

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
Case No. 10-cv-24513-JLK**

JUANA CURRY and WILLIAM MOORE,  
individually and on behalf of a class of  
similarly situated individuals,

Plaintiffs,

v.

AVMED, INC., d/b/a/ AvMed, a Florida  
Corporation,

Defendant.

[Hon. James Lawrence King]

**PLAINTIFFS' *UNOPPOSED* MOTION AND MEMORANDUM IN SUPPORT OF  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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## **I. INTRODUCTION**

Plaintiffs Juana Curry's and William Moore's claims in this class action lawsuit arise from a data breach at the corporate headquarters of Defendant AvMed, Inc. ("Defendant" or "AvMed"), a Florida-based health insurance provider. Plaintiffs allege that in December 2009, two laptop computers containing the unencrypted (i.e., easily accessible and readable) private information of Defendant's 1.2 million customers—including their names, addresses, Social Security numbers, and medical health information—were stolen from a conference room. Plaintiffs allege that as a result of Defendant's failure to properly secure their information, they suffered damages from having their identities stolen and by overpaying for insurance coverage (the price of which, they allege, included the costs associated with protecting their information).

After nearly three years of hard-fought litigation, which included an appeal before the Eleventh Circuit on an issue of first impression, multiple private mediation sessions, and extensive arm's-length negotiations, the Parties have reached a proposed settlement that, if approved, will finally resolve the claims asserted against Defendant in this matter and provide monetary benefits that go well beyond the credit monitoring enrollment offer that is normally achieved through data breach class action settlements. (The Parties' Settlement Agreement is attached hereto as Exhibit 1.)

Under the terms of the Settlement, Defendant has agreed to create a Settlement Fund<sup>1</sup> in the amount of \$3,000,000, from which members of the Premium Overpayment Settlement Class (i.e., customers that have paid Defendant for insurance) can make claims for \$10.00 for each year that they made such payments (subject to a cap of \$30.00), and members of the Identity Theft Settlement Class (i.e., those that have suffered identity theft caused by the 2009 data breach) can make claims to recover their losses. As discussed herein, the cash payments available to Premium Overpayment Settlement Class members provide reimbursement for the portion of their insurance premiums that Defendant should have allocated to data protection and

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<sup>1</sup> Unless otherwise stated, capitalized terms shall have the same meaning as set forth in the Settlement Agreement.

security—a benefit that has never before been achieved through a data breach settlement.

Additionally, under the Settlement, Defendant has implemented or, will have implemented by the Final Approval Hearing, wide-ranging prospective measures to ensure that its customers' Sensitive Personal Information is protected, including by (1) instituting mandatory security awareness and training programs for all company employees, (2) instituting mandatory training on appropriate laptop use and security for all company employees whose employment responsibilities include accessing information stored on company laptop computers, (3) upgrading all company laptop computers with additional security mechanisms, including GPS tracking technology, (4) adopting new password protocols and full disk encryption technology on all company desktops and laptops, and (5) installing physical security upgrades at company facilities and offices to further safeguard workstations from theft.

All told, the Settlement is a tremendous achievement for the Plaintiffs and proposed Settlement Classes, and provides landmark relief that will serve as a model for other companies who face similar lawsuits. Thus, Plaintiffs ask that the Court grant their unopposed motion for preliminary approval in its entirety.

## **II. SUMMARY OF THE LITIGATION, MEDIATION & SETTLEMENT**

### **A. Plaintiffs' Allegations and the Litigation History.**

Defendant AvMed is a healthcare plan provider that offers a variety of healthcare plans to both businesses and individuals throughout the State of Florida. (*See* Second Amended Complaint ["Compl."], Dkt. 31 at ¶ 9.) The data breach at the center of this case occurred on December 10, 2009, when two laptop computers containing approximately 1.2 million AvMed members' names, addresses, telephone numbers, Social Security numbers, medical diagnosis information, and other private health information, were stolen from Defendant's corporate office. (*Id.* ¶ 2.) Later investigations revealed that Defendant failed to encrypt the information contained on the stolen computers. (*Id.* ¶ 35.)

On November 16, 2010, Plaintiffs Jean Resnick, Miguel Vasquez, Christopher Atkinson, Rochel Albertson, and Kirsten Atkinson filed a putative class action in the Circuit

Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Civil Division, captioned *Resnick, et. al v. AvMed, Inc, d/b/a AvMed*, Case No. 10-60022-CA-08. In their complaint, plaintiffs alleged claims for damages and injunctive relief against Defendant for failing to properly safeguard their personal health information in accordance with the Health Insurance Portability and Accountability Act, 45 C.F.R. § 164.302, *et seq.* (“HIPAA”).

On January 14, 2011—following Defendant’s removal of the action to this Court—plaintiffs filed their First Amended Complaint. (Dkt. No. 15.) In their amended pleadings, plaintiffs provided additional detail with respect to Defendant’s insufficient security efforts and the resultant mass exposure of their Sensitive Personal Information, as well as specific allegations concerning Plaintiff Curry, who suffered actual identity theft and had accounts opened in her name, purchases made with her credit card, and her addresses changed with the Postal Service. (*Id.* ¶ 46-54.) Plaintiffs also added a count for unjust enrichment, alleging that they paid monthly premiums to Defendant, that Defendant was supposed to allocate a portion of those premiums to its promised data security efforts, that Defendant did not implement those efforts but retained the entirety of plaintiffs’ premiums in any event, and as a result, plaintiffs overpaid for promised but unimplemented services and were entitled to partial refunds. (*Id.* ¶ 109-114.)

Soon after, Defendant filed a motion to dismiss, which the Court granted after finding that plaintiffs’ allegations of harm were too speculative. (Dkt. 30.) On April 25, 2011, Plaintiffs filed their Second Amended Complaint (the “Complaint”), which dropped all Plaintiffs but Curry, added Plaintiff Moore as a party-plaintiff, and provided additional factual allegations linking their instances of identity theft to the December 2009 data breach. (Compl. ¶ 67-74.) Notwithstanding, on July 12, 2011, the Court found that the pleadings still failed to allege a cognizable injury, and dismissed the Complaint with prejudice. (Dkt. 39.)

Plaintiffs appealed the dismissal to the Eleventh Circuit and, after full briefing and oral argument, the Eleventh Circuit reversed in part and affirmed in part. Acknowledging that the appeal presented an issue of first impression in this Circuit, the court first found that Plaintiffs’



allegations conferred Article III standing. *See Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1327-28 (11th Cir. 2012). The Eleventh Circuit also found that Plaintiffs had established a plausible causal connection between the December 2009 data breach and their instances of identity theft and, thus, the alleged injuries were not prohibitively speculative. *Id.* As for Plaintiffs' unjust enrichment theory, the Eleventh Circuit recognized that Plaintiffs' allegations—that part of the insurance premiums Plaintiffs paid to Defendant were supposed to fund the administrative costs of data security, and that Defendant's subsequent failure to implement that security barred it from equitably retaining the full amounts received—were sufficient to state a claim. *Id.* at 1328.

The Eleventh Circuit remanded the case on October 9, 2012, and shortly thereafter, on October 26, 2012, AvMed answered the Second Amended Complaint and filed a Motion to Strike Class Allegations. (Dkts. 51, 52.) Plaintiffs responded and, before AvMed filed its reply, the Court denied Defendant's motion as premature. (Dkts. 57, 58.) A few weeks later, the Parties conducted their Rule 26(f) conference. Plaintiffs then propounded their First Sets of Interrogatories and Requests for the Production of Documents, and the Parties began to exchange documents and information.

#### **B. The Parties' Negotiations and Settlement Efforts.**

Beginning in December 2012, the Parties engaged in discussions to explore the potential for settlement, and decided to give mediation a chance. (*See* Declaration of Ari J. Scharg ¶ 4, ("Scharg Decl.") attached as Exhibit 2.) They selected Rodney A. Max of the Upchurch Watson White & Max Mediation Group to serve as mediator (*id.*), and jointly moved to stay the case. (Dkts. 72-73.)

On January 18, 2013, the Parties met for a formal, in-person mediation with Mr. Max in Miami, Florida. (Scharg Decl. ¶ 5.) Over the course of a full day of negotiations, the Parties engaged in productive discussions and, though unable to agree to the principal terms of a settlement at that time, agreed to continue speaking. (*Id.*) Over the next six months, the Parties, with the assistance of Mr. Max, engaged in several additional rounds of arm's-length negotiations. (*Id.* ¶ 6.) Eventually, the Parties made enough progress that Mr. Max suggested

that they sit down for a second in-person mediation to work through certain remaining issues.

(*Id.*) As such, the Parties met again with Mr. Max in Miami, Florida on April 11, 2013. (*Id.* ¶

7.) This time, the Parties made substantial progress towards settlement and agreed to work through the remaining issues that stood in the way of a complete resolution. (*Id.*)

Finally, on May 19, 2013, after several additional rounds of arm's-length negotiations presided over by Mr. Max, the Parties reached an agreement on the principal terms of a settlement, which they memorialized in a Memorandum of Understanding. (*Id.* ¶ 8.) Over the next four months, the Parties exchanged several drafts of the agreement and related documents, until they were finalized. The Parties now seek preliminary approval of the Settlement.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT**

The terms of the settlement are set forth in the Settlement Agreement (*see* Ex. 1) and are briefly summarized as follows:

**A. Class Definitions.** The Settlement Agreement provides for two Settlement Classes, defined as follows:

**The Premium Overpayment Settlement Class:** All current and former AvMed customers who, prior to December 2009, paid AvMed for insurance, and whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident.

**The Identity Theft Settlement Class:** All current and former AvMed customers whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident, and who suffered Identity Theft and incurred unreimbursed losses as a result.

Excluded from the Settlement Classes are: (a) Defendant; (b) any current or former employee, officer, or agent of Defendant; (c) the Settlement Administrator, and its respective parents, subsidiaries, successors, predecessors, and related entities; and (d) any trial judge(s) presiding over this Action, and the immediate family members of any such trial judge(s). (Agreement ¶¶ 1.18, 1.33.)

**B. Monetary Relief.** Defendant has agreed to establish a Settlement Fund in the amount of \$3,000,000, to pay for (i) Approved Premium Overpayment Claims, (ii) Approved Identity Theft Claims, (iii) Settlement Administration Expenses, (iv) Class Counsel's attorneys'

fees and expenses, and (v) Plaintiffs' Incentive Awards.

**1. *Approved Premium Overpayment Claims.***

Under the Settlement, Premium Overpayment Settlement Class members who submit valid claim forms are eligible to receive up to \$10.00, or a lesser *pro rata* share, for each year they paid Defendant for insurance prior to the December 2009 data breach, subject to a maximum recovery of \$30.00. As explained below, this relief effectively reimburses Class members for the portion of premiums that Plaintiffs contend Defendant should have spent (but didn't spend) on adequate data protection. To be eligible for a payment, members of the Premium Overpayment Settlement Class must submit a Premium Overpayment Claim Form (*see* Ex. 1-A), signed under penalty of perjury, which states that they purchased insurance from Defendant prior to December 2009, identifies the number of years that they paid for such insurance, and indicates that they had the expectation that Defendant would protect their personal information. (Agreement ¶¶ 1.33, 1.45, 2.1(a).)

**2. *Approved Identity Theft Claims.***

The Settlement also provides payments to Identity Theft Settlement Class members for the amount of any unreimbursed monetary losses that occurred as a result of the December 2009 data breach, or a lesser *pro rata* share. To be eligible for a reimbursement, members of the Identity Theft Settlement Class must submit an Identity Theft Claim Form (*see* Ex. 1-B), signed under penalty of perjury, which identifies all such losses and provides supporting documentation. (Agreement ¶¶ 1.45, 1.18, 2.1(b).)

**C. *Prospective Relief.*** In addition to the monetary relief above, Defendant will implement (or has already implemented) the following prospective relief: (1) mandatory security awareness and training programs for all company employees, (2) mandatory training on appropriate laptop use and security for all company employees whose employment responsibilities include accessing information stored on company laptop computers, (3) upgrading of all company laptop computers with additional security mechanisms, including GPS tracking technology, (4) new password protocols and full disk encryption technology on all

company desktops and laptops so that electronic data stored on such devices would be encrypted at rest, (5) physical security upgrades at company facilities and offices to further safeguard workstations from theft, and (6) the review and revision of written policies and procedures to enhance information security.

**D. Additional Relief.** In addition to the monetary and prospective relief described above, Defendant has also agreed to provide the following:

**1. Payment of Notice and Administrative Fees:** Defendant will pay for the cost of sending notice to the Settlement Classes and any other notice as required by the Court, as well as all costs of administration of the settlement. All notice and administrative costs shall be deducted from the \$3,000,000 Settlement Fund. (Agreement ¶ 1.40.)

**2. Incentive Award for Class Representatives:** In addition to any award available to them under the Settlement, and in recognition of their efforts on behalf of the Classes, the Class Representatives in this matter shall, subject to Court approval, receive an award of \$10,000 to be split evenly amongst themselves as compensation for their time and effort serving as the Class Representatives in this action. (Agreement ¶ 8.3.)

**3. Payment of Attorneys' Fees:** Subject to Court approval, Defendant has agreed to pay Class Counsel \$750,000 for attorneys' fees and costs expended in this Action. Defendant agrees that this amount is fair and reasonable and will not object to or otherwise challenge Class Counsel's application for this amount. (Agreement ¶¶ 8.1-8.2.)

**E. Release of Liability.** In exchange for the relief described above, Defendant and each of its related and affiliated entities, will receive a full release of all claims related to the allegedly insufficient maintenance and protection of the Settlement Classes' Sensitive Personal Information that caused the December 2009 data breach. (Agreement ¶¶ 1.37-1.39, 3.1-3.2.)

#### **IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED**

In order to grant preliminary approval of a proposed settlement, the Court should determine that the proposed settlement class is appropriate for certification. *See* MANUAL FOR COMPLEX LITIG., § 21.632 (4th Ed. 2004)); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620

(1997). Class certification is proper if the proposed class, proposed class representative, and proposed class counsel satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a). Fed. R. Civ. P. 23(a)(1)-(4); *see also Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 313 (S.D. Fla. 2001). Additionally, because Plaintiffs seek certification under Rule 23(b)(3), Plaintiffs must demonstrate that common questions of law or fact predominate over individual issues and that a class action is superior to other methods of adjudicating the claims. Fed. R. Civ. P. 23(b)(3); *Amchem*, 521 U.S. at 615-16. District courts are given broad discretion to determine whether certification of a class action lawsuit is appropriate. *Walco Investments, Inc. v. Thenen*, 168 F.R.D. 315, 323 (S.D. Fla. 1996). Here, Plaintiffs meet all of the Rule 23(a) and 23(b)(3) prerequisites and certification is proper.

#### **A. The Requirement of Numerosity is Satisfied**

The first prerequisite of class certification is numerosity, which requires “the class [be] so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1); *see also Fabricant*, 202 F.R.D. at 313 (requiring that joinder be impracticable, not impossible). To satisfy this requirement, there is no “definite standard as to the size of a given class, and plaintiff’s estimate need only be reasonable.” *Id.* However, a plaintiff must “proffer some evidence of the number of members in the purported class, or at least a reasonable estimate of that number.” *Leszczynski v. Allianz Ins.*, 176 F.R.D. 659, 669 (S.D. Fla. 1997).

Here, the laptops stolen during the 2009 data breach contained the Sensitive Personal Information of 1.2 million AvMed customers. The Premium Overpayment Settlement Class is comprised of the approximately 460,000 individuals whose personal information was contained on the stolen laptops and who paid AvMed for insurance. Moreover, the Identity Theft Settlement Class is comprised of those individuals whose personal information was contained on the stolen laptops and who suffered identity theft. In light of the fact that both Curry and Moore have suffered actual identity theft, and that Class Counsel has been contacted by dozens of individuals to report fraudulent activity on their credit and bank statements, Class Counsel estimates that there are approximately 100 members in the Identity Theft Settlement Class.

(Scharg Decl. ¶ 9); *see Kilgo v. Bowman Trans.*, 789 F.2d 859, 878 (11th Cir. 1986) (numerosity satisfied where class was comprised of 31 members). Accordingly, the proposed Classes are so numerous that joinder is impracticable. The numerosity requirement is thus satisfied.

**B. The Requirement of Commonality is Satisfied**

The second requirement for certification mandates that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality is satisfied when there is “at least one issue affecting all or a significant number of proposed class members.” *Fabricant*, 202 F.R.D. at 313; *see also Agan v. Kathzamn & Korr, P.A.*, 222 F.R.D. 692, 697 (S.D. Fla. 2004). The threshold for demonstrating the commonality requirement is not high, *In re Checking Account Overdraft Litig.*, 286 F.R.D. 645, 652 (S.D. Fla. 2012), and is “generally satisfied when a plaintiff alleges that defendants have engaged in a standardized course of conduct that affects all class members.” *In re Checking Overdraft Litig.*, 275 F.R.D. 666, 673 (S.D. Fla. 2011).

Here, nearly every question of law or fact stems directly from Defendant’s alleged failure to protect its customers’ Sensitive Personal Information, and each is necessarily common because (1) Defendant protected, or failed to protect, the Classes’ personal information in the exact same way, and (2) this lawsuit arises out of a single event: the December 2009 data breach. As such, Defendant’s conduct gives rise to questions of law and fact that are common to both Settlement Classes—especially questions regarding Defendant’s compliance with HIPAA, such as: (i) whether Defendant failed to ensure the confidentiality and integrity of electronic protected health information it created, receives, maintains, and transmits in violation of 45 CFR 164.306(a)(1), (ii) whether Defendant implemented technical policies and procedures for electronic information systems that maintain electronic protected health information to allow access only to those persons or software programs that have been granted access rights in violation of 45 CFR 164.312(a)(1), (iii) whether Defendant failed to protect against any reasonably anticipated threats or hazards to the security or integrity of electronic protected health information in violation of 45 CFR 164.306(a)(2), (iv) whether Defendant failed to protect against reasonably anticipated uses or disclosures of electronic protected health information that

are not permitted under the privacy rules regarding individually identifiable health information in violation of 45 CFR 164.306(a)(3), and (v) whether Defendant failed to design, implement, and enforce policies and procedures establishing physical and administrative safeguards to reasonably safeguard protected health information, in compliance with 45 CFR 164.530(c). Further, additional common questions of fact and law exist with respect to the Premium Overpayment Settlement Class, such as whether Defendant unjustly retained a portion of their insurance premiums, and if so, the amount of their insurance premiums that should have been used for data protection and security. Regardless of the answers to any of the above questions, there can be no dispute that the questions are common to each and every member of the Settlement Classes.

There are multiple questions of law and fact common to members of both Classes, and thus, the commonality requirement is satisfied.

### **C. The Typicality Requirement is Satisfied**

The next requirement, typicality, requires that class representatives have claims that are typical of those of the putative class members. Fed. R. Civ. P. 23(a)(3). “[T]ypicality measures whether a significant nexus exists between the claims of the named representative and those of the class at large.” *Hines v. Widnall*, 334 F.3d 1253, 1256 (11th Cir. 2003). A class representative’s claims are typical of the claims of the class if they “arise from the same event or pattern or practice and are based on the same legal theory.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984); *see also Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004) (“Neither the typicality nor the commonality requirement mandates that all putative class members share identical claims, and . . . factual differences among the claims of the putative members do not defeat certification.”). Simply put, when the same unlawful course of conduct is directed at both the named plaintiff and the members of the proposed class, the typicality requirement is met. *Kennedy v. Tallant*, 710 F.2d 711, 717 (11th Cir. 1983).

