

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

LISA RANIERI and MEGAN CORNELIUS,  
Individually and on Behalf of a Class of  
Similarly Situated Persons,

v.

ADVOCARE INTERNATIONAL L.P.

Case No. 3:17-cv-00691-S

**SETTLEMENT AGREEMENT**

This agreement (the “**Settlement Agreement**”) is made and entered into pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and contains the terms of a proposed settlement between Megan Cornelius (the “**Class Representative**”), individually and on behalf of a class of similarly situated persons, and AdvoCare International, L.P. (“**AdvoCare**”)<sup>1</sup>. The Class Representative and AdvoCare are herein referred to as the “**Parties**.”

WHEREAS:

A. On March 9, 2017, the Class Representative and Lisa Ranieri (together, “**Plaintiffs**”) initiated the above-captioned action (the “**Action**”).

B. The original Class Action Complaint alleged, among other things, that AdvoCare and various individuals operated an illegal pyramid scheme, and that Plaintiffs and others similarly situated were damaged by AdvoCare’s operation of the pyramid scheme.

C. On July 5, 2017, the U.S. District Court for the Northern District of Texas (the “**Court**”) stayed the Action pending an arbitrator’s ruling on whether or not the Action should be arbitrated.

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<sup>1</sup> As of the date of this settlement agreement, AdvoCare is operating as AdvoCare International, LLC.

D. On December 27, 2017, an arbitrator appointed by both Plaintiffs and AdvoCare, after receiving extensive briefing and hearing oral argument from the Parties, determined that Plaintiff Ranieri's claims against AdvoCare were not arbitrable. The Parties previously agreed that whatever decision the arbitrator reached as to Plaintiff Ranieri's claims would apply equally to Plaintiff Cornelius' claims.

E. On September 11, 2018, Plaintiffs filed an Amended Class Action Complaint with AdvoCare as the only defendant.

F. On July 31, 2019, Plaintiffs filed a Second Amended Class Action Complaint (the "SAC"). The SAC (as well as the preceding versions) included claims under the federal Racketeer Influenced and Corrupt Practices Act, 18 U.S.C. § 1961 *et seq.* ("**RIC**O").

G. On October 2, 2019, the Federal Trade Commission (the "**FTC**") filed a complaint against AdvoCare and others in the United States District Court for the Eastern District of Texas (the "**FTC Court**"), Case No. 4:19-cv-00715. Like Plaintiffs, the FTC alleged that AdvoCare operated an illegal pyramid scheme.

H. On October 9, 2019, the FTC Court entered the Stipulated Order for Permanent Injunction and Monetary Judgment against AdvoCare and defendant Brian Connolly [Doc. No. 15] ("**FTC Judgment**"). Pursuant to the FTC Judgment, AdvoCare abandoned its multi-level marketing business and paid a \$150 million fine (the "**FTC Fine**"). The FTC "may" deposit AdvoCare's FTC Fine in a fund (an "**FTC Fund**") to be used for "equitable relief, including consumer redress." FTC Judgment at VI(G). AdvoCare, pursuant to the FTC Judgment, has notified Distributors that "[t]he FTC will use the money [AdvoCare's FTC Fine] to provide refunds." FTC Judgment at Attachment A.

I. As of the date of this Settlement Agreement, the FTC has not distributed any portion of the FTC Fine to consumers as redress.

J. AdvoCare denies the substantive allegations in the SAC and denies any and all liability to both the Plaintiffs and the members of the putative class.

K. AdvoCare and Plaintiff Ranieri have settled their dispute by a separate agreement.

L. AdvoCare and the Class Representative now desire to resolve the remaining issues in this Action without further proceedings and without admitting fault or liability.

M. The Parties and their respective counsel have engaged in lengthy good-faith discussions, including three full-day mediation sessions before the Honorable Judge Royal Furgeson (retired) (the “**Mediator**”), regarding the possibility of settling the Action and have reached an agreement concerning the proposed settlement of the Action as set forth herein.

N. Plaintiffs’ counsel, having made a thorough investigation of the facts and law, believe that the proposed settlement is fair, reasonable, adequate, and in the best interests of the putative class.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Class Representative and AdvoCare, subject to final approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, to conditionally settle the Action on the terms set forth below:

**I. DEFINITIONS**

In addition to the foregoing defined terms, the following terms shall have the meanings set forth below:

A. “Accepted Claimants” shall have the meaning set forth in Section XIII.D.2.

B. “Accepted Claims List” shall have the meaning set forth in Section XIII.E.

C. “Adjusted Base Claims” shall have the meaning set forth in Section XIII.F.3.

D. “Base Claim” shall have the meaning set forth in Section XII.B.

E. “Cash Payment” shall have the meaning set forth in Section II.A.

F. “Claims Deadline” is the deadline by which Class Members must return a Claims Form for the Form to be valid.

G. “Claims Form” shall mean a document substantially in the form of the document attached hereto as Exhibit B.

H. “Class” shall have the meaning set forth in Section IV.C.

I. “Class Counsel” means the law firm Reid Collins & Tsai LLP.

J. “Class Member” and “Class Members” shall have the meaning set forth in Section IV.C.

K. “Court” shall mean the United States District Court for the Northern District of Texas.

L. “Defense Counsel” means Thomas M. Melsheimer, Steven H. Stodghill, John C.C. Sanders, Jr., Rex A. Mann, and Becca Loegering of Winston & Strawn LLP.

