

STATE OF NEW MEXICO
THIRD JUDICIAL DISTRICT COURT
COUNTY OF DONA ANA

LAS CRUCES MEDICAL CENTER, LLC, dba
MOUNTAIN VIEW REGIONAL MEDICAL CENTER,
Plaintiff,

vs.

Case No. D-307-CV-2022-01051
Judge: CASEY B. FITCH

RUBY RAMIREZ,
Defendant.

RUBY RAMIREZ,
on behalf of herself and other
individuals similarly situated,
Counterclaim Plaintiff,

vs.

LAS CRUCES MEDICAL CENTER, LLC, dba
MOUNTAIN VIEW REGIONAL MEDICAL CENTER;
and FABER & BRAND, LLC,
Counterclaim Defendants.

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is entered into as of the last date of any signature below ("Execution Date") by and among:

- Ruby Ramirez (Representative Plaintiff), on the one hand and
- (a) Las Cruces Medical Center, LLC, dba Mountainview Regional Medical Center; and
 - (b) Faber & Brand LLC, on the other hand.

RECITALS

1. **Nature of the Case:** On July 14, 2022, Counterclaim Defendant Las Cruces Medical Center filed a lawsuit against Counterclaim Plaintiff for allegedly unpaid medical debt for services at Las Cruces Medical Center. On October 11, 2022, Counterclaim Plaintiff filed an Answer and Class Action Counterclaim against Defendants Las Cruces Medical Center and Faber & Brand. In the action, Counterclaim Plaintiff claims that the Counterclaim Defendants filed collections actions to recover allegedly unpaid medical debt without determining whether patients are indigent, giving rise to claims under the New Mexico Patients Collection Practices Act, the New Mexico Unfair Practices Act, and the federal Fair Debt Collection Practices Act.
2. **No Admission of Fault:** Las Cruces Medical Center, and Faber & Brand deny the material allegations in the Action and deny all liability with respect to the facts and claims alleged in the Action. Nevertheless, without admitting or conceding liability, Las Cruces Medical Center and Faber & Brand desire to settle the Action on the terms and conditions set forth in this Agreement to avoid the burden, expense, and uncertainty of continuing litigation and to put the rest all claims that were brought in this Action or in similar litigation based on the facts alleged in this Action.
3. **Class Counsel Review:** Class Counsel, as defined below, have analyzed and evaluated the merits of all contentions of the Parties, Las Cruces Medical Center and Faber & Brand, the risks of continued litigation and the likelihood that the Action, if not settled now, would be further protracted and will further delay any relief to the proposed class. Representative Plaintiff and Class Counsel are satisfied that the terms and conditions of the Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action on the terms described in this Agreement is the best interests of the proposed Settlement Class.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the Parties, for themselves and through their undersigned counsel, agree to the following Settlement, subject to Court approval, under the following terms and conditions.

I. DEFINITIONS

In addition to the terms defined parenthetically herein, the following definitions apply to this Agreement.

1. "Action" means the Action in the Second Judicial District Court for the County of Bernalillo, New Mexico under the caption Las Cruces Medical Center v. Ruby Ann Ramirez and Ruby Ramirez v. Las Cruces Medical Center, No. D-307-CV-2022-01051.

2. "Class Counsel" means NM Center on Law and Poverty and Treinen Law Office PC.

3. "Class Notice" means the notice provided to the Settlement Class of the class action status and proposed settlement of the Action. The Class Notice will include a hearing date set by the Court to consider objections, if any, to the settlement and to enter the Settlement Order and Final Judgment. The Class Notice will be in substantially the form of Exhibit A.

4. "Defendants" means, Las Cruces Medical Center, LLC dba, Mountainview Medical Center and Faber & Brand, LLC, the defendants in the Action.

5. "Distribution Date" means no later than 14 days after Final Approval.

6. "Eligible Class Member" means a Settlement Class Member who does not exclude himself or herself from the Action.

7. Faber & Brand means Counterclaim Defendant, Faber & Brand, LLC.

8. "Final Approval" means that all of the following have occurred:

(a) The Court has entered the Settlement Order and Final Judgment;

(b) The Court has made its final award of attorney fees, costs, and Service Award; and

(c) Thirty-One (31) days have passed after entry of the Settlement Order and Final Judgment by the Court without any appeals or requests for review of the Court's Settlement Order and Final Judgment being filed, or, if appeals or requests for review have been filed, the time has passed for seeking further review after orders on appeal affirming the Settlement Order and Final Judgment, or review has been denied after exhaustion of all appellate remedies.