In this case, the claims of Plaintiffs Curry and Moore, and each member of both Classes, center on Defendant’s alleged failure to adequately safeguard their Sensitive Personal



Information, and moreover, arise from the exact same event: the 2009 data breach. Plaintiffs and members of the Premium Overpayment Settlement Class all seek the return of monies paid for data security that AvMed allegedly did not implement. Likewise, Plaintiffs and members of the Identity Theft Settlement Class all allege that their personal data was compromised in the 2009 Incident, which lead to instances of identity theft and losses they now seek to recover. Accordingly, by pursuing their own claims through this matter, Plaintiffs Curry and Moore will necessarily advance the interests of the Settlement Classes. The typicality requirement is therefore satisfied.

**D. The Adequacy of Representation Requirement is Satisfied**

Finally, Rule 23(a) requires the representative parties to “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This factor mandates both that: (1) the class representative possess no interests antagonistic to the settlement class, and (2) that both the class representative and proposed Class Counsel will prosecute the Action vigorously on behalf of the Class. *Fabricant*, 202 F.R.D. at 314-15 (citing *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 726-28 (11th Cir. 1987)). Stated differently, “[a]dequacy exists where the named plaintiffs share common interests with the class members and seek the same type of relief for themselves as they seek for the class.” *In re Checking*, 286 F.R.D. at 654.

First, Plaintiffs Curry’s and Moore’s interests are both typical of and aligned with those of the proposed Classes. Both Plaintiffs seek recovery for both premium overpayments and unreimbursed losses related to instances of identity theft caused by the 2009 Incident. Moreover, each has remained involved in this case throughout its entire pendency, and each remains committed to see that the interests of both Classes are protected and advanced. (Scharg Decl. ¶ 10.) As such, both Curry and Moore have no interests antagonistic to those of the Classes, and both have and will continue to fairly and adequately protect the Classes’ interests.

Likewise, proposed Class Counsel and the lawyers at Edelson LLC will adequately represent the Settlement Classes, as they regularly engage in major complex litigation involving consumer technology issues, have the resources necessary to conduct litigation of this nature,



and have frequently been appointed lead class counsel by courts throughout the country. (Scharg Decl. ¶ 11; *see also* Firm Resume of Edelson LLC, attached as Exhibit A.) Moreover, proposed Class Counsel have diligently investigated, prosecuted, and dedicated substantial resources to the claims in this Action, and will continue to do so throughout its pendency. (*Id.* at ¶ 13.)

As such, Plaintiffs and their counsel have and will continue to adequately represent the Settlement Classes, and the final Rule 23(a) requirement is satisfied.

### **E. The Proposed Settlement Classes Meet the Requirements of Rule 23(b)(3)**

In addition to meeting the prerequisites of Rule 23(a), Plaintiffs must also meet one of the three requirements of Rule 23(b) to certify the proposed class. *In re Checking*, 286 F.R.D. at 650. Here, Plaintiffs seek certification under Rule 23(b)(3), which requires that (i) questions of law and fact common to members of the class predominate over any questions affecting only individuals, and (ii) the class action mechanism is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3). The “inquiry into whether common questions predominate over individual questions is generally focused on whether there are common liability issues which may be resolved efficiently on a class-wide basis.” *Agan*, 222 F.R.D. at 700. As explained below, the proposed Settlement Classes meet these requirements.

#### **1. Common Questions of Law and Fact Predominate**

Rule 23(b)(3)’s predominance requirement focuses primarily on whether a defendant’s liability is common enough to be resolved on a class basis, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551-57 (2011), and whether the proposed class is “sufficiently cohesive to warrant adjudication by representation,” *Amchem*, 521 U.S. at 623. Common issues of fact and law predominate in a case “if they have a direct impact on every class member’s effort to establish liability and on every class member’s entitlement to injunctive and monetary relief.” *In re Checking*, 286 F.R.D. at 655 (S.D. Fla. 2012); *see also Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1179 (11th Cir. 2010) (noting that “[t]he relevant inquiry [is] whether questions of liability to the class . . . predominate over . . . individual issues relating to damages. . . .”). Predominance does not require that all questions of

law or fact be common, but rather, that a significant aspect of the case “can be resolved for all members of the class in a single adjudication.” *Hanlon*, 150 F.3d at 1022.

Here, there are common questions of fact and law that are shared by members of both Classes stemming from Defendant’s alleged failure to protect their personal information. With respect to the Premium Overpayment Settlement Class, to establish liability each member must show that (i) Defendant was required to safeguard their Personal Sensitive Information in accordance with HIPAA, (ii) they paid money for such protections through their insurance premiums, and (iii) Defendant failed to adequately safeguard and protect their information. Likewise, each Identity Theft Class Members must show that (i) Defendant was required to safeguard their Personal Sensitive Information in accordance with HIPAA, (ii) Defendant failed to adequately protect their Sensitive Personal Information, and as a result (iii) they suffered identity theft. Thus, the issues raised by Defendant’s alleged failure to protect the Sensitive Personal Information of both Classes predominates over any issues affecting individual members (such as the amount of damages) and will be subject to common proof. Accordingly, the predominance requirement is met.

## **2. *A Class Action is the Superior Method for Adjudicating this Controversy***

Here, the class mechanism is superior to any other method available to fairly and efficiently adjudicate the claims of both Classes. As courts have historically noted, “[t]he class action fills an essential role when the plaintiffs would not have the incentive or resources to prosecute relatively small claims in individual suits, leaving the defendant free from legal accountability.” *In re Checking*, 286 F.R.D. at 659; *see also In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 700 (S.D. Fla. 2004) (class actions are “particularly appropriate where . . . it is necessary to permit the plaintiffs to pool claims which would be uneconomical to litigate individually.”) (internal citations omitted). At its most basic, “[t]he inquiry into whether the class action is the superior method for a particular case focuses on ‘increased efficiency.’” *Agan*, 222 F.R.D. at 700 (quoting *Sikes v. Teleline, Inc.*, 281 F.3d 1350, 1359 (11th Cir. 2002)).

Here, absent a class action, members of the Settlement Classes would almost certainly

find the cost of individually litigating their claims to be prohibitive, and multiple individual actions would be judicially inefficient given that each must address the same legal and factual arguments to prove their common claims. Also, because this action has been settled, the Court need not concern itself with issues of manageability relating to trial. *See Amchem*, 521 U.S. at 620 (“[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial”) (citations omitted). Therefore, because common questions predominate and a class action is the superior method for adjudicating the controversy, maintenance of this action as a class action is appropriate.

#### **V. PLAINTIFFS’ COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL**

Under Rule 23, “a court that certifies a class must appoint class counsel . . . [who] must fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). In making this determination, the Court must consider counsel’s: (1) work in identifying or investigating potential claims; (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).

As discussed above, proposed Class Counsel has extensive experience in prosecuting consumer electronic privacy class actions. *See, e.g., In re Facebook Privacy Litig.*, No. 10-cv-02389-JW, dkt. 69 at \*5 (N.D. Cal. Dec. 10, 2010) (recognizing that the attorneys at Edelson are “pioneer[s] in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue”); *Harris v. comScore*, No. 11-cv-5807, 2013 WL 1339262 (N.D. Ill. Apr. 2, 2013) (achieving adversarial certification in the largest-ever privacy class action); (*see also* Scharg Decl. ¶ 11.) Further, proposed Class Counsel have devoted substantial time and resources to the investigation and prosecution of Plaintiffs’ and the Classes’ claims, having engaged in three years of hard-fought litigation in this case, and a successful appeal to the Eleventh Circuit. (*Id.* ¶¶ 13-14.)

As a result of their efforts, proposed Class Counsel have successfully reached a

settlement with Defendant that provides landmark monetary relief, as well as the prospective relief necessary to protect Defendants' customers' electronically-stored information going forward. Thus, the Court should appoint Jay Edelson, Ari J. Scharg, and Benjamin S. Thomassen of Edelson LLC as Class Counsel.

**VI. THE PROPOSED SETTLEMENT IS FUNDAMENTALLY FAIR, REASONABLE, AND ADEQUATE, AND THUS WARRANTS PRELIMINARY APPROVAL**

After determining that a proposed settlement class is appropriate for certification, courts consider whether the proposed settlement itself warrants preliminary approval. The procedure for review of a proposed class action settlement is a well-established two-step process. *ALBA & CONTE*, 4 *NEWBERG ON CLASS ACTIONS*, §11.25, at 38-39 (4th Ed. 2002). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval.” *NEWBERG*, §11.25, at 38-39 (quoting *MAN. FOR COMPLEX LITIG.*, §30.41 (3rd Ed. 1995)); *Fresco v. Auto Data Direct, Inc.*, 2007 WL 2330895 at \*4 (S.D. Fla. May 14, 2007). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at \*2 (S.D. Fla. Jun. 15, 2010). Settlement negotiations that involve arm’s-length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See* *MANUAL FOR COMPLEX LITIG.*, §30.42 (3rd Ed. 1995).

There is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (“Public policy strongly favors the pretrial settlement of class action lawsuits”); *Warren v. City of Tampa*, 693 F. Supp. 1051, 154 (M.D. Fla. 1998), *aff’d*, 893 F. 2d 347 (11th Cir. 1998); *Access Now, Inc. v. Claires Stores, Inc.*, 2002 WL 1162422, at \*4 (S.D. Fla. May 7, 2002). Through the class action mechanism, class members are ensured a benefit as opposed to the “mere possibility of recovery at some indefinite time in the future.” *In re Domestic Air Transport.*, 148 F.R.D. 297, 306 (N.D. Ga. 1993). While district courts have discretion in

deciding whether to approve a proposed settlement, courts recognize that deference should be given to the consensual decision of the parties. *Warren*, 693 F. Supp. at 1054.

Here, there should be no question that the proposed Settlement is fair, reasonable, and adequate. To start, the process used to reach the settlement was fair. That is, the proposed Settlement was reached only after three years of hard-fought litigation, which included the exchange of formal and informal discovery, an appeal to the Eleventh Circuit, two separate rounds of in-person mediation facilitated by experienced third-party neutral Rodney A. Max—who has been described by another court in this district as “an eminently qualified mediator.” *Fresco*, 2007 WL 2330895, at \*5—and multiple rounds of arm’s-length negotiations over ten months. (Scharg Decl. ¶ 14.) Moreover, the Parties agreed on the terms of the settlement through experienced counsel, who ensured that they had ample information at their disposal prior to the mediation sessions and during subsequent negotiations to evaluate the terms of any proposed agreement and to reach a fair and reasonable compromise. (Scharg Decl. ¶ 15.)

In terms of the relief provided by the Settlement itself, the fact that substantial money payments are available to the Classes weighs strongly in favor of a finding of reasonableness. First, Premium Overpayment Settlement Class members are entitled to recover \$10 per year (up to \$30), which represents reimbursements for data security that they paid for but allegedly did not receive. (*See* Agreement § 2.1(a).) The true measure of this recovery comes from comparing the *actual*, per-member cost of providing the missing security measures—e.g., what AvMed would have paid to provide encryption and password protection to laptop computers containing Personal Sensitive Information, and to otherwise comply with HIPAA’s security regulations—against what Class members stand to receive through the Settlement. According to Plaintiffs’ retained expert C. Matthew Curtin, *C.I.S.S.P.* (Certified Information Security Systems Professional), the per-person recovery here (i.e., \$10 per year, up to \$30) falls within the upper bounds of what any individual member of the Premium Overpayment Settlement Class might

recover through an actual trial on an unjust enrichment theory.<sup>2</sup> Second, Identity Theft Settlement Class members may submit claims for the amount of their losses. (*Id.* § 2.1(b).) Thus, the Settlement Agreement offers the greatest relief possible, and is deserving of preliminary approval.

Given the robust notice plan (i.e., direct notice via email and First Class U.S. Mail, and the creation of a Settlement Website), coupled with the ease with which Settlement Class members may file claims (i.e., via electronic submission or hard-copy), along with the strong prospective measures afforded by the Settlement, Class Counsel believes that the results achieved are well within the range of possible approval. (Scharg Decl. ¶16.) Notwithstanding, Plaintiffs also recognize that despite their belief in the strength of the claims at issue, the expense, duration, and complexity of protracted litigation would be substantial, and the outcome of trial is uncertain. (*Id.* ¶ 17); *see also Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1322 (S.D. Fla. 2005) (noting that “uncertainties in outcome strongly favor approval of a negotiated settlement”). Likewise, Defendant has repeatedly indicated that absent settlement it would continue to aggressively defend this case, and that it would appeal any judgment ultimately rendered in Plaintiffs’ favor, which would further delay recovery by the Settlement Classes. (Scharg Decl. ¶ 18).

Finally, the Court need not rule on a blank slate when it comes to the settlement’s fairness, reasonableness, and adequacy. By making cash payments available to members of both Classes—i.e., up to \$30 to members of the Premium Overpayment Settlement Class, and identity theft reimbursements to members of the Identity Theft Settlement Class members—the instant Settlement exceeds the benefits conferred by other data breach settlements that have received final approval from federal district courts throughout the country. *See, e.g., Johansson-Dohrmann v. Cbr Sys., Inc.*, No. 12-CV-1115 (S.D. Cal. July 24, 2013) (establishing a \$2.5

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<sup>2</sup> At the time of the filing of this Motion, the expert report of C. Matthew Curtin was in the process of being finalized and executed. Plaintiffs intend to file Mr. Curtin’s executed final report by October 23, 2013.

million fund to provide approximately 300,000 class members with two years of credit monitoring and identity theft reimbursement); *Beringer v. Certegy Check Services, Inc.*, No. 07-cv-01657 (M.D. Fla. Sept. 3, 2008) (establishing a \$5 million fund to provide approximately 37 million class members with up to two years of credit monitoring and identity theft reimbursement); *In re Heartland Payment Sys. Inc. Customer Data Sec. Breach Litig.*, MDL No. 09-2046 (S.D. Tex. 2012) (establishing a \$2.4 million fund from which to provide over 100 million class members with identity theft reimbursement); *Rowe v. Unicare Life and Health Ins. Co.*, No. 09-cv-02286 (N.D. Ill. Sept. 14, 2011) (establishing a \$3 million fund to provide approximately 220,000 class members with one year of credit monitoring, identity theft reimbursement, and *cy pres*).

For all of these reasons, Plaintiffs and proposed Class Counsel firmly believe that the monetary and prospective relief provided by the settlement weighs heavily in favor of a finding that it is fair, reasonable, and adequate, and well within the range of approval. (Scharg Decl. ¶ 19.) Accordingly, the Court should grant preliminary approval.

## **VII. THE NOTICES SHOULD BE APPROVED IN FORM AND SUBSTANCE**

To satisfy the requirements of both Rule 23 and Due Process, Rule 23(c)(2)(B) provides that “for any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Rule 23(e)(1) similarly requires that the notice be reasonably disseminated to those who would be bound by the court’s judgment. Further, notice is proper as long as the average class member would be able to understand it, NEWBERG § 11:53 at 167, and the substance of the notice must describe the nature of the action, the definition of the class to be certified, and the class claims and defenses at issue. *See* Fed. R. Civ. P. 23(c)(2)(B). It must also explain that settlement class members may enter an appearance through counsel or request to be excluded from the settlement class so as not to be bound by any judgment. *Id.*

The Parties have agreed upon a multi-part notice plan that easily satisfies the



requirements of both Rule 23 and Due Process. First, the Settlement Administrator will send direct notice via email to all persons who are potential members of the Settlement Classes (i.e., all 1.2 million individuals affected by the 2009 Incident), and whose email address are located in AvMed's database.<sup>3</sup> The e-mail itself will include a hyperlink to the Settlement Website, [www.databreachsettlement.com](http://www.databreachsettlement.com), which serves as the "long-form" notice, provides access to relevant court documents, and allows Class Members to electronically submit claim forms online. (Agreement § 4.2(a), (c); Exs. 1-A, 1-B, 1-C, and 1-E.) For those potential members whose email addresses are not contained in AvMed's database, the Settlement Administrator shall send direct postcard notice via First Class U.S. Mail. (Agreement § 4.2(b), Ex. D.) Finally, Defendant will serve notice of the proposed settlement, pursuant to 28 U.S.C. § 1715, within ten (10) days after it is filed with the Court, to the Attorneys General of each State, the Attorney General of the United States, and other required government officials. (*Id.* § 4.2(d).)

In sum, the Court should find that the proposed methods for providing notice to the Classes comports with both Rule 23 and Due Process, and should be approved by the Court.

### **VIII. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order (i) granting preliminary approval of the Parties' proposed Class Action Settlement, (ii) certifying the proposed Settlement Classes for settlement purposes, (iii) approving the form and content of the notice to the members of the Settlement Classes, (iv) appointing Plaintiffs as Class Representatives, (v) appointing Plaintiffs' counsel as Class Counsel, (vi) scheduling a Fairness Hearing in this matter, and (vii) providing such other and further relief as the Court deems reasonable and just.<sup>4</sup>

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<sup>3</sup> In the event an email "bounces back," the Settlement Administrator will attempt to resend the notice via email, and will also send the notice via First Class U.S. Mail. (Agreement § 4.2(a).)



Dated: October 21, 2013

Respectfully submitted,

JUANA CURRY and WILLIAM MOORE,  
individually and on behalf of a class of similarly  
situated individuals

By: /s/ Ari J. Scharg

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**CERTIFICATE OF SERVICE**

I, Edmund A. Normand, and attorney, hereby certify that on October 21, 2013, I served the above and forgoing ***Plaintiffs' Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement***, on all counsel of record by filing it electronically with the Clerk of the Court using the CM/ECF system, on this, the 21st day of October, 2013.

/s/ Edmund A. Normand

# Exhibit 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**  
Case No. 10-cv-24513-JLK

JUANA CURRY and WILLIAM MOORE,	)
individually and on behalf of a class of	)
similarly situated individuals,	)
	)
Plaintiffs,	)
	)
v.	)
	)
AVMED, INC., d/b/a AVMED, a Florida	)
Corporation,	)
	)
Defendant.	)
	)

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**CLASS ACTION SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) the Plaintiffs Juana Curry (“Curry”) and William Moore (“Moore”); (ii) the Settlement Classes (as defined herein) (the Settlement Classes and Plaintiffs Curry and Moore are collectively herein referred to as the “Plaintiffs” unless otherwise noted); and (iii) Defendant AvMed, Inc. (“Defendant” or “AvMed”). The Plaintiffs and the Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as the term is defined below), upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court.

**RECITALS**

A. In December, 2009, two company laptop computers were stolen from a locked conference room inside of one of AvMed’s corporate buildings in Gainesville, Florida. After conducting an investigation, AvMed notified current and former members that, as a result of the

theft, there was a possible compromise of their information, including names, addresses, dates of birth, Social Security numbers and health-related information.

B. On November 16, 2010, Plaintiffs Jean Resnick, Miguel Vasquez, Christopher Atkinson, Rochel Albertson, and Kirsten Atkinson filed a putative class action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Civil Division, captioned *Resnick, et. al v. AvMed, Inc, d/b/a AvMed*, Case No. 10-60022-CA-08 (the “Miami-Dade County Action”) alleging claims for damages and injunctive relief against Defendant AvMed for failing to properly safeguard their personal health information in accordance with the standards set forth by the Health Insurance Portability and Accountability Act, 45 C.F.R. § 164.302, *et seq.* (“HIPAA Regulations”).

C. On December 17, 2010, AvMed removed the Miami-Dade County Action to the United States District Court for the Southern District of Florida, at which time it was assigned Case No. 10-cv-24513 (the “Action”).

