among other things, the above described claims. If the Settlement is approved by the Court and becomes final, the Settlement will be consummated. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

## **V. FINAL APPROVAL HEARING.**

The Court will hold a hearing in Department 613 of the Superior Court of the State of California for the County of San Francisco, at the San Francisco Superior Court, 400 McAllister



Street, San Francisco, CA 94102, on \_\_\_\_\_, 2022, at \_\_\_\_\_ to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The hearing may be continued without further notice to the Settlement Class. It is not necessary for you to appear at this hearing.

#### **VI. ADDITIONAL INFORMATION.**

The entire case record in this litigation, including pleadings and copies of the Settlement Agreement, is available on the website for the Superior Court of the State of California for the County of San Francisco (<https://www.superiorcourt.org/online-services>) and can be viewed for free by entering the case number: CGC-18-565456. The case record also may be examined at any time during regular business hours at the office of the Clerk of the Superior Court of the State of California for San Francisco County, at the San Francisco Superior Court, 400 McAllister Street, San Francisco, CA 94102. Copies of the Settlement Notice, the Settlement, the Order Granting Preliminary Approval, and Order Granting Final Approval, deadline dates and payment schedule, including any updates to the deadline dates and payment schedule are also available on the publicly accessible portion of the website located at: [www.AJBoggsSettlementCompany.com](http://www.AJBoggsSettlementCompany.com). Documents and information filed under seal as part of Plaintiff's Motions for Approval of the Settlement can be viewed under the condition that the Settlement Class Member (and any counsel individually retained by the Settlement Class Member) have agreed in writing to be bound by the Stipulated Amended Protective Order entered by the Court on February 8, 2022, a copy of which can be obtained from the Claims Administrator. After the executed (signed and dated) copies are returned to the Claims Administrator, the Claims Administrator will provide an access code and the second authentication information needed to gain access to the secure portion of the settlement website. This Stipulated Amended Protective Order requires that the covered documents and information be kept confidential and be used only in this Action.

If you have any questions about this Notice or the Settlement, please direct your questions to the Claims Administrator or, at your election, the following Settlement Class Counsel:

Kara N. Ingelhart (pro hac vice)  
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**PLEASE DO NOT CONTACT A.J. BOGGS, A.J. BOGGS' ATTORNEYS, THE COURT, OR THE COURT CLERK. A.J. BOGGS, ITS ATTORNEYS AND THE COURT WILL NOT BE PERMITTED TO DISCUSS THE TERMS OF THE SETTLEMENT WITH YOU.**

**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.251)

I, CLARK BANAYAD, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On June 14, 2022, I electronically served the ATTACHED DOCUMENT(S) via File&ServeXpress on the recipients designated on the Transaction Receipt located on the File&ServeXpress website.

Dated: June 14, 2022

T. Michael Yuen, Clerk

By:   
CLARK BANAYAD, Deputy Clerk