9. Las Cruces Medical Center means Counterclaim Defendant Las Cruces Medical Center, LLC dba Mountainview Medical Center.

10. "Parties" means the Representative Plaintiff Ramirez and Defendants Las Cruces Medical Center, LLC, Faber & Brand, LLC,

11. Professional Account Services Inc. ("PASI") is a third party contracted by Las Cruces Medical Center to conduct accounts receivable services for Las Cruces Medical Center.

12. "Preliminary Approval" means the Court has entered an order substantially in the form of Exhibit B to this Agreement, preliminarily approving the terms and conditions of this Agreement, including the manner of providing Class Notice to the Settlement Class.

13. "Released Claims" means any and all claims, rights (including rights to restitution or reimbursement), demands, actions, causes of action, suits, liens, damages, attorneys fees,

obligations, contracts, liabilities, agreements, costs, interest, expenses, or losses of any nature, whether known or unknown, direct or indirect, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected, equitable or legal, and whether under federal statutory law, federal common law or federal regulation, or the statutes, constitutions, regulations, ordinances, common law, or any other law of any and all states or their subdivisions, parishes or municipalities that were alleged or asserted in the Action arising out of or relating to collections actions filed against patients for medical debt allegedly owed to Las Cruces Medical Center, as well as any claims arising out of or relating to the same nucleus of operative facts as alleged in the Action, by way of pleadings, motions, or briefs. In addition, with respect to Representative Plaintiff only, "Released Claims" includes all claims arising, or that could arise in the future, out of any conduct or omissions occurring prior to the date of Preliminary Approval that might be attributable to Defendants.

14. "Released Parties" means the Parties, Las Cruces Medical Center, LLC dba Mountainview Medical Center and Faber & Brand, LLC, along with their respective affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies actually or allegedly under common control with any of them, and each of their respective predecessors, successors, past and present owners, shareholders, members, partners, past and present officers, directors, managers, employees, agents, servants, accountants, attorneys, advisors, insurers, representatives, partners, vendors, issuers, and assigns, or anyone acting on their behalf, including but not limited to Professional Account Services Inc. ("PASI").

15. "Representative Plaintiff" means the named plaintiff in the Action, specifically Ruby Ramirez.

16. "Service Award" means the payment to Representative Plaintiff for her time and effort in connection with this Action in an amount approved by the Court.

17. "Settlement Administration" means the process under the Court's supervision, that includes, but is not limited to, the manner in which the Class Notice and the making of payments, and distributions required under this Agreement, are effectuated. The cost for Settlement Administration will be deducted from the Settlement Fund.

18. "Settlement Administrator" means a third-party settlement administrator mutually agreed on by the Parties.

19. Except as otherwise provided in this Paragraph, "Settlement Class" means:

The Class consists of all persons against whom Las Cruces Medical Center LLC filed a collections action for allegedly unpaid medical debt after December 28, 2021, without attempting to determine whether the individual was indigent.

The Settlement Class does not include Las Cruces Medical Center, LLC, Faber & Brand, LLC, any entity that has a controlling interest in any of them, and any of their current or former owners, current or former directors, officers, counsel, and their immediate families. The Settlement Class also does not include any persons who request exclusion from the Class.

For purposes of settlement only, there are 271 persons in the Settlement Class based on an analysis of Las Cruces Medical Center and Faber & Brand's records.

20. "Settlement Class Members" means persons meeting the definition of the Settlement Class.

21. "Settlement Fund" means the amount of \$399,375 that will be paid by Las Cruces Medical Center as provided in this Agreement on account of the settlement and compromise of the Settlement Class Members' claims, Representative Plaintiff Service Award, and costs of Settlement Administration and Class Notice.

22. "Settlement Hearing" means the hearing to be set by the Court to consider objections, if any, to the settlement and to enter the Settlement Order and Final Judgment.

23. "Settlement Order and Final Judgment" means an order and judgment substantially in the form of Exhibit C to this Agreement, entered by the Court approving this Agreement as final and binding on the Parties, Settlement Class Members, and Released Parties.

24. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

II. GENERAL TERMS OF SETTLEMENT

1. **Payment of the Settlement Fund.** The Settlement Fund shall be funded as follows: (a) Las Cruces Medical Center and Faber & Brand shall pay to the Settlement Administrator \$399,375 by the Date set by the Court in the Order Granting Preliminary Approval. This payment shall be split 50/50 between Las Cruces Medical Center and Faber & Brand, with each Defendant to pay \$199,687.50 to the Settlement Administrator. These sums and their payment shall be Las Cruces Medical Center and Faber & Brand's total financial obligation under this Agreement, except for an award of attorneys' fees. These payments shall be paid to the Settlement Administrator and held in an account solely to be used to effectuate this settlement. Notwithstanding the foregoing, if the Court has not approved the Settlement Administrator by the time tender of payment is required to the Settlement Fund, then such payment shall be deposited in the trust accounts of respective Parties' counsel, to be held in such account until such time as the Settlement Administrator is approved by the Court.
2. **Payments to Settlement Class Members.** On or before the Distribution Date, Defendants will pay to each Eligible Class Member, through the Settlement Administrator: a) the amount of \$625 and, if applicable b) the amount that Defendants collected from each class member through actions that Plaintiffs allege were not in compliance with the Patients Debt Collection Practices Act. The amounts to be distributed under (b) have been agreed to by the parties and will be provided to the class

administrator. The amount distributed under (b) above may be decreased proportionately if necessary, so those distributions do not exceed an agreed cap of \$200,000.

3. **Class List:** Las Cruces Medical Center and Faber & Brand have already provided to Class Counsel a Class List that includes the name, phone number and full address of every member of the Settlement Class and the amount of actual damages for each class member.
4. **Settlement Administration:** Settlement Administration shall occur under the Court's supervision. The Parties will engage ALCS, a third-party administrator (or another third-party settlement administrator mutually agreed on by the Parties), to provide Settlement Administration, including but not limited to making the payments to Settlement Class Members, payment of attorney fees and expenses to Class Counsel, payment of the Representative Plaintiff Service Award, and payment of costs of Settlement Administration and Class Notice, plus any other distributions required under this Agreement. Costs of Settlement Administration will be paid by Defendants up to a cap of \$20,000. Any fees and costs in excess of \$20,000 will be paid solely by the Settlement Class.
5. **Payment of Attorneys Fees.** No later than 21 days after entry of the Preliminary Approval Order, Class Counsel will apply to the Court for an award of attorney fees and costs. If Final Approval occurs, Defendants shall pay to Class Counsel the total amount approved by the Court, in full and complete compensation for attorney fees and costs.
6. **Payment of Representative Plaintiff Service Award.** Subject to Court approval, Plaintiffs may request an amount not to exceed \$10,000. If Final Approval occurs, Settlement Administrator shall pay from the Settlement Fund to Class Counsel the Representative Plaintiff Service Award, in the manner and at the time set forth in Paragraph V(2).
7. **No Reversion to Defendants.** Any remainder left in the Settlement Fund after all other distributions have been made will be distributed by the Settlement Administrator to a cy pres recipient with no reversion to Defendants.
8. **Cy Pres.** The Parties agree that the cy pres recipient should be Strong Families New Mexico.

III. INJUNCTIVE RELIEF

Injunctive Relief: Within ninety (90) days of the date the Settlement Agreement receives final approval from the Court:

- A. Reversing Collections Actions and Credit Reporting Against Class Members:

- 1) Counterclaim Defendants shall file with the appropriate court all necessary motions or other filings to initiate the termination of all collection litigation brought against the attached list of class members agreed by the parties, including quashing writs of garnishment, vacating judgments and/or dismissing cases.
- 2) If the Counterclaim Defendants perform any credit reporting, the Counterclaim Defendant(s) shall take all steps necessary to remove any credit reporting or credit reference, made or directed to be made by Counterclaim Defendants, concerning any class member, and which does not include the mere entry of a Judgment or Judgment lien. This includes sending written or electronic notice to each credit bureau or consumer reporting agency to which PASI has reported any information about medical debts owed to LCMC. PASI shall submit a Metro II form coded with "DA" (i.e., delete account) and/or Universal Data form with the "Delete Tradeline" option box checked to such credit bureau or consumer reporting agency.