D. On January 14, 2011, Plaintiffs filed a First Amended Complaint. (Dkt. No. 15.)

E. On February 18, 2011, AvMed moved to dismiss the First Amended Complaint. (Dkt. No. 23.) After full briefing, the District Court granted AvMed’s motion on April 5, 2011 without prejudice, and granted Plaintiffs leave to file a Second Amended Complaint to address those pleading deficiencies identified in the dismissal order. (Dkt. No. 30.)

F. On April 25, 2011, Plaintiffs filed a Second Amended Complaint. (Dkt. No. 31.)

G. On May 12, 2011, AvMed again moved to dismiss. As before, and after a full round of briefing, the District Court granted AvMed’s motion on July 12, 2011—this time with prejudice. (Dkt. No. 33.)

H. Shortly thereafter, on August 9, 2011, Plaintiffs filed their notice of appeal of the

District Court's second dismissal order to the United States Court of Appeals for the Eleventh Circuit. (Dkt. No. 42.)

I. On September 5, 2012, after considering the briefing and oral argument, the Eleventh Circuit affirmed in part and reversed in part the District Court's second dismissal order. The Eleventh Circuit affirmed the District Court's dismissal of Plaintiffs' claims for negligence *per se* and breach of the implied covenant of good faith and fair dealing, but reversed the District Court's dismissal of the remaining five counts for negligence, breach of contract, breach of implied contract, breach of fiduciary duty and restitution/unjust enrichment. As such, the case was remanded to the Southern District of Florida for further proceedings on October 9, 2012. (Dkt. No. 50.)

J. Following remand, and on October 23, 2012, AvMed answered the Second Amended Complaint (Dkt. No. 51), and separately moved to strike the class allegations, which the District Court denied—on November 15, 2012—after receiving briefing from the Parties. (Dkt. No. 58.)

K. On November 19, 2012, and following the District Court's denial of AvMed's motion to strike class allegations, the Parties agreed to meet and confer to discuss certain scheduling issues. During the meeting, the Parties also engaged in preliminary settlement discussions and agreed to attempt to resolve this matter through private mediation. Shortly thereafter, the Parties selected Rodney A. Max of the Upchurch Watson White & Max Mediation Group to facilitate the mediation process.

L. On January 18, 2013, the Parties met for a formal, in-person mediation with Mr. Max in Miami, Florida. Over the course of that day, the Parties engaged in productive discussions and agreed to continue speaking.

M. Over the next six months, the Parties engaged in several additional rounds of arm's-length negotiations, guided by Mr. Max, and engaged in a second day of in-person mediation on April 11, 2013. With the assistance of Mr. Max, through this subsequent mediation, the Parties made substantial progress toward a classwide settlement, but were unable to resolve certain remaining issues. Nonetheless, the Parties agreed to continue negotiating in the hopes of reaching a settlement.

N. Finally, on May 19, 2013, after several additional rounds of arm's-length negotiations presided over by Mr. Max, the Parties were able to resolve all remaining issues and reach an agreement on the principal terms of a settlement. At all times, Defendant has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, or threatened, or attempted to commit any wrongful act or violation of law or duty alleged in the Action. Defendant also denies: (1) each and all of the claims and contentions alleged by Plaintiff in the Action; (2) all charges of wrongdoing or liability against them or their agents arising out of any conduct, statements, acts or omissions alleged in the Action; and (3) that Plaintiff or the Settlement Classes are entitled to any form of damages based on the conduct alleged in the Action. In addition, Defendant maintains that it has meritorious defenses to the claims alleged in the Action and was prepared to vigorously defend all aspects of the Action. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendant has concluded that further defense of the Action would be protracted, risky, burdensome, and expensive, and that it is desirable and beneficial to it that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an

admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

O. Plaintiffs believe that the claims asserted in the Action against the Defendant have merit and that they would have ultimately been successful in adversarial certification of the proposed classes under Rule 23 and prevailing on the merits at summary judgment or trial. Nonetheless, Plaintiffs and Settlement Class Counsel recognize and acknowledge that Defendants have raised factual and legal defenses in the Action that present a risk that Plaintiffs may not prevail. Plaintiffs and Settlement Class Counsel also have taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulties and delays inherent in such litigation. Therefore, Plaintiffs believe that it is desirable that the Released Claims be fully and finally compromised, settled and resolved with prejudice, and barred pursuant to the terms set forth herein. Based on their evaluation, Settlement Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable and adequate to the Settlement Classes, and that it is in the best interests of the Settlement Classes to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

P. Given all the above, and considering all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs Curry and Moore, the Settlement Classes, and each of them, and Defendant, by and through their respective undersigned counsel that, subject to final approval of the Court after a



hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Settlement Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS**

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1 “Approved Identity Theft Claim”** means an Identity Theft Claim Form submitted by an Identity Theft Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is signed by the claimant, physically or electronically, subject to penalties of perjury; (c) identifies actual, documented, and unreimbursed losses which resulted from Identity Theft caused by the December 2009 Incident (excluding any charge initiated with the Identity Theft Settlement Class Member’s authorization) that occurred during the time period from December 10, 2009 through the Claims Deadline; (d) is accompanied by proof of such losses such as police reports, correspondence with governmental agencies, correspondence with financial institutions or credit card companies, and/or banking, brokerage, or credit card records; and (e) demonstrate that the claimant’s Identity Theft more likely than not was proximately caused by the December 2009 Incident.

**1.2 “Approved Premium Overpayment Claim”** means a Premium Overpayment Claim Form submitted by a Premium Overpayment Settlement Class Member that: (a) is

submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is signed by the claimant, physically or electronically, subject to penalties of perjury; and (c) provides the information requested by the Premium Overpayment Claim Form, including the claimant's name, address, telephone number, which years and the total number of years that he or she has paid Defendant for insurance.

**1.3 “Claims Deadline”** means the date by which all Claims Forms must be postmarked or received to be considered timely and shall be, subject to Court approval, thirty (30) days after entry of the Final Judgment. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order and in the Final Judgment as well as in the Notice and the Claim Forms.

**1.4 “Claim Forms”** refers collectively to the Premium Overpayment Claim Form and Identity Theft Claim Form.

**1.5 “Class List”** means a list that Defendant shall comprise based upon records in its possession that identify the Persons whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident. The Defendant shall provide the Settlement Administrator with the Class List within seven (7) days after Preliminary Approval.

**1.6 “Class Representatives”** means the named Plaintiffs in this Action, William Moore and Juana Curry.

**1.7 “Court”** means the United States District Court for the Southern District of Florida, Judge James Lawrence King, or any judge who shall succeed him as the Judge in this Action, presiding.

**1.8 “December 2009 Incident”** means or refers to the theft of two laptop computers from AvMed's Gainesville, Florida facilities on or about December 10, 2009.

**1.9 “Defendant”** means Defendant AvMed, Inc.

**1.10 “Defendant’s Counsel”** means John J. Delionado, Neil K. Gilman, and Paulo R. Lima of Hunton Williams, LLP.

**1.11 “Effective Date”** means the date ten (10) days after which all of the events and conditions specified in Paragraph 9.1 have been met and have occurred.

**1.12 “Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Settlement Class Counsel.

**1.13 “Final Approval”** means one business day following the later of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award or incentive award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

**1.14 “Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the incentive award to the Class Representatives.

**1.15 “Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Settlement after the Final Approval Hearing.

**1.16 “Identity Theft”** means the use of an Identity Theft Settlement Class Member’s

Sensitive Personal Information, without his or her knowledge, to commit fraud or other crimes.

**1.17 “Identity Theft Claim Form”** means the document substantially in the form attached hereto as Exhibit B, as approved by the Court. The Identity Theft Claim Form, to be completed by Identity Theft Settlement Class Members who wish to file a claim for a payment for unreimbursed Identity Theft losses pursuant to this Agreement, shall be available in paper and electronic format.

**1.18 “Identity Theft Settlement Class”** means all current and former AvMed customers whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident, and who suffered Identity Theft and incurred unreimbursed losses as a result.

**1.19 “Identity Theft Settlement Class Members”** refers to all Persons that fall within the definition of the Identity Theft Settlement Class.

**1.20 “Mediator”** means Rodney A. Max of Upchurch Watson White & Max Mediation Group.

**1.21 “Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to members of the Settlement Classes substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process, Rule 23, and is substantially in the form of Exhibits C, D, and E hereto.

**1.22 “Notice Date”** means the date by which the Notice Plan set forth in Paragraph 4.2 is complete, which shall be a date no later than sixty (60) days after entry of the Preliminary Approval Order.

**1.23 “Notice Plan”** means the proposed plan of disseminating notice to members of the Settlement Classes of the proposed Settlement Agreement and of the Final Approval Hearing.

**1.24 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Classes must be postmarked and/or filed with the Court, which shall be designated as a date no later than forty-five (45) days after the Notice Date, or such other date as ordered by the Court.

**1.25 “Parties” or “Settling Parties”** means Plaintiffs Juana Curry and William Moore, the Premium Overpayment Settlement Class Members, the Identity Theft Settlement Class Members, and Defendant AvMed, Inc., collectively.

**1.26 “Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns. The definition of “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General’s office.

**1.27 “Plaintiff Curry” or “Curry”** means Juana Curry.

**1.28 “Plaintiff Moore” or “Moore”** means William Moore.

**1.29 “Plaintiffs”** means Plaintiffs Juana Curry and William Moore, the Premium Overpayment Settlement Class Members, and the Identity Theft Settlement Class Members, collectively.

**1.30 “Preliminary Approval”** means the Court’s certification of the Settlement Classes for settlement purposes, preliminary approval of the Settlement Agreement, and approval of the form of the Notice and of the Notice Plan.

**1.31 “Preliminary Approval Order”** means the proposed order preliminarily approving the Agreement and directing notice thereof to the Settlement Classes, to be submitted

to the Court in conjunction with Plaintiffs' motion for Preliminary Approval of the Agreement.

**1.32 "Premium Overpayment Claim Form"** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Premium Overpayment Claim Form, which is to be completed by members of the Premium Overpayment Settlement Class who wish to file a claim for reimbursement of premiums pursuant to this Agreement, shall be available in paper and electronic format.

**1.33 "Premium Overpayment Settlement Class"** means all current and former AvMed customers who, prior to December 2009, paid AvMed for insurance, and whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident.

**1.34 "Premium Overpayment Settlement Class Members"** refers to all Persons that fall within the definition of the Premium Overpayment Settlement Class.

**1.35 "Released Claims"** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, disclosed or undisclosed, claims, demands, liabilities, rights, judgments, liens, losses, debts, guarantees, penalties, indemnities, actions, causes of action, contracts or agreements, extracontractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of, concerning, or in connection with any of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations, omissions, or

failures to act regarding AvMed's allegedly insufficient maintenance and protection of the Settlement Classes' personal health information, including any that caused the December 2009 Incident, and any resulting instances of Identity Theft arising therefrom, that were or could have been alleged or asserted in the Action relating to the December 2009 Incident, belonging to any and all Plaintiffs and Releasing Parties, including, but not limited to, negligence, breach of contract, breach of implied contract, breach of fiduciary duty and restitution/unjust enrichment, negligence per se and breach of the implied covenant of good faith and fair dealing.

**1.36 "Released Parties"** means Defendant AvMed, Inc. and any and all of its present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents (including SantaFe HealthCare), holding companies, divisions or other related entities, sister or affiliated companies, subsidiaries, associates, employers, employees, agents, consultants, independent contractors, vendors, insurers, directors, managing directors, officers, partners, principals, fiduciaries, investors, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and Persons, firms, trusts, corporations, officers, directors, other individuals or entities in which Defendant has a controlling interest or which is affiliated with any of them, or any other representatives of any of these Persons and entities. For purposes of clarity, "Released Parties" does not encompass the individual(s) responsible for stealing laptop computers from AvMed's facilities, or otherwise contributing in any way to the December 2009 Incident.

**1.37 "Releasing Parties"** means Plaintiffs; those members of the Settlement Classes who do not request to be excluded from the Settlement Classes (whether or not such members submit Claim Forms); to the extent a member of either Settlement Class is not an individual, all

of its present, former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, predecessors-in-interest, and all of the aforementioned's present, former, and future officers, directors, employees, shareholders, attorneys, agents, independent contractors; and, to the extent a member of either Settlement Class is an individual, any present, former, and future spouses, as well as the present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns of each of them.

**1.38 “Remaining Funds”** means the amount of the Settlement Fund remaining after the payments of Approved Identity Theft Claims, Approved Premium Overpayment Claims, Settlement Administration Expenses, incentive award to Class Representatives, fees of the Special Master, and the Fee Award, if any.

**1.39 “Sensitive Personal Information”** means or refers to Personal Information as defined in Florida Statute § 817.5681(5), and/or Protected Health Information as set forth in 42 U.S.C. §1301, et seq., including its implementing regulations and the Privacy Rule, 45 C.F.R. §§ 160.102 & 160.103, and includes the information that was contained on the two laptops that were stolen during the December 2009 Incident.

**1.40 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice to the Settlement Classes and processing claim forms, as well as any costs incurred in sending the CAFA notices described in Paragraph 4.2(d) below. All such Settlement Administration Expenses shall be paid from the Settlement Fund.

**1.41 “Settlement Administrator”** means, subject to Court approval, the firm of Garden City Group, Inc., which has been selected by the Parties to oversee the distribution of Notice as well as the processing and payment of claims to the Settlement Classes as set forth in



this Settlement Agreement.

**1.42 “Settlement Agreement” or “Agreement”** means the settlement contemplated by this Settlement Agreement.

**1.43 “Settlement Class Counsel”** means Jay Edelson, Ari J. Scharg, and Benjamin S. Thomassen of Edelson LLC.

**1.44 “Settlement Classes”** refers collectively to the Premium Overpayment Settlement Class and Identity Theft Settlement Class.

**1.45 “Settlement Fund”** means a claims-made fund that is established by the Defendant in the amount of three million dollars (\$3,000,000.00). From this Settlement Fund, Defendant shall pay all costs associated with the Settlement, including (i) Approved Identity Theft Claims, (ii) Approved Premium Overpayment Claims, (iii) Settlement Notice and Administrative Expenses, (iv) the Fee Award, and (v) incentive awards to the Class Representatives. The Settlement Fund represents the limit and extent of Defendant’s monetary obligations under this Agreement for the payments of Approved Claims, Settlement Notice and Administrative Expenses, the Fee Award, and incentive awards to the Class Representatives.

**1.46 “Special Master”** means Rodney Max or such other independent person to be agreed upon by the Parties or appointed by the Court to evaluate those Claim Forms submitted by purported members of the Settlement Classes, the acceptance or rejection of which has been challenged by Defendant or Settlement Class Counsel.

**1.47 “Unknown Claims”** means claims that could have been raised in the Action and that the Plaintiffs or any or all other Persons and entities whose claims are being released, or any of them, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or

its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiffs and all other Persons and entities whose claims are being released shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, Plaintiffs and all other Persons and entities whose claims are being released, also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Plaintiffs acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever to settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

## **2. SETTLEMENT RELIEF**

### **2.1 Payments.**

#### **(a) Payments Available to the Premium Overpayment Settlement Class.**

Premium Overpayment Settlement Class Members shall have until the Claims Deadline to submit an Approved Premium Overpayment Claim. Defendant agrees to pay or cause to be paid from the Settlement Fund a sum of ten dollars (\$10.00) for each year or partial year that the Premium Overpayment Settlement Class Member paid AvMed for insurance coverage prior to the December 2009 Incident, subject to a maximum recovery of thirty dollars (\$30.00). In the

event that the Settlement Administrator receives a Premium Overpayment Claim Form that is facially incomplete, the Settlement Administrator shall request from the claimant, in writing, additional information (“Claim Supplementation”), that shall be provided by the claimant within forty-five days (45) of the request. If the Claim Supplementation fails to provide sufficient additional information to render the claim form facially complete, then that the claim shall be rejected and shall not be paid.

**(b) Payments Available to the Identity Theft Settlement Class.**

Identity Theft Settlement Class Members shall have until the Claims Deadline to submit an Approved Identity Theft Claim. Defendant agrees to reimburse each Identity Theft Settlement Class Member for the amount of any proven actual, monetary loss that is claimed and shown by the claimant to have occurred more likely than not as a result of the December 2009 Incident, regardless of whether said claimant elects to also make a claim as a Premium Overpayment Settlement Class Member under this Settlement. Each reimbursable loss must be (1) an actual, documented, and unreimbursed loss as required by the Claim Form, (2) which resulted from Identity Theft caused by the December 2009 Incident (excluding any charge initiated with the Identity Theft Settlement Class Member’s authorization), (3) that occurred during the time period from December 10, 2009 through the Claims Deadline, and (4) signed under penalty of perjury. In the event that the Settlement Administrator receives an Identity Theft Claim Form that is facially incomplete, the Settlement Administrator shall request Claim Supplementation, which shall be provided by the claimant within forty-five days (45) of the request. If the Claim Supplementation fails to provide sufficient additional information to render the claim form facially complete, then that the claim shall be rejected and shall not be paid. A sum of Two Hundred and Fifty Thousand dollars (\$250,000.00) shall be allocated from the

Settlement Fund to pay Approved Identity Theft Claims, and any funds remaining shall be made available to pay Approved Premium Overpayment Claims.

(c) Claimants that are members of both the Premium Overpayment Settlement Class and the Identity Theft Settlement Class may file both a Premium Overpayment Claim Form and an Identity Theft Claim Form.

(d) If, after deducting the amounts paid pursuant to Paragraph 1.45(iii), (iv), and (v), the amount remaining in the Settlement Fund is less than the total amount of Approved Identity Theft Claims and Approved Premium Overpayment Claims, then the amount paid to members of the Identity Theft Settlement Class and the Premium Overpayment Settlement Class who submitted an Approved Claim shall be reduced *pro rata* so that the total payments made shall not exceed Three Million Dollars (\$3,000,000.00).

(e) **Remaining Funds.** The Remaining Funds are the property of the Defendant. In no event will the Remaining Funds constitute abandoned or unclaimed property, and the Defendant is entitled to all such Remaining Funds.

(f) Within sixty (60) days after the Effective Date has occurred, or within thirty (30) days of the Settlement Administrator and/or the Special Master adjudicating all claims including those challenged pursuant to Paragraph 5.3 below, whichever is later, the Settlement Administrator shall pay all Premium Overpayment Approved Claims from the Settlement Fund by check and mail them to the claimants via First Class U.S. Mail.

(g) Within sixty (60) days after the Effective Date has occurred, or within thirty (30) days of the Settlement Administrator and/or the Special Master adjudicating all claims including those challenged pursuant to Paragraph 5.4 below, whichever is later, the Settlement Administrator shall pay all Approved Identity Theft Claims from the Settlement Fund by check

and mail them to the claimants via First Class U.S. Mail.

(h) All cash payments issued to members of the Settlement Classes via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance. To the extent that a check issued to a member of the Settlement Classes is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds shall revert to the Settlement Fund. In no event will the funds represented by an uncashed check constitute abandoned or unclaimed property, and the Defendant is entitled to all such funds as part of the Remaining Funds.

(i) Within one hundred eighty (180) days after the Effective Date has occurred, the Settlement Administrator shall pay to the Defendant, unless otherwise notified beforehand, all remaining monies in the Settlement Fund. In the event there should be any monies remaining in or returned to the Settlement Fund more than one hundred eighty (180) days after the Effective Date, then the Settlement Administrator shall repay such funds to the Defendant.

**2.2 Prospective Relief.** AvMed has or will have implemented by the Final Approval Hearing the following: (1) mandatory security awareness and training programs for all company employees; (2) mandatory training on appropriate laptop use and security for all company employees whose employment responsibilities include accessing information stored on company laptop computers; (3) upgrade all company laptop computers with additional security mechanisms, including GPS tracking technology; (4) new password protocols and full disk encryption technology on all company desktops and laptops so that electronic data stored on such devices would be encrypted at rest; (5) physical security upgrades at company facilities and offices to further safeguard workstations from theft; (6) the review and revision of written

policies and procedures to enhance information security.

### **3. RELEASES**

**3.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

**3.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties, and each of them.

### **4. NOTICE TO THE CLASS**

**4.1.** Upon issuance of Preliminary Approval of this Agreement, the Settlement Administrator shall cause the Settlement Class Notices describing the Fairness Hearing and the terms of the settlement embodied in this Agreement to be disseminated to the Settlement Classes, pursuant to the dates and terms described in Section 4.2 below. Such notice shall comport with due process and be effectuated pursuant to the Notice Plan.

**4.2.** The Notice Plan shall include:

**(a) Direct Notice by Electronic Mail.** Within thirty (30) days after Preliminary Approval, Defendant shall, based upon a review of the business records and data in its possession, custody or control, disseminate the Class Notice via electronic mail to any and all Persons who are potential members of the Settlement Classes. E-mail notice shall be sent to those Class Members for which Defendant has an e-mail address by no later than the Notice Date, will be substantially in the form attached as Exhibit C, and will bear an electronic link to the Internet Publication Notice (as identified below). In the event that the transmission of such email notice results in any “bounce-backs,” Defendant shall make a second attempt to re-send the email notice, and will additionally send notice via U.S. Mail pursuant to Paragraph 4.2(b),

below.

**(b) Direct Notice by U.S. Mail.** Within thirty (30) days after Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of all known U.S. mailing addresses for those Class Members whose email addresses are not contained in its business records or database. The Settlement Administrator shall send postcard notice substantially in the form attached as Exhibit D to each such physical address by First Class U.S. Mail by no later than the Notice Date.

**(c) Internet Publication Notice.** Within ten (10) days following the entry of the Preliminary Approval Order, Notice shall be provided on a website at [www.databreachsettlement.com](http://www.databreachsettlement.com), which shall be administered by the Settlement Administrator and shall include the ability to file Claim Forms online. The Notice on the Website shall be substantially in the form of Exhibit E attached hereto.

**(d) CAFA Notice.** Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, Defendant shall serve upon the Attorneys General of each U.S. State, the Attorney General of the United States, and other required government officials, notice of the proposed settlement as required by law.

**4.3.** The Notice Plan shall be conducted jointly with respect to the Premium Overpayment Settlement Class and Identity Theft Settlement Class. The Notice shall advise members of the Premium Overpayment Settlement Class and the Identity Theft Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved

by the Court and specified in the Notice, the Person making an objection files notice of his or her intention to do so and at the same time (a) files copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, (b) files copies of such papers through the Court's CM/ECF system if the Person is represented by counsel, and (c) sends copies of such papers via mail, hand, or overnight delivery service to both Settlement Class Counsel and Defendant's Counsel.

**4.4.** Any member of the Premium Overpayment Settlement Class and the Identity Theft Settlement Class who intends to object to this Settlement Agreement must include his/her name and address, include all arguments, citations, and evidence supporting the objection (including copies of any documents relied on), state that he or she is a member of the Premium Overpayment Settlement Class and/or the Identity Theft Settlement Class and provide a statement about whether the objector intends to appear at the Final Approval Hearing with or without counsel. Any member of the Premium Overpayment Settlement Class or the Identity Theft Settlement Class who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means and shall be deemed to have waived his, her, or its objections and be forever barred from making any such objections in the Action or any other action or proceeding. To be valid, the objection must be filed and sent to Settlement Class Counsel and Defendant's Counsel on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice.



**4.5.** Any member of the Premium Overpayment Settlement Class or the Identity Theft Settlement Class may request to be excluded from the Premium Overpayment Settlement Class and/or Identity Theft Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Premium Overpayment Settlement Class and/or the Identity Theft Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name and address, a signature, the name and number of the case, and a statement that he/she wishes to be excluded from the Premium Overpayment Settlement Class and/or Identity Theft Settlement Class. A request to be excluded that does not include all of the foregoing information, or that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified shall be invalid and the persons or entities serving such a request shall be members of the Premium Overpayment Settlement Class and/or Identity Theft Settlement Class and shall be bound as a Premium Overpayment Settlement Class Member and/or Identity Theft Settlement Class Member by the Agreement, if approved. Any member of the Premium Overpayment Settlement Class or Identity Theft Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. The request for exclusion must be personally signed by the Person requesting exclusion. So called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

## **5. SETTLEMENT ADMINISTRATION**

**5.1** The Settlement Administrator shall, under the supervision of the Court, administer

the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Settlement Class Counsel and Defendant's Counsel, the Parties and/or their representatives upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Settlement Class Counsel and Defendant's Counsel with information concerning Notice, administration and implementation of the Settlement Agreement. Should the Court request, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to members of the Settlement Classes on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Forward to Defendant's Counsel, with copies to Settlement Class Counsel, all original documents and other materials received in connection with the administration of the Settlement Agreement, and all copies therefore, within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed per the terms of the Settlement Agreement;

(b) Receive exclusion forms and other requests from members of the Settlement Classes to exclude themselves from the Settlement Agreement and promptly provide to Settlement Class Counsel and Defendant's Counsel a copy thereof upon receipt. If the Settlement Administrator receives any exclusion forms or other requests from members of the

Settlement Classes after the Objection/Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Settlement Class Counsel and Defendant's Counsel;

(c) Provide reports and/or summaries to Settlement Class Counsel and Defendant's Counsel, the Parties and/or their representatives as provided in the contract to be entered into by Defendant with the Settlement Administrator, including without limitation, reports regarding the number of Claim Forms received and the amount of benefits sought, the number thereof approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

(d) Make available for inspection by Settlement Class Counsel or Defendant's Counsel, the Parties and/or their representatives the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

**5.2** The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud, and shall reject a Claim Form, or any part of a claim for a payment reflected therein, where the name provided on a Claim Form does not appear on the Class List or where there is evidence of abuse or fraud. The Settlement Administrator shall also reject a Claim Form that does not contain all requested information necessary to screen the claim for fraud or abuse, after giving the claimant a reasonable opportunity to provide any requested missing information.

**5.3 Challenging Premium Overpayment Claims.** Defendant's Counsel and Settlement Class Counsel shall have the right to challenge the acceptance or rejection of submitted Premium Overpayment Claim Forms submitted by Premium Class Members. The Settlement Administrator shall follow any agreed to decisions of Defendant's Counsel and Settlement Class Counsel. To the extent Defendant's Counsel and Settlement Class Counsel are

not able to agree on the disposition of a challenge, the Special Master shall timely decide such challenge. The Parties agree that the Settlement Administrator shall thereafter follow the decision of the Special Master resulting from any such challenge.

**5.4 Challenging Identity Theft Claims.** The Settlement Administrator shall forward all facially completed Claim Forms to the Parties. All forwarded claims shall be paid by Defendant, subject to the resolution of any challenges by Defendant as described in this paragraph. Before any Identity Theft Settlement Class Member can be reimbursed for actual losses, Defendant may, within thirty (30) days from the Claims Deadline, challenge the validity of the claim. Defendant's challenge shall be resolved by a Special Master and shall be limited to two issues: (1) was the claimant's Identity Theft more likely than not proximately caused by the December 2009 Incident and, if so, (2) what are the resulting actual damages? Once Defendant makes a challenge, the Parties may request additional Claim Supplementation from the claimant, which shall be provided within forty-five days (45) of the request. The Special Master's decision shall be based solely upon the submitted Identity Theft Claim Form, any writings provided by Defendant (in support of its belief that the claim is not valid) and Settlement Class Counsel (in support of their belief that the claim is valid), and any Claim Supplementation provided by the claimant. The ultimate decision of the Special Master as to the challenge shall be final and non-appealable. All fees and expenses of the Special Master associated with a challenge under this subsection shall be the sole obligation of and paid for by Defendant, and shall be in addition to and separate from the Settlement Fund. All other fees and expenses associated herewith shall be borne by the party incurring them. The Parties agree that the Settlement Administrator shall thereafter follow the decision of the Special Master resulting from any such challenge.

**5.5** Any member of the Settlement Classes who does not, in accordance with the

terms and conditions of this Agreement, seek exclusion from the Settlement Classes or timely file a Claim Form will not be entitled to receive any cash award or any other benefits pursuant to this Settlement Agreement, but will otherwise be bound together with all members of the Settlement Classes by all of the terms of this Settlement Agreement, including the terms of the Final Judgment to be entered in the Action and the releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

**5.6** Settlement Class Counsel and Defendant's Counsel each agree to keep all information about the settlement administration process—including without limitation all information received pursuant to Paragraph 5 of this Agreement, such as claims reports, information concerning opt-outs, and the Class List—confidential and may use it only for purposes of effectuating this Agreement.

## **6. TERMINATION OF SETTLEMENT**

**6.1** Subject to Paragraph 9 below, the Class Representatives, on behalf of the Settlement Classes, or Defendant, shall have the right to terminate this Settlement Agreement by providing written notice of the election to do so ("Termination Notice") to all other Parties hereto within ten (10) days, of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant final approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternative Judgment, as defined in Paragraph 9.1 of this Agreement is modified or reversed in any material respect by the Court of Appeals or the

Supreme Court.

**7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER**

**7.1** Promptly after the execution of this Settlement Agreement, Settlement Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Classes for settlement purposes only, appointment of Settlement Class Counsel and the Class Representatives, and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Notice and Claim Forms for dissemination in accordance with the Notice Plan, substantially in the form of Exhibits C, D, and E.

**7.2** At the time of the submission of this Settlement Agreement to the Court as described above, Settlement Class Counsel and Defendant's Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

**7.3** After Notice is given, the Parties shall request and obtain from the Court a Final Judgment. The Final Judgment will (among other things):

**(a)** find that the Court has personal jurisdiction over all members of the Settlement Classes and that the Court has subject matter jurisdiction to approve the Settlement Agreement, including all exhibits thereto;

**(b)** approve the Settlement Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the members of the Settlement Classes; direct the Parties and their counsel to implement and consummate the Settlement Agreement according to its terms and provisions; and declare the Settlement Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other

proceedings maintained by or on behalf of Plaintiffs and all other members of the Settlement Classes, Releasing Parties, and their heirs, executors and administrators, successors and assigns;

(c) find that the Notice and the Notice Plan implemented pursuant to the Settlement Agreement (1) constitute the best practicable notice under the circumstances, (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Classes of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement and to appear at the Final Approval Hearing, (3) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice, and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution and the rules of the Court;

(d) find that the Class Representatives and Settlement Class Counsel adequately represented the Settlement Classes for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and claims of the Settlement Classes presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all members of the Settlement Classes who have not been properly excluded from the Settlement Classes from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) authorize the Parties, without further approval from the Court, to agree to

and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) as (1) shall be consistent in all material respects with the Final Judgment, or (b) do not limit the rights of members of the Settlement Classes;

(i) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(j) incorporate any other provisions as the Court deems necessary and just.

**8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD.**

**8.1** Subject to the Court's approval, the Parties have agreed that Defendant shall pay to Settlement Class Counsel the sum of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) for attorneys' fees and costs expended in this Action, which represents twenty-five percent (25%) of the Settlement Fund. Defendant agrees that such an amount is reasonable and will not object to, or otherwise challenge, Settlement Class Counsel's application for attorneys' fees and for reimbursement of costs and other expenses if Settlement Class Counsel's application does not exceed said amount. Settlement Class Counsel has, in turn, agreed not to seek or accept more than this amount from the Court.

**8.2** Settlement Class Counsel shall, within ten (10) business days after the date the Court enters the Final Approval, if there have been no objections to the Settlement Agreement, or within ten (10) business days after the Effective Date, be paid from the Settlement Fund the amount of attorneys' fees and expenses approved by the Court. Any payment of attorneys' fees and expenses shall be paid via electronic transfer to an account designated by Settlement Class



Counsel providing necessary information for electronic transfer. Settlement Class Counsel agrees that in no event shall Defendant pay or be obligated to pay in excess of \$750,000.00 for Settlement Class Counsel's attorneys' fees and costs. Should the Court award less than this amount, the difference in the amount of the Fee Award and the amount sought pursuant to this paragraph shall remain in the Settlement Fund to pay Approved Claims of members of the Settlement Classes.

**8.3** In addition to any award to which they may be entitled under the Settlement Agreement, and in recognition of their efforts on behalf of the Settlement Classes, the Class Representatives Juana Curry and William Moore shall, subject to the approval of the Court, each be awarded an incentive award in the amount of Five Thousand Dollars (\$5,000.00). Defendant agrees that such an amount is reasonable and that it shall not oppose such award, directly or indirectly. This sum shall be paid in recognition of the Plaintiffs' time and effort serving as the Class Representatives in this litigation. Defendant shall pay said amounts via check from the Settlement Fund to the Class Representatives, such checks to be sent care of Settlement Class Counsel, within ten (10) business days after the date the Court enters the Final Approval if there have been no objections to the Settlement Agreement, and, if there have been such objections, within ten (10) business days after the Effective Date.

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.**

**9.1** The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

**(a)** This Agreement has been signed by the Plaintiffs, Defendant, Settlement Class Counsel, and Defendant's Counsel;

(b) The Court has entered the Preliminary Approval Order approving this Settlement Agreement, Notice and Claim Forms;

(c) The Court has entered an order finally approving this Agreement in its entirety, following notice to the Settlement Classes and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment substantially consistent with this Agreement; and

(d) The Final Judgment has become Final, as defined above, or, in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and that has the consent of the Parties, such Alternative Judgment becomes Final.

**9.2** If some or all of the conditions specified in Paragraph 9.1 are not met, or in the event that this Settlement Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 9.3 unless Settlement Class Counsel and Defendant’s Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties. Notwithstanding anything herein, the Parties agree that the Court’s failure to approve, in whole or in part, the attorneys’ fees payment to Settlement Class Counsel set forth in Paragraph 8.1 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

**9.3** If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 6.1, 6.2, 9.1, or 9.2 above, the Parties shall be restored to their respective

positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

## **10. MISCELLANEOUS PROVISIONS**

**10.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Settlement Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**10.2** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs and the Settlement Classes, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

**10.3** The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the

same.

**10.4** Whether or not the Effective Date occurs or this Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the fee award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against Defendant, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against Plaintiffs or the Settlement Classes, or each or any of them, as an admission, concession or evidence of, the infirmity or strength of any claims raised in the Action, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

(d) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the

settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. However, if this Settlement Agreement is approved by the Court, any party or any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(e) is, may be deemed, or shall be construed against Plaintiffs and the Settlement Classes, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(f) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs and the Settlement Classes, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

**10.5** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

**10.6** The waiver by one party of any breach of this Agreement by any other party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

**10.7** All of the exhibits to this Settlement Agreement are material and integral parts

thereof and are fully incorporated herein by this reference.

**10.8** This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. 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 such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

**10.9** Except as otherwise provided herein, each Party shall bear its own costs.

**10.10** It is expressly acknowledged and agreed that neither Plaintiffs nor Defendant will institute, participate in, or encourage any appeal from an order implementing this Settlement Agreement; provided, however, that Plaintiffs and Defendant have the right to appeal an order that is in any way different from the material terms of this Settlement Agreement or that materially alters the consideration to be given by or to any party.

**10.11** To the extent that either side desires to issue a press release or press statement, they may do so, subject to the prior approval of the other party. No press release, press statement, or public statements shall include statements disparaging either side, or statements suggesting that the Defendant has been found to have violated the law, or that the Settlement amounts to an admission of liability or damages.

**10.12** Termination of Settlement by AvMed. AvMed may, in its sole discretion, withdraw from and terminate this Settlement Agreement if more than 15,000 of the Settlement Class Members elect to exclude themselves (opt out) from the settlement. Should AvMed elect

to withdraw from and terminate this settlement pursuant to this Paragraph, such withdrawal and termination shall be treated as if Final Approval was not granted under Paragraph 9.

**10.13** Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other Person or party and that they are fully entitled to release the same.

**10.14** Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

**10.15** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement all exchange original signed counterparts. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

**10.16** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

**10.17** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

**10.18** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**10.19** This Settlement Agreement is deemed to have been prepared by counsel for all

Parties, as a result of arms' length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

**10.20** Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Jay Edelson, Edelson LLC, 350 North LaSalle Street, Suite 1300, Chicago, Illinois 60654; and John Delionado of Hunton & Williams, LLP, 1111 Brickell Avenue, Suite 2500, Miami, Florida 33131.

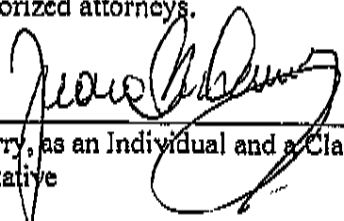
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FOLLOWS.]



To: Page 39 of 39 04/18/2014 06:14 PM 38/48 2013-10-16 21:53:27 (GMT) From: Thad Heckman

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be  
executed, by their duly authorized attorneys.

Dated: \_\_\_\_\_

By   
Juana Curry, as an Individual and a Class  
Representative

Dated: \_\_\_\_\_

By \_\_\_\_\_  
William Moore, as an Individual and a Class  
Representative

Dated: \_\_\_\_\_

AVMED, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

EDELSON LLC  
Attorneys for Plaintiff

By \_\_\_\_\_  
Jay Edelson  
Ari J. Scharg  
Benjamin S. Thomassen

Dated: \_\_\_\_\_

HUNTON AND WILLIAMS, LLP  
Attorneys for Defendant AvMed, Inc.

By \_\_\_\_\_  
John J. Delionado  
Neil K. Gilman  
Paulo R. Lima

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be  
executed, by their duly authorized attorneys.

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Juana Curry, as an Individual and a Class  
Representative

Dated: 10/19/2013

By William A. Moore  
William Moore, as an Individual and a Class  
Representative

Dated: \_\_\_\_\_

AVMED, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

EDELSON LLC  
Attorneys for Plaintiff

By \_\_\_\_\_  
Jay Edelson  
Ari J. Scharg  
Benjamin S. Thomassen

Dated: \_\_\_\_\_

HUNTON AND WILLIAMS, LLP  
Attorneys for Defendant AvMed, Inc.

By \_\_\_\_\_  
John J. Delionado  
Neil K. Gilman  
Paulo R. Lima

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be  
executed, by their duly authorized attorneys.

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Juana Curry, as an Individual and a Class  
Representative

Dated: \_\_\_\_\_

By \_\_\_\_\_  
William Moore, as an Individual and a Class  
Representative

Dated: 10/21/13

AVMED, INC.  
By [Signature]  
Title SVP/CC

**IT IS SO STIPULATED:**

Dated: 10/21/13

EDELSON LLC  
Attorneys for Plaintiff

By [Signature]  
Jay Edelson  
Ari J. Scharg  
Benjamin S. Thomassen

Dated: 10/21/13

HUNTON AND WILLIAMS, LLP  
Attorneys for Defendant AvMed, Inc.