B. LCMC and any third-party retained by LCMC to provide accounts receivable collection services, including but not limited to PASI, shall draft and implement all policies, practices, procedures and forms in order to comply fully with New Mexico law, including the New Mexico Patients' Debt Collection Protection Act, NMSA 1978, §§ 57-32-1 through -10, and all rules promulgated and issued by the New Mexico Attorney General pursuant to, NMSA 1978, § 57-32-10(A), and the New Mexico Superintendent of Insurance, including NMAC 13.10.39.1 - .9. Counterclaim Defendants and any third-party retained by LCMC to provide accounts receivable collection services, including but not limited to PASI, shall amend or rescind any policy that is inconsistent with these laws, including:

- 1) Amending the Eligibility Screening Services (ESS) "State Basic Items Required to Submit a Complete Application in NM" policy to require the following:
 - a) Screening when a patient registers for care at the hospital and, if applicable, when a patient: admitted for emergency care has been stabilized through treatment and prior to discharge; admitted for inpatient care is scheduled for care or within forty-eight (48) hours of admission; receiving outpatient care is scheduled for care or prior to completion of treatment; or requests a screening; and
 - b) Notification to PASI that a patient qualifies as indigent if ESS's screening process identifies a patient has a household income at or below 200% of the federal poverty line (including through eligibility for healthcare programs such as Medicaid).
- 2) Amending PASI Policy # SP-50 ("New Mexico Account Policy") and any contrary policy or form utilized by Counterclaim Defendants and any third-party retained by LCMC to provide accounts receivable collection services to:
 - a) Cease pursuing collection actions, referring accounts to Faber & Brand or another attorney for pursuit of collections actions, or otherwise seeking payment, including credit reporting on accounts, prior to Counterclaim

Defendants or PASI offering a screening and enrollment assistance for public health insurance programs, programs that assist with healthcare costs, and the hospital's financial assistance policy, and while a patient's screening and/or application for public health insurance programs, programs that assist with healthcare costs, and the hospital's financial assistance is pending.

- b) During a communication to determine if a patient is indigent, PASI shall clearly state that the communication is not a demand for payment and that the purpose of the communication is to determine if the patient is indigent and should be protected from collection actions under New Mexico law, and shall not seek to collect upon an alleged medical debt nor state that the communication is an attempt to collect upon an alleged medical debt.
- c) Require the attachment of the OSI's "Notice of Protection Against Medical Debt Collection" form and indigency attestations to all bills and statements seeking payment for care at the hospital;
- d) Require Counterclaim Defendants and any third-party retained by LCMC to provide accounts receivable collection services, including but not limited to PASI, to process attestations of indigency submitted by the hospital's patients.
- e) For each hospital patient who submits an attestation of indigency, require Counterclaim Defendants and any third-party retained by LCMC to provide accounts receivable collection services, including but not limited to PASI, to provide to all such patients a written notice of the results of their indigency determinations.
- f) PASI shall not hire or otherwise engage third parties to perform collection actions against or otherwise recover alleged medical debts from indigent patients.
- g) When referring an account to Faber & Brand or approving a lawsuit, LCMC and/or PASI shall certify to Faber & Brand that LCMC and/or PASI either determined the patient was not indigent or that LCMC and/or PASI was unable to make such determination due to noncooperation by the patient.

C. LCMC shall make its financial assistance policy available to the public via a link from the homepage of its website.

D. Faber & Brand shall draft and implement all policies, practices, procedures and forms in order to comply fully with New Mexico law, including the New Mexico Patients' Debt Collection Protection Act, NMSA 1978, §§ 57-32-1 through -10, and all rules promulgated and issued by the New Mexico Attorney General pursuant to, NMSA 1978, § 57-32-10(A), and the New Mexico Superintendent of Insurance, including NMAC 13.10.39.1 - .9. Faber & Brand shall amend or rescind any policy or procedure that is inconsistent with these laws and shall draft and implement a policy governing the policies

and procedures applicable for all its New Mexico accounts and files that include the following:

- 1) Offering, Accepting, and Processing Requests for Indigency Determinations:
 - a) Processing attestations of indigency submitted by the patients;
 - b) Providing a patient with an attestation of indigency upon request;
 - c) If a patient is determined to be indigent, noting for the patient's file that the patient is indigent and that collection litigation, including garnishment proceedings, is prohibited for at least twenty-four months following the determination of indigency;
 - d) If a patient's file reflects a determination that the patient is indigent, immediately, and no later than thirty (30) days after that determination is made, filing the pleadings necessary to cease and terminate collection actions brought against the patient; depending on when the status of indigency is to be applied, this may include filing motions to dismiss, vacating judgments, quashing writs of garnishment;
 - e) Within thirty (30) days of making a determination of indigency and no later than sixty (60) days after the determination is initiated, provide the patient with a written notice of the results of an indigency determination.
 - f) If a patient does not respond to questions/inquiries regarding indigency after three documented attempts by Faber & Brand, Faber & Brand can assume that the patient no longer wishes to claim indigency;