By [Signature]  
John J. Delionado  
Neil K. Gilman  
Paulo R. Lima

**EXHIBITS**

**Exhibit A      Premium Overpayment Claim Form**

**Exhibit B      Identity Theft Claim Form**

**Exhibit C      Direct Email Notice**

**Exhibit D      Direct Postcard Notice**

**Exhibit E      Website Notice**

# Exhibit A

# **Curry v. AvMed, Inc., PREMIUM OVERPAYMENT CLAIM FORM**

Return this Claim Form to: Claims Administrator, [address]. Questions, visit [www.databreachsettlement.com](http://www.databreachsettlement.com) or call 1-800-204-0556

**DEADLINE: THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [CLAIMS DEADLINE] AND MUST BE FULLY COMPLETED, BE SIGNED UNDER OATH, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.**

**Instructions:** If you are a current or former AvMed, Inc. customer who, prior to December 2009, paid AvMed for insurance, you may be entitled to a monetary settlement payment of up to \$10 for each year you made such payments for insurance (up to \$30) or a lesser *pro rata* share (the actual amount of payments will be based on the number of valid claim forms submitted), in this lawsuit against AvMed, Inc. if it is finally approved by the Court. YOU MUST SUBMIT THIS CLAIM FORM IN ORDER TO RECEIVE A SETTLEMENT PAYMENT.

Please note that if you are a Premium Overpayment Settlement Class Member, the Class Member Verification section below requires you to state, under penalty of perjury, that you paid insurance premium payments to AvMed, Inc. prior to December 2009.

Visit [www.databreachsettlement.com](http://www.databreachsettlement.com) for complete information.

## YOUR CONTACT INFORMATION

**Name:** \_\_\_\_\_  
                    *(First)*                  *(Middle)*                  *(Last)*

**Address:** \_\_\_\_\_  
(Street) (You must provide a street address. A P.O. box will not be accepted.)

---

(City)


---

(State)


---

(Zip Code)

**Current Phone Number:** ( \_\_\_\_ ) \_\_\_\_ - \_\_\_\_  
(Please provide a phone number where you can be reached if further information is required.)

## AvMed Insurance Purchased

Please state the number of years or partial years for which you paid AvMed, Inc. for insurance prior to December 2009:  
\_\_\_\_\_ **years**

## Class Member Verification

By submitting this claim form and checking the boxes below, I declare under penalty of perjury that I am a member of the Premium Overpayment Settlement Class and that the following statements are true (check each box that applies):

- ☐ That I made insurance premium payments to AvMed, Inc. prior to December 2009.
- ☐ Prior to the December 2009 Incident, I had the expectation that AvMed would protect my personal information and this was important to me in choosing AvMed.
- ☐ That all information provided in this Claim Form is true and correct.

The Claims Administrator may audit any and all claims. Persons knowingly making false claims may be subject to civil or criminal penalties. **I declare under penalty of perjury that the foregoing is true and correct.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Your claim will be submitted to the Claims Administrator for review, if accepted you will be mailed a check for up to \$30 or a lesser *pro rata* share. This process takes time, please be patient.

**CLAIM FORMS MUST BE SUBMITTED ONLINE OR POSTMARKED NO LATER THAN [Claims Deadline] TO BE ELIGIBLE FOR PAYMENT. FILE ONLINE AT: [www.databreachsettlement.com](http://www.databreachsettlement.com) OR MAIL THIS CLAIM FORM TO: Claims Administrator, [Address].** If you have questions, you may call the Settlement Administrator at 1-800-204-0556 or Class Counsel at 1-866-354-3015.

# Exhibit B

**Curry v. AvMed, Inc., IDENTITY THEFT REIMBURSEMENT CLAIM FORM**Return this Claim Form to: Claims Administrator, [address]. Questions, visit [www.databreachsettlement.com](http://www.databreachsettlement.com) or call 1-800-204-0556.**DEADLINE: THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [CLAIMS DEADLINE] AND MUST BE FULLY COMPLETED, BE SIGNED UNDER OATH, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.**

**Instructions:** If you are a current or former AvMed customer whose Sensitive Personal Information was contained on laptops stolen from AvMed in December of 2009 and you have suffered Identity Theft and incurred unreimbursed losses as a result, you may be entitled to a monetary settlement payment for up to the total amount of your unreimbursed costs resulting from the identity theft, or a lesser *pro rata* share (the actual amount of payments will be based on the number of valid claim forms submitted), in this lawsuit against AvMed, Inc. ("Defendant"), if it is finally approved by the Court. **YOU MUST SUBMIT THIS CLAIM FORM IN ORDER TO RECEIVE A SETTLEMENT PAYMENT.**

Please note that if you are an Identity Theft Settlement Class Member, the Class Member Verification section below requires you to state, under penalty of perjury, both that: (1) you have been a victim of identity theft between December 2009 and [claims deadline]; and (2) due to this identity theft, you have suffered actual, monetary damages, for which you have not been reimbursed, excluding any charges initiated with your authorization. With this Identity Theft Reimbursement Claim Form, you must also submit any and all documentation or records evidencing that you were a victim of identity theft and showing the specific monetary losses you incurred as a result. All claims **MUST** be submitted with documentation to be considered valid. All claims are subject to review by both Parties and final approval by the Claims Administrator. Visit [www.databreachsettlement.com](http://www.databreachsettlement.com) for complete information.

**YOUR CONTACT INFORMATION****Name:** (First) \_\_\_\_\_ (Middle) \_\_\_\_\_ (Last) \_\_\_\_\_**Address:** (Street) \_\_\_\_\_

(You must provide a street address. A P.O. box will not be accepted.)

(City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code) \_\_\_\_\_

**Current Phone Number:** ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

(Please provide a phone number where you can be reached if further information is required.)

**Amount of Losses**Please state the total amount of monetary losses you have suffered as a result of identity theft, excluding any charge initiated with your authorization, AND have not been reimbursed for:

\$ \_\_\_\_\_.

*(Please attach all supporting documentation of the identity theft and amount of losses to this Claim Form. Claims submitted without documentation will NOT be considered valid.)***Class Member Verification**

By submitting this claim form and checking the boxes below, I declare under penalty of perjury that I am a member of the Identity Theft Class and that the following statements are true (check each box that applies):

☐ I purchased insurance from AvMed, Inc., and was a victim of identity theft between December 2009 and [claims deadline].☐ As a result of this identity theft, I suffered actual monetary losses, for which I have not been reimbursed, in the amount listed above.☐ That all information provided in this Claim Form is true and correct.The Claims Administrator may audit any and all claims and may require the submission of supplemental information to evaluate any claims. Persons knowingly making false claims may be subject to civil or criminal penalties. **I declare under penalty of perjury that the foregoing is true and correct.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Your claim will be submitted to the Claims Administrator for review, if accepted you will be mailed a check for your unreimbursed losses, or a lesser *pro rata* share. This process takes time, please be patient.

**CLAIM FORMS MUST BE SUBMITTED ONLINE OR POSTMARKED NO LATER THAN [Claims Deadline] TO BE ELIGIBLE FOR PAYMENT. FILE ONLINE AT: [www.databreachsettlement.com](http://www.databreachsettlement.com) OR MAIL THIS CLAIM FORM TO: Claims Administrator, [Address]. If you have questions, you may call the Settlement Administrator at or call 1-800-204-0556 or Class Counsel at 1-866-354-3015.**



# Exhibit C

**IF YOU PAID FOR OR RECEIVED HEALTH INSURANCE FROM AVMED, INC. AT ANY TIME THROUGH DECEMBER 2009, PLEASE READ THIS NOTICE CAREFULLY BECAUSE IT COULD AFFECT YOUR RIGHTS.**

*Para una notificación en Español, visitar [www.databreachsettlement.com](http://www.databreachsettlement.com)*

**COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

A proposed class action settlement has been reached in a lawsuit regarding the December 2009 theft of two laptop computers containing the personal information of AvMed Inc.'s customers. Your legal rights may be affected by this settlement whether you act or don't act. Please read this Notice carefully. Visit [www.databreachsettlement.com](http://www.databreachsettlement.com) to read the full Notice and the Settlement Agreement and to make a claim.

**What is the Lawsuit About?**

This lawsuit concerns the theft of two laptop computers from AvMed's facilities in December 2009. The lawsuit claims that before December 2009, AvMed failed to adequately safeguard its customers' personal information, which exposed them to harm.

AvMed denies it violated any law, and claims that it did adequately safeguard its customers' personal information and that its customers did not suffer any actual harm from its actions. The Court has not determined who is right. Rather, the parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation. AvMed promises to vigorously defend the lawsuit if the proposed settlement is not approved by the Court.

**How Do I Know if I am a Class Member?**

There are two groups, or "Classes," in the Settlement.

The Court decided that everyone who fits this description is a member of the **Premium Overpayment Settlement Class**: all current and former AvMed customers who, prior to December 2009, paid AvMed for insurance, and whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident

The Court decided that everyone who fits this description is a member of the **Identity Theft Settlement Class**: All current and former AvMed customers whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident, and who suffered Identity Theft and incurred unreimbursed losses as a result.

**What Can I Get From the Settlement?**

If you are a Member of the Premium Overpayment Settlement Class and the Court approves the Settlement, and if you meet certain requirements you may be entitled to receive up to \$30 (\$10 per year for each year that you were an AvMed customer, up to three years). If you are an Identity Theft Settlement Class Member, the amount you are entitled to will be calculated by the Claims Administrator on a case-by-case basis. You may be reimbursed for all actual unrecovered losses resulting from the identity theft, subject to the submission of documented proof and the approval of the Claims Administrator. If the expenses, fees, incentive award and claims exceed the \$3 million Settlement Fund created by the Defendant, members of these classes may receive a lesser *pro rata* share.

The Settlement Agreement available at [www.databreachsettlement.com](http://www.databreachsettlement.com) describes the details of the settlement. Only those Members of the Settlement Classes who submit valid approved claims will receive a payment.

**How Do I Submit a Claim for Payment?**

To qualify for a payment under the settlement, you must submit a timely and properly completed Claim Form for the class of which you are a member. You may submit either Claim Form online at [www.databreachsettlement.com](http://www.databreachsettlement.com), no later than **[claims deadline]** by following the instructions found through the link, or you may mail a completed Claim Form, **postmarked no later than [claims deadline]** to *Curry v. AvMed* Settlement Administrator, **[address]**. Only those claims that meet the requirements of the Settlement Agreement will be eligible for a payment.

**What are My Other Options?**

If you fall within the description of the Premium Overpayment Settlement Class and/or Identity Theft Settlement Class, you will be a member of either or both of such Classes unless you exclude yourself from the settlement. If you do not wish to be a member of either Settlement Class, you may exclude yourself by sending a letter to the settlement administrator no later than **[objection/exclusion deadline]**. You must include your name and address, signature, and a statement that you wish to be excluded from either or both Settlement Classes in *Curry v. AvMed Inc.*, No. 10-cv-24513. If you choose to exclude yourself, you give up your right to any settlement payment or to object to the settlement, but retain any rights you may currently have to sue the Defendant over the issues in the lawsuit.

You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Objecting is telling the Court you don't like something about the settlement. You can object **ONLY** if you stay in a Settlement Class and don't exclude yourself. Your written objection must be filed with the Court and sent to the attorneys for all parties to the lawsuit no later than **[objection/exclusion deadline]**. Specific instructions about how to object to, or exclude yourself from, the settlement are available at [www.databreachsettlement.com](http://www.databreachsettlement.com).

If you do nothing you will be in the Premium Overpayment and/or Identity Theft Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments of the Court. If the Court approves the Settlement, your claims relating to the December 2009 laptop thefts from AvMed's facilities will be fully and finally resolved and released. However, you need to timely submit a valid Claim Form to make a claim for a payment.

**Who Represents Me?**

The Court has appointed Jay Edelson, Ari Scharg, and Ben Thomassen from Edelson LLC to represent the class. These attorneys are referred to as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

**When Will the Court Consider the Proposed Settlement?**

The Court will hold the Final Approval Hearing to determine the fairness of the settlement at **[time]** on **[date]** at the James Lawrence King Federal Justice Building, Room 1127, 99 Northeast Fourth Street, Miami, FL 33132. At that hearing, the Court will hear any objections concerning the fairness of the settlement that have been properly raised, as set forth above. The hearing may be postponed to a different date or time without notice. You are not required to come to this hearing.

At the Final Approval Hearing, Class Counsel will ask the Court for \$750,000 from the Settlement Fund for attorneys' fees and for actual costs of investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than this amount. Class Counsel will post their fee petition and itemization of actual costs on the settlement website by **[date]**.

The Court has also appointed two Class Representatives, who will each seek an incentive award of \$5,000 (an amount the Defendant does not oppose) from the Settlement Fund for their services throughout this case. The Court may award less than this amount.

**How Do I Get More Information?**

This Notice is intended only as a summary of the lawsuit and proposed settlement. It is not a complete statement of the lawsuit or the proposed settlement. For more information about the proposed settlement and a copy of the full Notice and Claim Forms, go to [www.databreachsettlement.com](http://www.databreachsettlement.com), contact the settlement administrator at 1-800-204-0556 or *Curry v. AvMed* Settlement Administrator, **[address]**, or call Class Counsel at 1-866-354-3015.

By Order of the Court Dated: **[date]**

# Exhibit D

COURT AUTHORIZED NOTICE OF CLASS  
ACTION AND PROPOSED SETTLEMENT

**IF YOU PAID FOR OR  
RECEIVED HEALTH  
INSURANCE FROM AVMED,  
INC. AT ANY TIME  
THROUGH DECEMBER  
2009, PLEASE READ THIS  
NOTICE CAREFULLY  
BECAUSE IT COULD  
AFFECT YOUR RIGHTS.**

*Para una notificación en Español,  
visitar [www.databreachsettlement.com](http://www.databreachsettlement.com)*

AvMed Data Breach Settlement  
Settlement Administrator  
P.O. Box 0000  
Providence, RI 00000-0000

First-Class  
Mail  
US Postage  
Paid  
Permit # \_\_



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»  
«C/O»  
«Addr1» «Addr2»  
«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

A proposed class action settlement has been reached in a lawsuit regarding the December 2009 theft of two laptop computers containing the personal information of AvMed Inc.'s customers. The lawsuit claims that before the theft, AvMed (the "Defendant") failed to adequately safeguard its customers' personal information, which exposed them to harm. The Defendant vigorously denies they violated any law, and claims that it adequately safeguarded its customers' personal information and its customers did not suffer any actual harm from its actions, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** There are two groups, or "Classes," in the Settlement. The Court decided that everyone who fits this description is a member of the **Premium Overpayment Settlement Class**: all current and former AvMed customers who, prior to December 2009, paid AvMed for insurance, and whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident. The Court decided that everyone who fits this description is a member of the **Identity Theft Settlement Class**: All current and former AvMed customers whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident, and who suffered Identity Theft and incurred unreimbursed losses as a result.

**What Can I Get?** If approved by the Court, Premium Overpayment Settlement Class Members who meet certain requirements can receive up to \$30 (\$10 per year for each year that they were an AvMed customer, up to three years). Identity Theft Settlement Class Members can receive reimbursement for all actual unrecovered losses resulting from the identity theft, subject to the submission of documented proof and the approval of the Claims Administrator, which will be calculated by the Claims Administrator on a case-by-case basis. Defendant has also agreed to put certain practices and policies in place to bolster its data security. If the expenses, fees, incentive award and claims exceed the \$3 million Settlement Fund created by the Defendant, members of these classes may receive a lesser *pro rata* share.

**How Do I Get a Payment?** You must submit one, or both, timely and properly completed Claim Forms signed under penalty of perjury no later than [claims deadline]. You may access, complete, and submit one or both Claim Forms online at [www.databreachsettlement.com](http://www.databreachsettlement.com).

**What are My Other Options?** You may exclude yourself from the Settlement Classes by sending a letter to the settlement administrator no later than [deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the Defendant over the issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [www.databreachsettlement.com](http://www.databreachsettlement.com). If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims relating to the alleged negligence in this case against the Defendant will be fully and finally resolved and released.

**Who Represents Me?** The Court has appointed lawyers from Edelson LLC to represent the class. These attorneys are called Class Counsel and you will not be charged for these lawyers, but you may hire an attorney to represent you at your own expense.

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [redacted] .m. on [redacted] at the Lawrence King Federal Justice Building, Courtroom 1127, 99 Northeast Fourth Street, Miami, Florida 33132. At that hearing, the Court will hear any objections, determine the fairness of the settlement, decide whether to approve Class Counsel's request for attorneys' fees and expenses of up to 25% of the Settlement Fund; and decide whether to award the Class Representatives \$5,000 each from the Fund for their services throughout this case. The Court may award less than these amounts.

**How Do I Get More Information?** For more information, including the full Notice, Claim Forms and Settlement Agreement go to [www.databreachsettlement.com](http://www.databreachsettlement.com), contact the settlement administrator at 1-800-204-0556, or call Class Counsel at 1-866-354-3015.

# Exhibit E

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

*Curry v. AvMed, Inc.*, Case No. 10-cv-24513

**If You Paid for or Received Insurance from AvMed, Inc.  
at Any Time Through December of 2009,  
You May Be Part of a Class Action Settlement.**

IMPORTANT: PLEASE READ THIS NOTICE CAREFULLY.  
THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT  
AND, IF YOU ARE A MEMBER OF THE SETTLEMENT CLASSES, CONTAINS  
IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO MAKE A CLAIM UNDER THE  
SETTLEMENT OR TO OBJECT TO THE SETTLEMENT

*(A federal court authorized this notice. It is not a solicitation from a lawyer.)*

Your legal rights are affected whether or not you act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A CLAIM FORM</b>	This is the only way to receive a payment.
<b>EXCLUDE YOURSELF</b>	You will receive no benefits, but you will retain any rights you currently have to sue the Defendant about the claims in this case.
<b>OBJECT</b>	Write to the Court explaining why you don't like the Settlement.
<b>GO TO THE HEARING</b>	Ask to speak in Court about your opinion of the Settlement.
<b>DO NOTHING</b>	You won't get a share of the Settlement benefits and will give up your rights to sue the Defendant about the claims in this case.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice.

## BASIC INFORMATION

### 1. Why was this Notice issued?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge James King, of the U.S. District Court for the Southern District of Florida, is overseeing this case. The case is known as *Curry v. AvMed, Inc.*, No. 10-cv-24513. The persons who sued are called the Plaintiffs. The Defendant is AvMed, Inc.

### 2. What is a Class Action?

In a class action, one or more people called class representatives (in this case, Juana Curry and William Moore) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### 3. What is this Lawsuit about?

This lawsuit claims that in December of 2009, unsecured laptops containing the sensitive personal information of AvMed customers were stolen while they were in the Defendant’s custody. The lawsuit claims that, by failing to adequately secure and encrypt the laptops, Defendant was negligent and failed to discharge its obligation to protect the sensitive personal information of its customers. A more complete description of the allegations is available on the Settlement Website at [www.databreachsettlement.com](http://www.databreachsettlement.com).

Defendant AvMed, Inc. denies any wrongdoing, and further states that it complied with and provided all data security obligations to its customers, and that its customers did not suffer any actual harm. The Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

The Agreement has already received preliminarily approval from the Court on [date]. Nevertheless, the settlement of a class action determines the rights of all members of the proposed class, and as such, the Court has ordered this notice of the Agreement to be disseminated to the Settlement Classes. The Court will also hold a Fairness Hearing in order to determine whether final approval may be granted to the Settlement, before it can take effect.

At this point, the Court has conditionally certified two Classes for settlement purposes, so that the Members of such Classes can be given this notice and the opportunity to exclude themselves if they wish, voice their support or opposition to the Settlement, and also to explain how those who do not exclude themselves may submit a Claim Form to get the monetary benefit offered by the Settlement. If the Settlement is not granted final approval by the Court, or the Parties terminate it, the Settlement will be void, and the lawsuit will continue as if there had been no settlement and no certification of the Classes.

#### 4. What type of information was allegedly stolen?

The lawsuit claims that the following customer information was contained on the stolen AvMed laptops:

- Names
- Addresses
- Phone numbers
- Social Security numbers
- Medical History
- Prescription Records
- Medical Diagnoses and Medical Treatment History

#### 5. Why is there a Settlement?

The Court has not decided in favor of either side in the case. The Defendant denies all allegations of wrongdoing or liability against it and asserts that its conduct was lawful. The Defendant is settling to avoid the expense, inconvenience, and inherent risk and disruption of litigation. Plaintiffs and their attorneys believe that the settlement is in the best interests of Members of both Classes because it provides an appropriate recovery now, while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals that could further delay any recovery for Members of the Classes.

### WHO'S INCLUDED IN THE SETTLEMENT?

#### 6. How do I know if I am a member of either or both Settlement Classes?

There are two groups, or “Classes,” in the Settlement.

The Court decided that everyone who fits this description is a member of the **Premium Overpayment Settlement Class**: All current and former AvMed customers who, prior to December 2009, paid AvMed for insurance, and whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident.

The Court decided that everyone who fits this description is a member of the **Identity Theft Settlement Class**: All current and former AvMed customers whose Sensitive Personal Information was contained on the laptops stolen during the December 2009 Incident, and who suffered Identity Theft and incurred unreimbursed losses as a result.

For a more detailed explanation of the Settlement Classes, please see the Settlement Agreement, which is available at [www.databreachsettlement.com](http://www.databreachsettlement.com).

### THE SETTLEMENT BENEFITS

#### 7. What does the Settlement provide?

Defendant has created a Settlement Fund totaling \$3 million. The cost to administer the Settlement, as well as attorneys' fees and payments to the Class Representatives will come out of these funds (see Question 14). The amount remaining after deducting these costs will be paid to eligible



Members of the Premium Overpayment Settlement Class and Identity Theft Settlement Class who submit valid claims.

In addition to creating a \$3 million Settlement Fund, AvMed has or will have implemented the following practices and/or policies regarding the security of its members' information: (1) a mandatory security awareness and training program for all company employees; (2) mandatory training on appropriate laptop use and security for all company employees whose employment responsibilities include accessing information stored on company laptop computers; (3) upgrade all company laptop computers with additional security mechanisms, including GPS tracking technology; (4) new password protocols and full disk encryption technology on all company desktop and laptop so that electronic data stored on such devices would be encrypted at rest; (5) physical security upgrades at company facilities and offices to further safeguard workstations from theft; (6) the review and revision of written policies and procedures to enhance information security.

#### **8. How much will my payment be?**

If you are member of the **Premium Overpayment Settlement Class**, and the Court gives final approval to the Settlement, and if you meet certain requirements you may be entitled to receive up to \$10 for each year or partial year for which you paid for insurance from AvMed, Inc. (up to a maximum of \$30). However, the amount of your exact payment cannot be calculated at this time because your payment will depend on the total number of valid claims that are filed. The Premium Overpayment Settlement Class includes approximately 465,000 Members. Your payment may be reduced, on a *pro rata* basis if the claims exceed the amount allocated to the Settlement Fund.

If you are a member of the **Identity Theft Settlement Class**, the amount you are entitled to will be calculated by the Claims Administrator on a case-by-case basis. You may be reimbursed for all actual unrecovered losses resulting from the identity theft, subject to the submission of documented proof and the approval of the Claims Administrator. Your payment may be reduced, on a *pro rata* basis if the claims exceed the amount allocated to the Settlement Fund.

#### **9. When will I get my payment?**

You should receive a check from the settlement administrator within 60-90 days after the Settlement has been finally approved and/or after any appeals have been resolved in favor of the Settlement. The hearing to consider the final fairness of the Settlement is scheduled for [Fairness Hearing Date.] All checks will expire and become void 90 days after they are issued.

### **HOW TO GET BENEFITS**

#### **10. How do I get benefits?**

If you are a member of either or both Settlement Classes and you want to participate in the Settlement, you must complete and submit a truthful Claim Form, signed under penalty of perjury, by [claims Deadline]. The Claim Forms for both Settlement Classes can be found at [www.databreachsettlement.com](http://www.databreachsettlement.com) or by calling, toll free, 1-800-204-0556. A Claim Form can be submitted online at the website or mailed to the Settlement Administrator. Only Premium Overpayment Class Members can submit a Premium Overpayment Claim Form, and only Identity Theft Class Members may submit an Identity Theft Claim Form. Those persons who submit an Identity Theft Claim Form must also submit documented proof of their losses, such as police reports,

correspondence with governmental agencies, correspondence with financial institutions or credit card companies, and/or banking, brokerage, or credit card records that demonstrate that any identity theft and losses were more than likely caused by the December 2009 Incident. It is possible you may be a member of both Classes, and may submit both Claim Forms only if you meet the criteria for membership in both Classes.

Members of both Settlement Classes are able to and encouraged to submit their Claim Forms and documented proof of identity theft and unreimbursed losses online. Not only is it easier and more secure, it is completely free and takes only minutes!

## **REMAINING IN THE SETTLEMENT**

### **11. What am I giving up if I remain a Member of either Class?**

If the Settlement becomes final, you will give up your right to sue the Defendant for the claims being resolved by this Settlement. The specific claims you are giving up against the Defendant are described in Section 3 of the Settlement Agreement. You will be “releasing” the Defendant and all related people as described in Section 3 of the Settlement Agreement. Unless you exclude yourself (*see* Question 15), you are “releasing” the claims, regardless of whether you submit a claim or not. The Settlement Agreement is available at [www.databreachsettlement.com](http://www.databreachsettlement.com).

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to Class Counsel listed in Question 13 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

### **12. What happens if I do nothing at all?**

If you do nothing and fall within the description of either or both Classes, you will be included in the Premium Overpayment and/or Identity Theft Settlement Classes but will not receive any benefits from this Settlement. But, unless you exclude yourself (*see* Question 15), you won’t be able to start a lawsuit or be part of any other lawsuit against the Defendant for the claims being resolved by this Settlement.

## **THE LAWYERS REPRESENTING YOU**

### **13. Do I have a lawyer in the case?**

The Court has appointed Jay Edelson, Ari J. Scharg, and Benjamin S. Thomassen of Edelson LLC to be the attorneys representing the Settlement Classes. They are called “Class Counsel.” They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Classes. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

### **14. How will the lawyers be paid?**

Subject to Court approval, Defendant has agreed to pay Class Counsel up to 25% of the Settlement Fund for attorneys’ fees and expenses for investigating the facts, litigating the case, and negotiating

the Settlement in this matter. The Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund.

Subject to approval by the Court, Defendant has agreed to pay \$5,000 to each of the Class Representatives from the Settlement Fund for their services in helping to settle this case.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **15. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter (or request for exclusion) by mail stating that you want to be excluded from *Curry v. AvMed, Inc.*, No. 10-cv-24513. Your letter or request for exclusion must also include your name and address, a signature, the name and number of the case, and a statement that you wish to be excluded from the Premium Overpayment Settlement Class and/or Identity Theft Settlement Class. You must mail your exclusion request no later than **Month 00, 2014**, to:

**AvMed Settlement  
P.O. Box 0000  
City, ST 00000**

### **16. If I don't exclude myself, can I sue the Defendant for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims being resolved by this Settlement.

### **17. If I exclude myself, can I get anything from this Settlement?**

No. If you exclude yourself, do not submit either Claim Form to ask for benefits.

## **OBJECTING TO THE SETTLEMENT**

### **18. How do I object to the Settlement?**

If you're a member of either Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it and the Court will consider your views. To object, you must send a letter stating that you object to the Settlement in *Curry v. AvMed, Inc.*, No. 10-cv-24513. Your letter or brief must also include your name and address, your signature, and all arguments, citations, and evidence supporting the objection (including copies of any documents relied on), a statement that you are a member of the Premium Overpayment Settlement Class and/or the Identity Theft Settlement Class and a statement indicating whether you intend to appear at the Final Approval Hearing with or without counsel.

Class Counsel will file with the Court and post on this website its request for attorneys' fees two weeks prior to the objection deadline.

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question Number 22), you must say so in your letter or brief. Mail the objection to these three different places postmarked no later than **Month 00, 2014**:

<b>Court</b>	<b>Class Counsel</b>	<b>Defense Counsel</b>
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The Honorable James King c/o Clerk of the Court Federal Justice Building 99 NE Fourth St. Miami, FL 33132	Ari J. Scharg Edelson LLC 350 North LaSalle St, Suite 1300 Chicago, Illinois 60654	John Delionado Hunton and Williams, LLP 1111 Brickell Avenue, Suite 2500 Miami, FL 33131
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### **19. What's the difference between objecting and excluding myself from the Settlement?**

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Classes. Excluding yourself from the Classes is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## **THE COURT'S FINAL APPROVAL HEARING**

### **20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold the Fairness Hearing at [time] on **Month 00, 2014** in Courtroom 1127 of the James Lawrence King Federal Justice Building, 99 Northeast Fourth Street, Miami, Florida 33132. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Classes; to consider the Parties' agreement that Class Counsel should be paid 25% of the Settlement Funds for attorneys' fees and expenses; and to consider the request for an incentive award to Class Representatives in the total amount of \$10,000. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [www.databreachsettlement.com](http://www.databreachsettlement.com) or call 1-800-204-0556 . If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Fairness Hearing, you will receive notice of any change in the date of such Fairness Hearing.

### **21. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

### **22. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear in *Curry v. AvMed, Inc.*, No. 10-cv-24513." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your Notice of Intent to Appear must be postmarked no later than **Month 00, 2014**, and be sent to the addresses listed in Question 18. You must also state in your objection that you plan on appearing at the hearing.

## GETTING MORE INFORMATION

### 23. Where do I get more information?

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.databreachsettlement.com](http://www.databreachsettlement.com). You may also write with questions to AvMed Settlement, P.O. Box 0000, City, ST 00000. You can call the Settlement Administrator at 1-800-204-0556 or Class Counsel at 1-866-354-3015, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the Settlement website.

# Exhibit 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
Case No. 10-cv-24513-JLK**

JUANA CURRY and WILLIAM MOORE,  
individually and on behalf of a class of  
similarly situated individuals,

Plaintiffs,

v.

AVMED, INC., d/b/a/ AvMed, a Florida  
Corporation,

Defendant.

Case No. 10-cv-24513-JLK

Hon. James Lawrence King

**DECLARATION OF ARI J. SCHARG IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am over the age of 18 and am fully competent to make this declaration. This declaration is based upon my personal knowledge, except where expressly noted otherwise.
2. I am an attorney admitted to practice in the State of Illinois and in the United States District Courts for the Northern District of Illinois, the Eastern District of Michigan, the District of Colorado, the Seventh Circuit Court of Appeals, and the Ninth Circuit Court of Appeals, and I am admitted *pro hac vice* in this matter. I am entering this declaration in support of Plaintiffs' Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement.
3. I am an attorney at the law firm of Edelson LLC, and have been retained to represent the named Plaintiffs in this matter, Juana Curry and William Moore.
4. Beginning in December of 2012, the Parties began discussing the potential for

settling this case, and subsequently agreed to attend a private mediation with the assistance of Mr. Rodney A. Max of the Upchurch Watson White & Max Mediation Group.

5. On January 18, 2013, the Parties met for a formal mediation with Mr. Max in Miami, Florida, during which the Parties engaged in productive discussions aimed towards reaching a potential settlement. Although the Parties were unable to reach a settlement in principle at that time, they agreed to continue speaking.

6. In the six months following the January 18, 2013 mediation, the Parties, with the assistance of Mr. Max, continued to engage in arm's-length negotiations, eventually reaching a point where Mr. Max suggested another in-person mediation to address certain issues.

7. On April 11, 2013, counsel for the Parties reconvened for a second formal mediation with Mr. Max and made substantial progress towards settlement and agreed to work through the remaining issues that stood in the way of a complete resolution.

8. On May 19, 2013, following several additional rounds of arm's-length negotiations, the Parties finally reached an agreement as to the principal terms of the settlement and were able to memorialize these terms in a Memorandum of Understanding.

9. Given that both Plaintiffs Curry and Moore have suffered actual identity theft, and that Class Counsel has been contacted by dozens of individuals to report fraudulent activity on their credit and bank statements, Class Counsel estimates that there are approximately 100 members in the Identity Theft Settlement Class.

10. Both Plaintiffs Curry and Moore have remained involved in this case throughout its entire pendency, and each remains committed to see that the interests of both Classes are protected.

11. Proposed Class Counsel and the lawyers at Edelson LLC will adequately



represent the Settlement Classes, as they regularly engage in major complex litigation involving consumer privacy and technology issues, have the resources necessary to conduct litigation of this nature, and have frequently been appointed lead class counsel by courts throughout the country.

12. Attached as Exhibit 2-A to this Declaration is a true and accurate copy of the Firm Resume of Edelson LLC.

13. Moreover, proposed Class Counsel have dedicated substantial time and resources to the diligent investigation and prosecution of Plaintiffs' and the Classes' claims in this Action, and will continue to do so throughout its pendency.

14. The proposed Settlement now before the Court was reached only after three years of hard-fought litigation, which included the exchange of formal and informal discovery, an appeal to the Eleventh Circuit, two separate rounds of in-person mediation facilitated by experienced third-party neutral Rodney A. Max, and multiple rounds of arm's-length negotiations over ten months.

15. The Parties agreed on the terms of the settlement through experienced counsel, who ensured that they had ample information at their disposal prior to the mediation sessions and during subsequent negotiations to evaluate the terms of any proposed agreement and to reach a fair and reasonable compromise.

16. Given the robust notice plan (i.e., direct notice via email and First Class U.S. Mail, and the creation of a Settlement Website), coupled with the ease with which Settlement Class members may file claims (i.e., via electronic submission or hard-copy), along with the strong prospective measures afforded by the Settlement, Class Counsel believes that the results achieved are well within the range of possible approval.

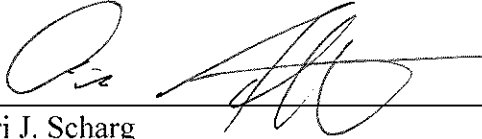
17. Notwithstanding, Plaintiffs also recognize that despite their belief in the strength of the claims at issue, the expense, duration, and complexity of protracted litigation would be substantial, and the outcome of trial is uncertain.

18. Likewise, Defendant has repeatedly indicated that absent settlement it would continue to aggressively defend this case, and that it would appeal any judgment ultimately rendered in Plaintiffs' favor, which would further delay recovery by the Settlement Classes.

19. Plaintiffs and proposed Class Counsel firmly believe that the monetary and prospective relief provided by the settlement weighs heavily in favor of a finding that it is fair, reasonable, and adequate, and well within the range of approval.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on October 21<sup>st</sup>, 2013 at Chicago, Illinois.

  
Ari J. Scharg

# Exhibit A

## **EDELSON LLC FIRM RESUME**

EDELSON LLC is a plaintiff's class action and commercial litigation firm with attorneys in Illinois, Colorado and California.

Our attorneys have been recognized as leaders in these fields by state and federal legislatures, national and international media groups, the courts, and our peers. Our reputation for leadership in class action litigation has led state and federal courts to appoint us lead counsel in many high-profile class action suits, including privacy class actions involving comScore, Netflix, Time, Microsoft, and Facebook, numerous Telephone Consumer Protection Act ("TCPA") against companies such as Google, Twentieth Century Fox, and Simon & Schuster, class actions against Citibank, Wells Fargo, and JP Morgan Chase related to reductions in home equity lines of credit, fraudulent marketing cases against software companies such as Symantec, mobile content class actions against all major cellular telephone carriers, the Thomas the Tank Engine lead paint class actions, and the tainted pet food litigation. We have testified before the United States Senate on class action issues and have repeatedly been asked to work on federal and state legislation involving cellular telephony, privacy and other issues. Our attorneys have appeared on dozens of national and international television and radio programs to discuss our cases and class action and consumer protection issues more generally. Our attorneys speak regularly at seminars on consumer protection and class action issues, lecture on class actions at law schools and are asked to serve as testifying experts in cases involving class action and consumer issues.

### **PLAINTIFFS' CLASS AND MASS ACTION PRACTICE GROUP**

EDELSON LLC is a leader in plaintiffs' class and mass action litigation, with a particular emphasis on consumer technology class actions, and has been called a "class action 'super firm'". (Decalogue Society of Lawyers, Spring 2010.) As recognized by federal courts nationwide, our firm has an "extensive histor[y] of experience in complex class action litigation, and [is a] well-respected law firm[] in the plaintiffs' class action bar." *In re Pet Food Prod. Liab. Litig.*, MDL Dkt. No. 1850, No. 07-2867 (NLH) (D.N.J. Nov. 18, 2008). A leading arbitrator concurred: "The proof of [the firm's] experience, reputation, and abilities is extraordinary. . . . Each [of their cases] elaborates on the experience and unique success [they] have had in achieving leading roles in the area of 'technology consumer protection class actions.'" (Arbitration award in mobile content class action settlement, August 6, 2009)

In appointing our firm interim co-lead in one of the most high profile cases in the country, a federal court pointed to our ability to be "vigorous advocates, constructive problem-solvers, and civil with their adversaries." - *In Re JPMorgan Chase Home Equity Line of Credit Litig.*, No. 10 C 3647 (N.D. Ill, July 16, 2010). After hard fought litigation, that case settled, resulting in the reinstatement of between \$3.2 billion and \$4.7 billion in home credit lines.

We have been specifically recognized as "pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue." *In re Facebook Privacy Litig.*, No. C 10-02389 (N.D. Cal) (order appointing the firm interim co-lead of privacy class action); see also *In re Netflix Privacy Litigation*, 5:11-cv-00379 (N.D. Cal. Aug. 12, 2011) (appointing the sole lead counsel due, in part, to its "significant and particularly

specialized expertise in electronic privacy litigation and class actions[.]”)

Similarly, as recognized by a recent federal court, our firm has “pioneered the application of the TCPA to text-messaging technology, litigating some of the largest consumer class actions in the country on this issue.” *Ellison v Steve Madden, Ltd.*, cv 11-5935 PSG (C.D. Cal. May 7, 2013).