- 2) Prior to sending a statement seeking payment, Faber & Brand will perform the following:
 - a) Reviewing its records and contacting the hospital and/or any third-party retained by the hospital to provide accounts receivable collection services, including but not limited to PASI, to verify whether the patient was determined to qualify as an indigent patient;
 - b) If, prior to filing a new case, the patient's file does not reflect whether a determination of indigency was made, contacting the hospital and/or any third-party retained by the hospital to provide accounts receivable collection services, including but not limited to PASI, seeking a certification that LCMC and/or PASI either determined the patient was not indigent or that LCMC and/or PASI was unable to make such a determination due to noncooperation by the patient. If the hospital and/or the third-party fails to make this certification, Faber & Brand shall not send a statement seeking payment, file a new case, or initiate garnishment proceedings and shall close the account;

- c) If the hospital and/or a third-party retained by the hospital to provide accounts receivable collection services, including but not limited to PASI, determines that a patient qualifies as an indigent patient, it will be noted on the patient's file that the patient is indigent and that collection litigation is prohibited for twenty-four months following the determination of indigency; and
 - d) If, prior to initiating garnishment proceedings or otherwise seeking to execute on the judgment, a patient's file does not reflect a determination of indigency has been made in the past twenty-four months, a determination of indigency of the patient will be made. Faber & Brand shall make and document at least three attempts to contact the patient for the purpose of determining indigency.
 - e) During a communication to determine if a patient is indigent, Faber & Brand shall clearly state that the purpose of the communication is to determine if the patient is indigent, affecting whether a collection action may be pursued.
- 3) Faber & Brand shall develop and use scripts for the following when speaking with a patient who states or otherwise indicates an inability to pay or inadequate wages:
- a) Clearly explaining that the patient may qualify as an indigent person affecting whether collection action may be pursued.
 - b) If the communication occurs after a file has been sent to Faber & Brand by the hospital and/or PASI, and the patient requests for a determination of indigency to be made, explaining that Faber & Brand can and will provide the patient with an attestation of indigency, which, if signed and returned, can prove their household income and size for purposes of determining indigency, affecting whether a collection action may be pursued.
- 4) Faber & Brand shall attach the OSI's "Notice of Protection Against Medical Debt Collection" or notice in the same form to all bills or statements seeking payment.

E. Nothing in this provision shall prevent LCMC and/or Faber & Brand from pursuing medical debt collection actions in the future against patients in compliance with the FDCPA and PDCPA.

F. Neither Counterclaim Defendants nor any third-party retained by LCMC to provide accounts receivable collection services, including but not limited to PASI, shall state or imply, directly or indirectly, that Counterclaim Plaintiff or Class Counsel has approved of, condones, or agrees with any collection action or any other activity to collect on an alleged medical debt.

IV. SETTLEMENT APPROVAL AND CLASS NOTICE

1. **Preliminary Approval.** On DATE, the Representative Plaintiff will move for an order in the form of Exhibit B ("Preliminary Approval Order"), which, among other things, provisionally certifies the Settlement Class for settlement purposes only; appoints Representative Plaintiff as the representative of the Settlement Class; appoints Class Counsel as counsel for the Settlement Class; approves the Settlement Administrator selected by the Parties; grants the Court's Preliminary Approval of this Agreement; approves the form of Class Notice, which will be substantially in the form of Exhibit A; and sets a Settlement Hearing date to consider objections, if any, to the settlement and to enter the Settlement Order and Final Judgment.
2. **Class Notice.** The Parties will request that the Preliminary Approval Order direct that, within 21 days of entry of the Preliminary Approval Order, the Settlement Administrator shall provide Class Notice of the provisional class certification and proposed settlement to all Settlement Class Members.
3. **Returned Mail.** Class Notices will be remailed if notice for any class member is returned by the USPS, either to the forwarding address provided by USPS or to a new address obtained via skip trace, with the opt out and objection deadline to stay the same. If the notice is returned 30 days after the initial mailing, no remailing will be required. Only one remailing shall be required and none shall be required if the USPS provides no forwarding address and skip tracing does not turn up an address. The class administrator shall handle all mailing and remailing and all skip tracing. Any amounts left in the class fund due to failure to deliver Notice, despite the above notice plan will revert to the cy pres fund.
4. **Submission of Exclusion Requests or Objections.** Representative Plaintiff will request that the Preliminary Approval Order direct that Settlement Class Members be allowed 60 days after the date established by the Court for the Settlement Administrator to provide Class Notice as set forth in Paragraph IV(2) above to request exclusion from the Settlement Class or to submit objections to the proposed Settlement. The Class Notice described in Paragraph IV(2) above shall direct that exclusion requests, if any, be sent to the Settlement Administrator, which will provide periodic updates on exclusion requests to Defendants' counsel and Class Counsel. The Class Notice described in Paragraph IV(2) above shall direct that objections, if any, be sent to Class Counsel, who shall file copies with the Court. Any re-sending of Class Notice shall not extend the time for a Settlement Class Member to request exclusion or submit objections.
5. **Entry of Final Judgment.** Representative Plaintiff will request that the Court: (a) grant Final Approval and (b) enter judgment in accordance with this Agreement, in the form of Exhibit C, approving the Agreement as fair, reasonable, and adequate, and binding on all Settlement Class Members who have not excluded themselves, ordering that the Claim Payments be paid to Eligible Class Members, ordering that attorney fees and costs, and the Representative Plaintiff Service Award, be paid in the amounts approved by the Court, approving the form and manner of Class Notice provided, ordering that any remainder left in the Settlement Fund be distributed to the cy pres recipient with no reversion to

Defendants, dismissing the Action with prejudice, and barring Settlement Class Members from bringing claims within the scope of the Released Claims.

6. **Reporting on distribution of payments.** Within 90 days of completing the distribution of payments pursuant to Section V below, Las Cruces Medical Center shall provide the Court a report, in a form substantially similar to Exhibit D, verifying its compliance with this Agreement to the date of the report.
7. **Reporting on injunctive relief:** Within one hundred twenty (120) days of the date the Settlement Agreement receives final approval from the Court, Counterclaim Defendants and any third-party retained by Las Cruces Medical Center to provide accounts receivable collection services, including but not limited to Professional Accounts Services Inc. (PASI), shall each file with the Court an affidavit signed by a person of appropriate authority, with the name and title of the person identified in the affidavit, verifying that all the actions required by the injunctive relief stated above have been completed and fully implemented.

V. ADMINISTRATION AND DISTRIBUTION OF PAYMENTS

1. **Responsibility for Distributions.** The Settlement Administrator will be responsible for making all distributions required under this Agreement. The Settlement Administrator will have authority to make all decisions reasonably necessary for the orderly implementation and administration of this Agreement and the distribution of all payments prescribed in this Agreement. The Settlement Administrator shall have no liability for any Settlement Administration decision made in good faith and not inconsistent with the express terms of this Agreement.
2. **Distribution of Representative Plaintiff Service Award.** No later than 14 days after the date of Final Approval, the Settlement Administrator shall distribute from the Settlement Fund the Representative Plaintiff Service Award, in the amount approved by the Court by a check or wire transfer as directed by Class Counsel.
3. **Eligibility for Distribution.** To be eligible for distribution pursuant to this Agreement, Settlement Class Members are not required to do anything other than not exclude themselves.
4. **Notification to Class Counsel.** No later than 30 days after Final Approval, the Settlement Administrator shall provide Las Cruces Medical Center and Faber & Brand, undersigned counsel and Class Counsel with (i) the names and addresses of Eligible Class Members and the Payment payable to each Eligible Class Members, and (ii) the names and addresses of Eligible Class Members who excluded themselves. The Settlement Administrator may provide this information in such form or media as Las Cruces Medical

Center, Faber & Brand and Class Counsel reasonably agree, subject to approval by the Settlement Administrator.

5. **Manner of Distribution.** The Settlement Administrator shall make the payments required to Eligible Class Members by check on or before the Distribution Date. The Settlement Administrator shall not have any obligation to re-mail any check returned after a payment in accordance with this Paragraph. Checks issued pursuant to this Paragraph shall remain valid for 60 days after issuance, and shall recite that limitation on the face of the check. The value of any Payments remaining uncashed after 60 days will be paid to the Court approved cy pres recipient.
6. **Notification to Eligible Claimants.** At the time of payment by check, Eligible Class Members will be notified that the check represents their payment under this Agreement. The determination of the payment amount is final and not subject to challenge by the Eligible Class Member to whom the check is sent.
7. **Distribution to Heirs of Deceased Eligible Class Members.** If an Eligible Class Member is deceased, payment of the amount due to that Eligible Class Member shall be made to any heir, or, if multiple heirs, to each heir, or to the Estate of the deceased Eligible Class Member, upon acceptable proof of eligibility. Acceptable proof of eligibility may include providing a copy of the Death Certificate, along with either court documents that establish the Estate or decide the heirs, or if no such documents exist and no Estate was established, or the Estate proceedings have been completed, an affidavit that states the identities of the heirs and the respective percentage due to each heir.