We have several sub-specialties within our plaintiffs’ class action practice:

***Privacy/Data Loss***

**Data Loss/Unauthorized Disclosure of Data**

We have litigated numerous class actions involving issues of first impression against Facebook, Apple, Netflix, Sony, Red Box, Pandora, Sears, Storm 8, Google, T-Mobile, Microsoft and others involving the failure to protect customers’ private information, security breaches, and unauthorized sharing of personal information with third parties. Representative settlements and ongoing cases include:

- *Dunston v. comScore, Inc.*, No. 11-cv-5807: Lead counsel in certified class action accusing internet analytics company of improper data collection practices.
- *Resnick v Avmed*, No. 10-cv-24513 (S.D.Fl.): Lead counsel in data breach case filed against health insurance company. Obtained landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred.
- *In re Netflix Privacy Litigation*, No. 5:11-cv-00379 (N.D. Cal.): Sole lead counsel in suit alleging that defendant violated the Video Privacy Protection Act by illegally retaining customer viewing information. Case resulted in a \$9 million dollar cy pres settlement that has been finally approved (pending appeal).
- *Halaburda v. Bauer Publishing Co.* 12-CV-12831 (E.D. Mich.), *Grenke v. Hearst Communications, Inc.*, 12-CV-14221 (E.D. Mich.), *Fox v. Time, Inc.*, 12-CV-14390 (E.D. Mich.) Consolidated actions brought under Michigan’s Video Rental Privacy Act, alleging unlawful disclosure of subscribers’ personal information. In a ground-breaking decision, the court denied three motions to dismiss finding that the magazine publishers were covered by the act and that the illegal sale of personal information triggers an automatic \$5,000 award to each aggrieved consumer.
- *Standiford v. Palm*, No. 5:09-cv-05719-LHK (N.D. Cal.): Sole lead counsel in data loss class action, resulting in \$640,000 settlement.
- *In re Zynga Privacy Litigation*, 10-cv-04680 (N.D. Cal.): Appointed co-lead counsel in suit against gaming application designer for the alleged unlawful disclosure of its users’ personally identifiable information to

advertisers and other third parties.

- *In re Facebook Privacy Litigation*, 10-cv-02389 (N.D. Cal.): Appointed co-lead counsel in suit alleging that Facebook unlawfully shared its users' sensitive personally identifiable information with Facebook's advertising partners.
- *In re Sidekick Litig.*, No. C 09-04854-JW (N.D. Cal.): Co-lead counsel in cloud computing data loss case against T-Mobile and Microsoft. Settlement provided the class with potential settlement benefits valued at over \$12 million.
- *Desantis v. Sears*, 08 CH 00448 (Cook County, IL): Lead counsel in injunctive settlement alleging national retailer allowed purchase information to be publicly available through the internet.

### **Telephone Consumer Protection Act**

Edelson has been at the forefront to TCPA litigation for over six years, having secured the groundbreaking *Satterfield* ruling in the Ninth Circuit applying the TCPA to text messages. In addition to numerous settlements totaling over \$100 million in relief to consumers, we have over two dozen putative TCPA class actions pending against companies including Santander Consumer USA, Inc., Walgreen Co., Path, Inc., Nuance Communications, Inc., Stonebridge Life Insurance, Inc., UnitedHealth Group, Inc., GEICO, DirectBuy, Inc., and RCI, Inc.. Representative settlements and ongoing cases include:

- *Rojas v CEC*, No. 1:10-cv-05260 (N.D. Ill): Lead counsel in text spam class action that settled for \$19,999,400.
- *In re Jiffy Lube Int'l Text Spam Litig*, No. 11-md-2261, 2012 WL 762888 (S.D. Cal. March 9, 2012): Co-lead counsel in \$35 million text spam settlement.
- *Ellison v Steve Madden, Ltd.*, cv 11-5935 PSG (C.D.Cal.): Lead counsel in \$10 million text spam settlement.
- *Kramer v. B2Mobile, et al*, No. 0-cv-02722-CW (N.D. Cal.): Lead counsel in \$12.2 million text spam settlement.
- *Pimental v. Google, Inc.*, No. 11-cv-02585 (N.D.Cal.): Lead counsel in class action alleging that defendant co-opted group text messaging lists to send unsolicited text messages. \$6 million settlement provides class members with an unprecedented \$500 recovery.
- *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D.Cal.). Lead counsel in \$10 million text spam settlement.
- *Miller v. Red Bull*, No. 12-CV-04961 (N.D. Ill.) Lead counsel in preliminary approved \$6 million settlement.

- *Woodman et al v. ADP Dealer Services, et al*, 2013 CH 10169 (Cook Cnty Ill.) Lead counsel in \$7.5 million text spam settlement.
- *Lozano v. 20<sup>th</sup> Century Fox*, No. 09-cv-05344 (N.D. Ill): Lead counsel in class action alleging that defendants violated federal law by sending unsolicited text messages to cellular telephones of consumers. Case settled for \$16 million.
- *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.). Co-lead counsel in in \$10 million text spam settlement.
- *Weinstein, et al. v. Airt2me, Inc.*, Case No. 06 C 0484 (N.D. Ill): Co-lead counsel in \$7 million text spam settlement.

## **Consumer Technology**

### **Fraudulent Software**

In addition to the settlements listed below, Edelson LLC has consumer fraud cases pending in courts nationwide against companies such as McAfee, Inc., Avanquest North America Inc., PC Cleaner, AVG, iolo Technologies, LLC, among others. Representative settlements include:

- *Drymon v. Cyberdefender*, No. 11 CH 16779 (Cook County, IL): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$9.75 million.
- *Gross v. Symantec Corp., et al.*, No. 3:12-cv-00154-CRB (N.D. Cal.) Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$11 million.
- *LaGarde, et al. v. Support.com, Inc., et al.* (N.D. Cal.) Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$8.59 million.
- *Ledet v. Ascentive LLC* (E.D. Pa.) Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$9.6 million.
- *Webb, et al. v. Cleverbridge, Inc., et al.* (N.D. Ill.) Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$5.5 million.

### **Video Games**

Edelson LLC has litigated cases video game related cases against Activision Blizzard Inc., Electronic Arts, Inc., Google, and Zenimax Media, Inc., and has active litigation pending, including:

- *Locke v. Sega of America*, 13-cv-01962-MEJ (N.D. Cal.) Pending putative class action alleging that Sega of America and Gearbox Software released video game trailer that falsely represented the actual content of the game.

### ***Mortgage & Banking***

EDELSON LLC has been at the forefront of class action litigation arising in the aftermath of the federal bailouts of the banks. Our suits include claims that the certain banks unlawfully suspended home credit lines based on pre-textual reasons, and that certain banks have failed to honor loan modification programs. We achieved the first federal appellate decision in the country recognizing the right of borrowers to enforce HAMP trial plans under state law. The court noted that "Prompt resolution of this matter is necessary not only for the good of the litigants but for the good of the Country." *Wigod v. Wells Fargo Bank*, N.A., 673 F.3d 547, 586 (7th Cir. 2012) (Ripple, J., concurring). Our settlements have restored billions of dollars in home credit lines to people throughout the country. Representative cases and settlements include:

- *In re JP Morgan Chase Bank Home Equity Line of Credit Litig.*, 10-cv-3647 (N.D. Ill.): Court appointed interim co-lead counsel in nationwide putative class action alleging illegal suspensions of home credit lines. Settlement restored between \$3.2 billion and \$4.7 billion in credit to the class.
- *Hamilton v. Wells Fargo Bank, N.A.*, 4:09-cv-04152-CW (N.D. Cal.). Lead counsel in class actions challenging Wells Fargo's suspensions of home equity lines of credit. Nationwide settlement restores access to over \$1 billion in credit and provides industry leading service enhancements and injunctive relief.
- *In re Citibank HELOC Reduction Litigation*, 09-CV-0350-MMC. Lead counsel in class actions challenging Citibank's suspensions of home equity lines of credit. The settlement restored up to \$653,920,000 worth of credit to affected borrowers.
- *Wigod v. Wells Fargo*, No. 10-cv-2348 (N.D. Ill.): In ongoing putative class action, obtained first appellate decision in the country recognizing the right of private litigants to sue to enforce HAMP trial plans.

### ***General Consumer Protection Class Actions***

We have successfully prosecuted countless class action suits against computer software companies, technology companies, health clubs, dating agencies, phone companies, debt collectors, and other businesses on behalf of consumers. In addition to the settlements listed below, Edelson LLC has consumer fraud cases pending in courts nationwide against companies such as Motorola Mobility, Stonebridge Benefit Services, J.C. Penney,



Sempris LLC, and Plimus, LLC. Representative settlements include:

**Mobile Content**

We have prosecuted over 100 cases involving mobile content, settling numerous nationwide class actions, including against industry leader AT&T Mobility, collectively worth over a hundred million dollars.

- *McFerren v. AT&T Mobility, LLC*, No. 08-CV-151322 (Fulton County Sup. Ct., GA): Lead counsel class action settlement involving 16 related cases against largest wireless service provider in the nation. “No cap” settlement provided virtually full refunds to a nationwide class of consumers who alleged that unauthorized charges for mobile content were placed on their cell phone bills.
- *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cook County, Illinois): Lead counsel in class action settlement involving 27 related cases alleging unauthorized mobile content charges. Case settled for \$36 million.
- *Gray v. Mobile Messenger Americas, Inc.*, No. 08-CV-61089 (S.D. Fla.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Case settled for \$12 million.
- *Parone v. m-Qube, Inc.* No. 08 CH 15834 (Cook County, Illinois): Lead counsel in class action settlement involving over 2 dozen cases alleging the imposition of unauthorized mobile content charges. Case settled for \$12.254 million.
- *Williams, et al. v. Motricity, Inc. et al.*, Case No. 09 CH 19089 (Cook County, Illinois): Lead counsel in class action settlement involving 24 cases alleging the imposition of unauthorized mobile content charges. Case settled for \$9 million.
- *VanDyke v. Media Breakaway, LLC*, No. 08 CV 22131 (S.D. Fla.): Lead counsel in class action settlement alleging unauthorized mobile content charges. Case settled for \$7.6 million.
- *Gresham v. Cellco Partnership*, No. BC 387729 (Los Angeles Sup. Ct.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Settlement provided class members with full refunds.
- *Abrams v. Facebook, Inc.*, No. 07-05378 (N.D. Cal.): Lead counsel in injunctive settlement concerning the transmission of allegedly unauthorized mobile content.

**Deceptive Marketing**

- *Van Tassell v. UMG*, No. 1:10-cv-2675 (N.D. Ill): Lead counsel in negative option marketing class action. Case settled for \$2.85 million.
- *McK Sales Inc. v. Discover Bank*, No. 1:10-cv-02964 (N.D. Ill): Lead counsel in class action alleging deceptive marketing aimed at small businesses. Case settled for \$6 million.
- *Farrell v. OpenTable*, No 3:11-cv-01785-si (N.D. Cal.): Lead counsel in gift certificate expiration case. Settlement netted class over \$3 million in benefits.
- *Ducharme v. Lexington Law*, No. 10-cv-2763-crb (N.D. Cal): Lead counsel in CROA class action. Settlement resulted in over \$6 million of benefits to the class.
- *Pulcini v. Bally Total Fitness Corp.*, No. 05 CH 10649 (Cook County, IL): Co-lead counsel in four class action lawsuits brought against two health clubs and three debt collection companies. A global settlement provided the class with over \$40 million in benefits, including cash payments, debt relief, and free health club services.
- *Kozubik v. Capital Fitness, Inc.*, 04 CH 627 (Cook County, IL): Co-lead counsel in state-wide suit against a leading health club chain, which settled in 2004, providing the over 150,000 class members with between \$11 million and \$14 million in benefits, consisting of cash refunds, full debt relief, and months of free health club membership.
- *Kim v. Riscuity*, No. 06 C 01585 (N.D. Ill): Co-lead counsel in suit against a debt collection company accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with full debt relief and return of all money collected.
- *Jones v. TrueLogic Financial Corp.*, No. 05 C 5937 (N.D. Ill): Co-lead counsel in suit against two debt collectors accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with approximately \$2 million in debt relief.
- *Fertelmeyster v. Match.com*, No. 02 CH 11534 (Cook County, IL): Co-lead counsel in a state-wide class action suit brought under Illinois consumer protection statutes. The settlement provided the class with a collective award with a face value in excess of \$3 million.

- *Cioe v. Yahoo!, Inc.*, No. 02 CH 21458 (Cook County, IL): Co-lead counsel in a state-wide class action suit brought under state consumer protection statutes. The settlement provided the class with a collective award with a face value between \$1.6 million and \$4.8 million.
- *Zurakov v. Register.com*, No. 01-600703 (New York County, NY): Co-lead counsel in a class action brought on behalf of an international class of over one million members against Register.com for its allegedly deceptive practices in advertising on “coming soon” pages of newly registered Internet domain names. Settlement required Register.com to fully disclose its practices and provided the class with relief valued in excess of \$17 million.

### ***Products Liability Class Actions***

We have been appointed lead counsel in state and federal products liability class settlements, including a \$30, million settlement resolving the “Thomas the Tank Engine” lead paint recall cases and a \$32 million settlement involving the largest pet food recall in the history of the United States and Canada. Representative settlements include:

- *Barrett v. RC2 Corp.*, No. 07 CH 20924 (Cook County, IL): Co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement is valued at over \$30 million and provided class with full cash refunds and reimbursement of certain costs related to blood testing.
- *In re Pet Food Products Liability Litig.*, No. 07-2867 (D. N.J.): Part of mediation team in class action involving largest pet food recall in United States history. Settlement provided \$24 million common fund and \$8 million in charge backs.

### ***Insurance Class Actions***

We have prosecuted and settled multi-million dollar suits against J.C. Penney Life Insurance for allegedly illegally denying life insurance benefits under an unenforceable policy exclusion and against a Wisconsin insurance company for terminating the health insurance policies of groups of self-insureds. Representative settlements include:

- *Holloway v. J.C. Penney*, No. 97 C 4555, (N.D. Ill.): One of the primary attorneys in a multi-state class action suit alleging that the defendant illegally denied life insurance benefits to the class. The case settled in or around December of 2000, resulting in a multi-million dollar cash award to the class.
- *Ramlow v. Family Health Plan* (Wisc. Cir. Ct., WI): Co-lead counsel in a class action suit challenging defendant's termination of health insurance to

groups of self-insureds. The plaintiff won a temporary injunction, which was sustained on appeal, prohibiting such termination and eventually settled the case ensuring that each class member would remain insured.

### ***Mass/Class Tort Cases***

Our attorneys were part of a team of lawyers representing a group of public housing residents in a suit based upon contamination related injuries, a group of employees exposed to second hand smoke on a riverboat casino, and a class of individuals suing a hospital and national association of blood banks for failure to warn of risks related to blood transfusions. Representative settlements include:

- *Aaron v. Chicago Housing Authority*, 99 L 11738, (Cook County, IL): Part of team representing a group of public housing residents bringing suit over contamination-related injuries. Case settled on a mass basis for over \$10 million.
- *Januszewski v. Horseshoe Hammond*, No. 2:00CV352JM (N.D. Ind.): Part of team of attorneys in mass suit alleging that defendant riverboat casino caused injuries to its employees arising from exposure to second-hand smoke.

The firm's cases regularly receive attention from local, national, and international media. Our cases and attorneys have been reported in the Chicago Tribune, USA Today, the Wall Street Journal, the New York Times, the LA Times, by the Reuters and UPI news services, and BBC International. Our attorneys have appeared on numerous national television and radio programs, including ABC World News, CNN, Fox News, NPR, and CBS Radio, as well as television and radio programs outside of the United States. We have also been called upon to give congressional testimony and other assistance in hearings involving our cases.

### **GENERAL COMMERCIAL LITIGATION**

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Our attorneys have handled a wide range of general commercial litigation matters, from partnership and business-to-business disputes, to litigation involving corporate takeovers. We have handled cases involving tens of thousands of dollars to “bet the company” cases involving up to hundreds of millions of dollars. Our attorneys have collectively tried hundreds of cases, as well as scores of arbitrations and mediations.

### **OUR ATTORNEYS**

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**JAY EDELSON** is the founder and Managing Partner of EDELSON LLC. He has been recognized as a leader in class actions, technology law, corporate compliance issues and consumer advocacy by his peers, the media, state and federal legislators, academia and courts throughout the country.

Jay has been appointed lead counsel in numerous state, federal, and international class actions, resulting in hundreds of millions of dollars for his clients. He is regularly asked to weigh in on

federal and state legislation involving his cases. He testified to the U.S. Senate about the largest pet food recall in the country's history and is advising state and federal politicians on consumer issues relating to the recent federal bailouts, as well as technology issues, such as those involving mobile marketing. Jay also counsels companies on legal compliance and legislative issues in addition to handling all types of complex commercial litigation.

Jay has litigated class actions that have established precedent concerning the ownership rights of domain name registrants, the applicability of consumer protection statutes to Internet businesses, and the interpretation of numerous other state and federal statutes including the Telephone Consumer Protection Act and the Video Privacy Protection Act. As lead counsel, he has also secured settlement in cases of first impression involving Facebook, Microsoft, AT&T and countless others, collectively worth hundreds of millions of dollars.

In addition to technology based litigation, Jay has been involved in a number of high-profile "mass tort" class actions and product recall cases, including cases against Menu Foods for selling contaminated pet food, a \$30 million class action settlement involving the Thomas the Tank toy train recall, and suits involving damages arising from second-hand smoke.

In 2009, Jay was named one of the top 40 Illinois attorneys under 40 by the Chicago Daily Law Bulletin. In giving Jay that award, he was heralded for his history of bringing and winning landmark cases and for his "reputation for integrity" in the "rough and tumble class action arena." In the same award, he was called "one of the best in the country" when it "comes to legal strategy and execution." Also in 2009, Jay was included in the American Bar Association's "24 hours of Legal Rebels" program, where he was dubbed one of "the most creative minds in the legal profession" for his views of associate training and firm management. In 2010, he was presented with the Annual Humanitarian Award in recognition of his "personal integrity, professional achievements, and charitable contributions" by the Hope Presbyterian Church. Starting in 2011, he has been selected as an Illinois Super Lawyer and, separately, as a top Illinois class action lawyer by Benchmark Plaintiff.

Jay is frequently asked to participate in legal seminars and discussions regarding the cases he is prosecuting, including serving as panelist on national symposium on tort reform and, separately, serving as a panelist on litigating high-profile cases. He has also appeared on dozens of television and radio programs to discuss his cases. He has taught classes on class action law at Northwestern Law School and The John Marshall Law School, and has co-chaired a 2-day national symposium on class action issues. He has been an adjunct professor, teaching a seminar on class action litigation at Chicago-Kent College of Law since 2010.

Jay is a graduate of Brandeis University and the University of Michigan Law School.

**RYAN D. ANDREWS** is a Partner at EDELSON LLC, and the Chair of the Telecommunications Practice Group. Mr. Andrews has been appointed class counsel in numerous state and federal class actions nationwide that have resulted in nearly \$100 million dollars in refunds to consumers, including *Satterfield v. Simon & Schuster, Inc.*, No. C 06 2893 CW (N.D. Cal.), *Gray v. Mobile Messenger Americas, Inc.*, No. 08-CV-61089 (S.D. Fla.), *Lofton v. Bank of America Corp.*, No. 07-5892 (N.D. Cal.), *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cook County, Ill.), *Parone v. m-Qube, Inc.* No. 08 CH 15834 (Cook County, Ill.), and *Kramer v. Autobytel*,

Inc., No. 10-cv-2722 (N.D. Cal. 2010).

In addition, Mr. Andrews has achieved groundbreaking court decisions protecting consumers through the application of the Telephone Consumer Protection Act to emerging text-messaging technology. Representative reported decisions include: *Lozano v. Twentieth Century Fox*, 702 F. Supp. 2d 999 (N.D. Ill. 2010), *Satterfield v. Simon & Schuster, Inc.* 569 F.3d 946 (9th Cir. 2009), and *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165 (N.D. Cal. 2010), *In re Jiffy Lube Int'l Text Spam Litig.*, --- F. Supp. 2d ---, No. 11-md-2261, 2012 WL 762888 (S.D. Cal. March 9, 2012).