VI. RELEASES

1. **Sole and Exclusive Remedy.** This settlement shall be the sole and exclusive remedy for any and all Released Claims against the Released Parties. Each Eligible Class Member (including anyone claiming by or through him or her) shall be barred from initiating, asserting, or prosecuting the Released Claims.
2. **Class Release to Las Cruces Medical Center, Faber & Brand and the Released Parties.** Effective upon Final Approval, the Representative Plaintiff, for herself and as representatives of the Settlement Class, and on behalf of each Settlement Class Member who did not exclude himself or herself from the Action, and each of their respective agents, successors, heirs, assigns, and any other person who can claim by or through the Representative Plaintiff or the Eligible Class Members in any manner, shall have fully, finally, and forever irrevocably released, relinquished, and forever discharged with prejudice all Released Claims against the Released Parties.

3. **Individual Release by Representative Plaintiff.** Effective upon Final Approval, the Representative Plaintiff, for herself and on behalf of her respective agents, successors, heirs, assigns, and any other person who can claim by or through them in any manner, shall have fully, finally and forever irrevocably released, relinquished and forever discharged with prejudice all Released Claims against the Released Parties.
4. **Effect of Releases.** With respect to any and all Released Claims, the Parties stipulate and agree that upon Final Approval, the Representative Plaintiff and eligible Class Members, for themselves and on behalf of their respective parents, affiliates, directors, officers, employees, owners, shareholders, members, partners, agents, successors, heirs, assigns, and any other person who can claim by or through each or any of them, shall expressly waive, and each Eligible Class Member and each Eligible Class Members' respective agents, successors, heirs, assigns, and any other person who can claim by or through each or any of them, in any manner, shall be deemed to have waived, and by operation of the judgment of the Court, shall have expressly waived, any and all claims, rights, or benefits they may have under and any federal or state law, right, rule, or legal principle that may be applicable. The Parties agree and acknowledge that this waiver is an essential term of this Agreement.

VII. MISCELLANEOUS PROVISIONS

1. **Settlement Purpose of Agreement.** This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement or its attachments, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim, defense or any fact alleged by any of the Parties in the Action or in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or admission by any Party of any claim, defense or allegation made in the Action or any other action, nor as an admission by any of Las Cruces Medical Center, Faber & Brand, Representative Plaintiff, or Settlement Class Members of the validity of any fact or defense asserted against them in the Action or any other action. If the Court should for any reason fail to approve this Agreement in the form substantially agreed to by the Parties, decline to enter the Settlement Order and Final Judgment in the form of Exhibit C without material modification, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Settlement Order and Final Judgment is reversed or rendered void, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect. If this Agreement terminates or is nullified, the provisional class certification in Exhibit B shall be vacated by its terms, and the Action shall revert to the status that existed before the initial date of settlement

between the Parties. Upon nullification of this Agreement, Representative Plaintiff shall be free to pursue any claims available to her, and Defendants shall be free to assert any defenses available to them. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims or defenses. In the event the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, decline to enter the Settlement Order and Final Judgment in the form of Exhibit C, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Settlement Order and Final Judgment is reversed or rendered void, the Parties will negotiate in good faith to address the issues raised by said events, including via mediation with attorney Charles Peifer.

2. **Cooperation.** The Parties and their counsel will cooperate fully in the process of seeking settlement approval. Class Counsel warrant and agree they will take all steps necessary to obtain and implement Final Approval of this Agreement, to defend the Settlement Order and Final Judgment through all stages of any appeals that may be taken (regardless of who prosecutes the appeal), to give Released Parties full and final peace from further prosecution of the Released Claims, and to give the Settlement Class Members the benefits they enjoy under this Agreement. Any disputes in the administration of this settlement shall be settled by a decision rendered by Charles Peifer after submissions. Payments to Charles Peifer for resolution of any disputes will be made from the Settlement Fund.

3. **Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of New Mexico, without regard to its rules regarding conflict of laws.

4. **Entire Agreement.** The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, whether oral or in writing, express or implied, and may not be contradicted by evidence of any prior or contemporaneous agreement. Any modification of the Agreement that may adversely affect Settlement Class Members' substantive rights must be in writing and signed by Representative Plaintiff, Las Cruces Medical Center and Faber & Brand; any other modification of the Agreement must be in writing and signed by Class Counsel and Defendants' undersigned counsel.

5. **Construction of Agreement.** The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after extensive negotiation, with consideration by and participation of counsel for all Parties. The Agreement shall be construed according to the fair intent of the language taken as a whole, and not for or against any Party.

6. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns.

7. **Waiver.** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

8. **Effectiveness of Agreement; Counterparts.** This Agreement shall become effective upon the last date of its execution by all of the persons for whom signature spaces have been provided below. The Parties and their counsel may execute this Agreement in counterparts (any one or all of which may be fax or PDF/electronic copies), and execution in counterparts shall have the same force and effect as if all signatories had signed the same document.

9. **Continuing Jurisdiction.** The Court shall retain exclusive and continuing jurisdiction over this Agreement and over all Parties and Settlement Class Members to interpret, effectuate, enforce, and implement this Agreement. The Court shall have exclusive jurisdiction to resolve any disputes involving this Agreement, subject to the dispute resolution mechanism set forth in Paragraph VII (2).

10. **Authority.** Each individual signing this Agreement represents and warrants that he or she has the authority to sign on behalf of the Party for which that individual signs.

11. **Assignment; Third Party Beneficiaries.** None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any member of the Settlement Class without the express written consent of the other Parties. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and shall not be construed to confer any right or to afford any remedy to any other person.


12. **Calculation of Time.** All time listed in this Agreement is in calendar days. Time is calculated by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

AGREED TO AND ACCEPTED:

RUBY RAMIREZ

Individually and as Representative Plaintiff for the Settlement Class

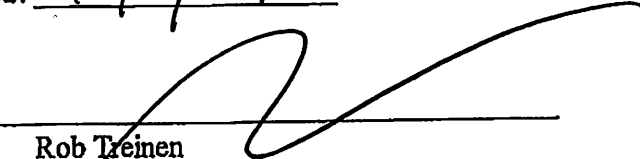
Signature: 
Ruby Ramirez

Dated: 12-02-2024

TREINEN LAW OFFICE PC

Attorneys for Representative Plaintiff and Proposed Settlement Class

Dated: 12/5/24

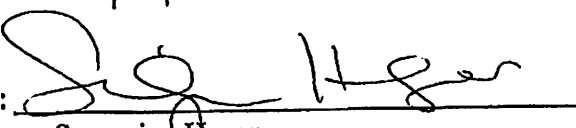
By: 

Rob Treinen
500 Tijeras Ave NW
Albuquerque, New Mexico 87102
(505) 247-1980
(505) 843-7129 (fax)
robtreinen@treinenlawoffice.com

NM CENTER ON LAW AND POVERTY

Attorneys for Representative Plaintiff and Proposed Settlement Class

Dated: 12/2/2024

By: 

Sovereign Hager
301 Edith Blvd. NE
Albuquerque, NM 87102
(505) 255-2840
sovereign@nmpovertylaw.org

Dated: _____

By: _____

Rob Treinen
500 Tijeras Ave NW
Albuquerque, New Mexico 87102
(505) 247-1980
(505) 843-7129 (fax)
robtreinen@treinenlawoffice.com

NM CENTER ON LAW AND POVERTY
*Attorneys for Representative Plaintiff and Proposed
Settlement Class*

Dated: _____

By: _____

Sovereign Hager
301 Edith Blvd. NE
Albuquerque, NM 87102
(505) 255-2840
sovereign@nmpovertylaw.org

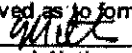
For LAS CRUCES MEDICAL CENTER, LLC

Signature:  _____


Printed Name: Justin D. Pitt

Title: Executive Vice President

Dated: 12-23-24

Approved as to form: 12/23/24
By: 
Matthew J. Nathanson, Litigation Counsel
CHSPSC, LLC


RODEY, DICKASON, SLOAN, AKIN &
ROBB, P.A.
Attorneys for Las Cruces Medical Center, LLC

By: 

Melanie B. Stambaugh
Linda M. Vanzi
Post Office Box 1888
Albuquerque, New Mexico 87103
mstambaugh@rodey.com
LVanzi@rodey.com

Dated: 12/26/2024

For FABER & BRAND, LLC:

Signature: 

Printed Name: Jay Jackson

Title: CEO

Dated: 1/22/24

O'BRIEN & PADILLA, P.C.
Attorneys for Faber & Brand, LLC

By: 

PENELOPE QUINTERO
WILLIAM ANDERSON
6000 Indian School Road NE, Suite 200
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pquintero@obrienlawoffice.com
wanderson@obrienlawoffice.com

Dated: 1/22/2025