Mr. Andrews received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Recently, Mr. Andrews has returned to Chicago-Kent as an Adjunct Professor of Law, teaching a third-year seminar on Class Actions. While in law school, Mr. Andrews was a Notes & Comments Editor for The Chicago-Kent Law Review, as well as a teaching assistant for both Property Law and Legal Writing courses. Mr. Andrews externed for the Honorable Joan B. Gottschall in the United State District Court for the Northern District of Illinois.

A native of the Detroit area, Mr. Andrews graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications.

Mr. Andrews is licensed to practice in Illinois state courts, the United States District Court for the Northern District of Illinois, the U.S. Court of Appeals for the Seventh Circuit, and the U.S. Court of Appeals for the Ninth Circuit.

**RAFEY S. BALABANIAN** is a Partner and the Chair of the Corporate Governance and Business Litigation Practice Group. Rafey's practice focuses upon a wide range of complex consumer class action litigation, as well as general business litigation.

On the plaintiff's side, Rafey has been appointed lead counsel in numerous class actions, including landmark settlements involving the telecom industry worth hundreds of millions of dollars. Rafey has been appointed Class Counsel in nationwide class action settlements against the major wireless carriers, aggregators, and providers of "mobile content," including *Van Dyke v. Media Breakaway, LLC*, No. 08-cv-22131 (S.D. Fla.); *Parone v. m-Qube, Inc.*, 08 CH 15834 (Cir. Ct. Cook County, Ill.); *Williams v. Motricity, Inc.*, et al., No. 09 CH 19089 (Cir. Ct. Cook County, Ill.); and *Walker v. OpenMarket, Inc.*, et al., No. 08 CH 40592 (Cir. Ct. Cook County, Ill.).

On the business side, Rafey has counseled clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and attorneys. He has successfully litigated numerous multi-million dollar cases, including several "bet the company" cases.

Rafey has first chaired jury and bench trials, mediations, and national and international arbitrations.

Rafey received his J.D. from the DePaul University College of Law in 2005. While in law school, he received a certificate in international and comparative law. Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.



**STEVEN LEZELL WOODROW** is a Partner and Chair of the firm's Banking and Financial Services Practice Group. Mr. Woodrow focuses his practice on complex national class actions against some of the Country's largest financial institutions. Representative matters include cases against national banks and mortgage servicers for improper loan modification practices, unlawful home equity line of credit ("HELOC") account suspensions and reductions, and claims regarding the misapplication of payments.

Mr. Woodrow delivered the winning oral argument in *Wigod v. Wells Fargo Bank, N.A.* (7th Cir. 2012), the first federal appellate court decision to allow borrowers to challenge bank failures to follow the federal Home Affordable Modification Program ("HAMP") under state law.

Courts have also appointed Mr. Woodrow as class counsel in nationwide class action settlements against cellphone companies, aggregators, and mobile content providers related to unauthorized charges for ringtones and other mobile content, including *Paluzzi v. Cellco Partnership*, *Williams et. al. v. Motricity, Inc.*, and *Walker et. al. v. OpenMarket Inc.*

Mr. Woodrow has also served as an Adjunct Professor of Law at Chicago-Kent College of Law where he co-taught a seminar on class actions. Prior to joining the firm, he worked as a litigator at a Chicago boutique where he tried and arbitrated a range of consumer protection and real estate matters.

Mr. Woodrow received his J.D. High Honors, Order of the Coif, from Chicago-Kent College of Law in 2005. During law school, Mr. Woodrow served as a Notes and Comments Editor for The Chicago-Kent Law Review, competed on Moot Court, and served as President of the Student Bar Association. He additionally spent a semester as a judicial extern for the Honorable Ann C. Williams on the United States Court of Appeals for the Seventh Circuit. Steven received the ALI-ABA Scholarship and Leadership Award for best representing the combination of leadership and scholarship in his graduating class as well as the Lowell H. Jacobson Memorial Scholarship, which is awarded competitively each year to a student from one of the law schools in the Seventh Circuit to recognize personal commitment and achievement.

Mr. Woodrow is admitted to practice in Colorado (2011) and Illinois (2005).

Mr. Woodrow received his B.A. in Political Science with Distinction from the University of Michigan—Ann Arbor in 2002.

**SEAN P. REIS** is Of Counsel to EDELSON LLC. Sean is an experience trial attorney and business litigator. Sean has experience in a wide-range of litigation matters, including those involving trade secrets, real estate fraud, employment, and consumer issues. Sean has tried sixteen cases, including several multi-week jury trials.

Prior to joining EDELSON LLC, Sean was trained at an international law firm and later founded his own practice. In 1993, Sean graduated from University of California at San Diego with a degree in quantative economics. Following that Sean graduated from Rutgers University School of Law, Newark, where he was the business editor of the Rutgers Law Review and where he received the graduation for appellate advocacy.

**DAVID DALE** is an Associate at EDELSON LLC, where he focuses on plaintiff's privacy class actions and litigation.

David received his J.D., magna cum laude, from the John Marshall School of Law, where he was a member of the Law Review, Trial Advocacy Council, and a Teaching Assistant for Prof. Rogelio Lasso in several torts courses. While in law school, David served as a judicial extern to the Honorable James F. Holderman, Chief Judge of the United States District Court for the Northern District of Illinois.

David attended the University of Missouri, where he graduated with a B.J. in Journalism in 2004. Prior to choosing law school, David worked in the fields of marketing, advertising and public relations for the University of Missouri.

**CHRISTOPHER L. DORE** is an associate at Edelson and a member of the Technology and Fraudulent Marketing Group. Chris focuses his practice on emerging consumer technology issues, with his cases relating to online fraud, deceptive marketing, consumer privacy, negative option membership enrollment, and unsolicited text messaging. Chris is also a member of the firm's Incubation and Startup Development Group wherein he consults with emergent businesses.

Chris has been appointed class counsel in multiple class actions, including one of the largest text-spam settlements under the Telephone Consumer Protection Act, ground breaking issues in the mobile phone industry and fraudulent marketing, as well as consumer privacy. (*Pimental v. Google, Inc.*, No. 11-cv-02585 (N.D.Cal.); *Kramer v. Autobytel, Inc.* (10-cv-02722-CW); *Turner v. Storm8, LLC*, (09-cv-05234) (N.D. Cal.); *Standiford v Palm, Inc.* (09-cv-05719-LHK) (N.D. Cal.); and *Espinal v Burger King Corporation*, (09-20982) (S.D. Fla.)). In addition, Chris has achieved groundbreaking court decisions protecting consumer rights. Representative reported decisions include: *Claridge v. RockYou, Inc.* 785 F.Supp.2d 855 (N.D. Cal.), *Kramer v. Autobytel, Inc.*, 759 F.Supp.2d 1165 (N.D. Cal.), and *Van Tassell v. United Marketing Group, LLC*, 795 F.Supp.2d 770 (N.D.Ill.). In total, his suits have resulted in hundreds of millions of dollars to consumers.

Prior to joining Edelson, Chris worked for two large defense firms in the areas of employment and products liability. Chris graduated magna cum laude from The John Marshall Law School, where he served as the Executive Lead Articles for the Law Review, as well as a team member for the D.M. Harish International Moot Court Competition in Mumbai, India. Chris has since returned to his alma mater to lecture on current issues in class action litigation and negotiations.

Before entering law school, Chris received his Masters degree in Legal Sociology, graduating magna cum laude from the International Institute for the Sociology of Law, located in Onati, Spain. Chris received his B.A. in Legal Sociology from the University of California, Santa Barbara.

**CHANDLER GIVENS** is an Associate at EDELSON LLC, where his practice focuses on technology and privacy class actions. His lawsuits have centered on fraudulent software development, unlawful tracking of consumers through mobile devices and computers, illegal



data retention, and data breach litigation.

Chandler leads a group of researchers in investigating complex technological fraud and privacy related violations. His team's research has lead to cases that have helped cause significant reforms to the utility software industry and resulted in tens of millions of dollars to U.S. consumers. On the privacy litigation front, Chandler plays an instrumental role in applying new technologies to federal and state statutes. His briefing of these issues has helped produce seminal rulings under statutes like the Stored Communications Act and establish data breach jurisprudence favorable to consumers.

A frequent speaker on emerging law and technology issues, Chandler has presented to legal panels and state bar associations on topics ranging from data privacy and security to complex litigation and social media. He has been featured on syndicated radio, quoted in major publications such as Reuters and PCWorld, and been an invited Cyberlaw guest lecturer at his alma mater.

Chandler graduated from the University of Pittsburgh School of Law where he was a research assistant for Cyberlaw Professor Dr. Kevin Ashley, and a judicial extern for the Honorable David S. Cercone of the United States District Court for the Western District of Pennsylvania. He graduated cum laude from Virginia Tech, with a B.S. in business information technology, with a focus on computer-based decision support systems. Chandler sits on the ABA committees for Information Security and e-Discovery.

Before joining the legal profession, Chandler worked as a systems analyst. He has also interned at the Virginia Attorney General's Office as well as the U.S. Department of Justice in Washington D.C.

**ALICIA HWANG** is an Associate at EDELSON LLC. Alicia practices in the area of consumer class action and general litigation.

Alicia received her J.D. from the Northwestern University School of Law in May 2012, where she was an articles editor for the Journal of Law and Social Policy. During law school, Alicia was a legal intern for the Chinese American Service League, served as president of the Asian Pacific American Law Student Association and the Student Animal Legal Defense Fund, and was Chair of the Student Services Committee. She also worked as a student in the Northwestern Entrepreneurship Law Clinic and Complex Civil Litigation and Investor Protection Clinic.

Prior to joining EDELSON LLC, Alicia worked as an Executive Team Leader for the Target Corporation, as well as a public relations intern for a tourism-marketing agency in London.

Alicia graduated magna cum laude from the University of Southern California, earning her B.A. in Communication in 2007. She is a member of the Phi Beta Kappa honor society.

**NICK LARRY** is an Associate at EDELSON LLC. Nick practices in the area of consumer class action and general litigation.

Nick received his J.D., cum laude, from Northwestern University School of Law, where he was a senior editor of the Northwestern University Journal of International Law and Business.

Nick attended Michigan State University, where he graduated with a B.A. in General Business Administration/Pre-law in 2008 and played on the school's rugby team.

**MEGAN LINDSEY** is an Associate at EDELSON LLC. Megan practices in the area of consumer class action, focusing on complex class actions in the banking industry.

Prior to joining EDELSON LLC, Megan worked for several years as a commercial loan underwriter and portfolio officer at Merrill Lynch, Pierce, Fenner & Smith. Megan also worked as an analyst in the troubled asset group at Bank of America, helping to monitor and restructure high-risk loans.

Megan received her J.D. from Chicago-Kent College of Law in May 2011. During law school Megan externed for the Honorable Judge Bauer in the Seventh Circuit Court of Appeals and served as Vice President-Evening Division of the Student Bar Association and Vice President of the Moot Court Honor Society. Megan also represented Chicago-Kent at the National First Amendment Moot Court Competition in Nashville, Tennessee and the National Cultural Heritage Law Moot Court Competition in Chicago, Illinois.

Megan graduated with High Honors from DePaul University in July 2005, earning her B.S. in Finance.

**DAVID I. MINDELL** is an Associate at EDELSON LLC. David practices in the area of technology and privacy class actions.

David has worked on cases involving fraudulent software products, unlawful collection and retention of consumer data, and mobile-device privacy violations. David also serves as a business consultant to private companies at all stages of development, from start-up to exit.

Prior to joining EDELSON LLC, David co-founded several technology companies that reached multi-million dollar valuations within 12 months of launch. David has advised or created strategic development and exit plans for a variety of other technology companies.

While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cyber-security professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the Internet, intellectual property rights, and privacy issues.

David has given speeches related to his research to a wide-range of audiences.

**JOHN OCHOA** is an associate at Edelson LLC, focusing his practice on protecting consumers with a special emphasis on plaintiffs' privacy class action litigation, including cases brought under the Telephone Consumer Protection Act. John prosecutes cases in both state and federal courts at the trial and appellate levels.

John has secured important court decisions protecting the rights of consumers, including *Elder v.*

Pacific Bell Telephone Co., et al., 205 Cal. App. 4th 841 (2012), where the California Court of Appeals held that consumers may pursue claims against telecommunications companies for placing unauthorized charges on consumers' telephone bills, a practice known as "cramming." John was also appointed class counsel in *Lee v. Stonebridge Life Ins. Co., et al.*, --- F.R.D. ---, 2013 WL 542854 (N.D. Cal. Feb. 12, 2013), a case where the Defendants are alleged to have caused the transmission of unauthorized text messages to the cellular telephones of thousands of consumers.

He graduated magna cum laude from the John Marshall Law School in May, 2010 and served as Managing Editor for the John Marshall Law Review. His student Comment, which examines bicycling and government tort immunity in Illinois, appears in Vol. 43, No. 1 of the John Marshall Law Review. While in law school, John externed with Judge Thomas Hoffman at the Illinois Court of Appeals, and competed in the ABA National Appellate Advocacy Competition.

John is active in the Illinois legal community, and serves as Co-Chair of the Membership Committee on the Young Professionals Board of Illinois Legal Aid Online (ILAO). ILAO is a non-profit organization committed to using technology to increase access to free and pro bono legal services for underserved communities throughout Illinois.

He received his B.A. with Honors in Political Science from the University of Iowa in 2004.

**ROGER PERLSTADT** is an Associate at EDELSON LLC, where he concentrates on appellate and complex litigation advocacy. Roger graduated from the University of Chicago Law School, where he was a member of the University of Chicago Law Review. After law school, he served as a clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois.

Prior to joining the firm, Roger spent several years at a litigation boutique in Chicago where his practice included employment and housing discrimination claims, constitutional litigation, and general commercial matters. In 2011, he was named a Rising Star by Illinois Super Lawyers Magazine.

Roger also spent time as a Visiting Assistant Professor at the University of Florida Law School where he taught Arbitration, Conflict of Laws, and Employment Discrimination, and has published articles on the Federal Arbitration Act in various law reviews.

**EVE-LYNN RAPP** is an Associate at EDELSON LLC. Eve-Lynn focuses her practice in the areas of consumer and technology class action litigation.

Prior to joining EDELSON LLC, Eve-Lynn was involved in numerous class action cases in the areas of consumer and securities fraud, debt collection abuses and public interest litigation. Eve-Lynn has substantial experience in both state and federal courts, including successfully briefing issues in both the United States and Illinois Supreme Courts.

Eve-Lynn received her J.D. from Loyola University of Chicago-School of Law, graduating cum laude, with a Certificate in Trial Advocacy. During law school, Eve-Lynn was an Associate Editor of Loyola's International Law Review and externed as a "711" at both the Cook County

State's Attorney's Office and for Cook County Commissioner Larry Suffredin. Eve-Lynn also clerked for both civil and criminal judges (The Honorable Judge Yvonne Lewis and Plummer Lott) in the Supreme Court of New York.

Eve-Lynn graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.

**BENJAMIN H. RICHMAN** is an Associate at EDELSON LLC and is a member of the firm's Corporate Governance and Business Litigation Practice Group. He handles plaintiff's-side consumer class actions, focusing mainly on technology-related cases, represents corporate defendants in class actions, and handles general commercial litigation matters.

On the plaintiff's side, Ben has brought industry-changing lawsuits involving the marketing practices of the mobile industry, print and online direct advertisers, and Internet companies. He has successfully prosecuted cases involving privacy claims and the negligent storage of consumer data. His suits have also uncovered complex fraudulent methodologies of Web 2.0 companies, including the use of automated bots to distort the value of consumer goods and services. In total, his suits have resulted in hundreds of millions of dollars to consumers.

On the defense side, Ben has represented large institutional lenders in the defense of employment class actions. He also routinely represents technology companies in a wide variety of both class action defense and general commercial litigation matters.

Ben received his J.D. from The John Marshall Law School, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the Honorable John W. Darrah of the United States District Court for the Northern District of Illinois, in addition to acting as a teaching assistant for Prof. Rogelio Lasso in several torts courses. Ben has since returned to the classroom as a guest-lecturer on issues related to class actions, complex litigation and negotiation. He also lectures incoming law students on the core first year curriculums. Before entering law school, Ben graduated from Colorado State University with a B.S. in Psychology.

Ben is the director of EDELSON LLC's Summer Associate Program.

**ARI J. SCHARG** is an associate at Edelson LLC. He handles technology-related class actions, focusing mainly on cases involving the unlawful geo-location tracking of consumers through their mobile devices, the illegal collection, storage, and disclosure of personal information, fraudulent software products, data breaches, and text message spam. His settlements have resulted in tens of millions of dollars to consumers, as well as industry-changing injunctive relief. Ari has been appointed class counsel by state and federal courts in several nationwide class action settlements, including *Webb v. Cleverbridge, et al.*, 11-cv-4141 (N.D. Ill.), *Missaghi v. Blockbuster*, 11-cv-2559 (D. Minn.), *Ledet v. Ascentive*, 11-cv-294 (E.D. Penn.), and *Drymon v. CyberDefender*, 11 CH 16779 (Cook Cnty, Illinois), and was appointed sole-lead class counsel in *Loewy v. Live Nation*, 11-cv-4872 (N.D. Ill.), where the court praised his work as "impressive" and noted that he "understand[s] what it means to be on a team that's working toward justice." Ari was selected as an Illinois Rising Star (2013) by Super Lawyers.

Prior to joining the firm, Ari worked as a litigation associate at a large Chicago firm, where he represented a wide range of clients including Fortune 500 companies and local municipalities. His work included representing the Cook County Sheriff's Office in several civil rights cases and he was part of the litigation team that forced Craigslist to remove its "Adult Services" section from its website.

Ari is very active in community groups and legal industry associations. He is a member of the Board of Directors of the Chicago Legal Clinic, an organization that provides legal services to low-income families in the Chicago area. Ari acts as Outreach Chair of the Young Adult Division of American Committee for the Shaare Zedek Medical Center in Jerusalem, and is actively involved with the Anti-Defamation League. He is also a member of the Standard Club Associates Committee.

Ari received his B.A. in Sociology from the University of Michigan – Ann Arbor and graduated magna cum laude from The John Marshall Law School where he served as a Staff Editor for The John Marshall Law Review and competed nationally in trial competitions. During law school, he also served as a judicial extern to The Honorable Judge Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois.

**BEN THOMASSEN** is an Associate at Edelson LLC. At the firm, Ben's practice centers on the prosecution of class actions cases that address federally protected privacy rights and issues of consumer fraud—several of which have established industry-changing precedent. Among other high profile cases, Ben recently played key roles in delivering the winning oral argument before the United States Court of Appeals for the Eleventh Circuit in *Curry v. AvMed*, 693 F.3d 1317 (11th Cir. 2012) (a data breach case that has, following the Eleventh Circuit's decision, garnered national attention both within and without the legal profession) and securing certification of a massive consumer class in *Dunstan v. comScore*, No. 11 C 5807, 2013 WL 1339262 (N.D. Ill. Apr. 2, 2013) (estimated by several sources as the largest privacy case ever certified on an adversarial basis).

Ben received his J.D., magna cum laude, from Chicago-Kent College of Law, where he also earned his certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. At Chicago-Kent, Ben was Vice President of the Moot Court Honor Society and earned (a currently unbroken firm record of) seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts.

Before settling into his legal career, Ben worked in and around the Chicago and Washington, D.C. areas in a number of capacities, including stints as a website designer/developer, a regular contributor to a monthly Capitol Hill newspaper, and a film projectionist and media technician (with many years experience) for commercial theatres, museums, and educational institutions. Ben received his Bachelor of Arts, summa cum laude, from St. Mary's College of Maryland and his Master of Arts from the University of Chicago.