M. “Distribution Order” shall have the meaning set forth in Section XIII.G.1.

N. “Distributor” refers to persons who contracted with AdvoCare such that they had the right to participate in AdvoCare’s multi-level marketing business and/or AdvoCare’s Compensation Plan. It does not include individuals who joined AdvoCare as Preferred Customers during the relevant class period.

O. “Distributor Master List” shall have the meaning set forth in Section VI.A.

P. “Effective Date” shall have the meaning set forth in Section VIII.A.

Q. “Estimated Fees and Expenses” shall have the meaning set forth in Section XIII.F.5.

R. “Execution Date” is the date set forth below and immediately preceding the Parties’ signatures.

S. “Fairness Hearing” shall mean the hearing scheduled by the Court described in Section V.A.1.

T. “Fee Award” means any award of attorneys’ fees and expenses to Class Counsel approved by the Court.

U. “Final Order And Judgment” shall mean an order substantially in the form as the document attached hereto as Exhibit D.

V. “Final Claims List” shall have the meaning set forth in Section XIII.F.6.

W. “Final Claims Payment” has the meaning ascribed in Section XII.A.

X. “FTC Payment Reduction” shall have the meaning set forth in Section XII.C.

Y. “Net Settlement Fund” shall have the meaning set forth in Section XIII.F.5.c.

Z. “Notice Program” shall mean that program for the dissemination of notice set forth in Section VI.

AA. “Preliminary Approval Order” shall mean an order substantially in the form of the document attached hereto as Exhibit A.

BB. “Putative Class Members” shall have the meaning set forth in Section VI.A.1.

CC. “Pro Rata Reduction” shall have the meaning set forth in Section XII.D.

DD. “Service Award” means any award to the Class Representative ordered by the Court to compensate her for the time, risk, effort, and out-of-pocket expenses she incurred in pursuing the Action for the benefit of the Class.

EE. “Settlement Account” shall mean the bank account selected by the Claims Administrator and Class Counsel to hold the Settlement Fund, as set forth in Section X.A.

FF. “Settlement Administrator” shall mean the entity designated in Section IX.A.

GG. “Settlement Fund” shall mean the Cash Payment, plus any interest earned on the Settlement Account.

HH. “Settlement Notice” shall mean a document substantially in the form of the document attached hereto as Exhibit C.

II. “Unpaid Fees and Expenses” shall have the meaning set forth in Section XIII.F.5.

## **II. ADVOCARE’S SETTLEMENT CONSIDERATION**

AdvoCare will provide the following consideration in return for the releases set forth in Section III, below.

**A. Cash Payment:** AdvoCare will pay \$10,500,000.00 (the “**Cash Payment**”) into the Settlement Account. This Cash Payment, together with any interest earned thereon in the Settlement Account, shall constitute the Settlement Fund. In no event shall AdvoCare be required to pay more than this Cash Payment of \$10,500,000.00.

**B. Settlement Support:** AdvoCare will support the Settlement Agreement and will not encourage any putative Class Member to opt out of or object to the Settlement Agreement.

## **III. RELEASES**

**A. Plaintiff Releases:** As of the Effective Date, the Parties, any spouses, and their counsel all release one another of any and all legal claims, known or unknown, suspected or unsuspected, reasonably discoverable or not, present, fixed or contingent, no matter the basis, other than any rights arising under this Settlement Agreement.

**B. The Class-Released Claims:** As of the Effective Date, the Class Members will release AdvoCare, including its past, present and future parents, subsidiaries, predecessors, successors, insurers, officers, directors, agents, and employees from any and all legal claims, known or unknown, suspected or unsuspected, reasonably discoverable or not, present, fixed or contingent, which the Class Members may have or ever had against AdvoCare as of May 16, 2016,

arising out of, relating to, or in any way connected with AdvoCare's alleged operation of a pyramid scheme, any tortious conduct relating to the operation of a pyramid scheme, any consumer fraud, or any misrepresentation or omission. Breach of contract claims for the payment of bonuses or commissions earned but unpaid as of May 16, 2016 are specifically not released. To be clear, persons who opt out of the Class are not Class Members and do not provide releases pursuant to this Settlement Agreement.

C. IN ADDITION, EACH CLASS MEMBER HEREBY EXPRESSLY WAIVES AND RELEASES, UPON THIS AGREEMENT BECOMING EFFECTIVE, ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE AND/OR ANY STATUTE, LAW OR PRINCIPLE OF COMMON LAW, WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO § 1542 OF THE CALIFORNIA CIVIL CODE, WHICH READS:

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

Each Class Member may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of this paragraph, but each Class Member hereby expressly waives and fully, finally, and forever settles and releases, upon the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claims existing as of May 17, 2016, and arising out of or relating to

AdvoCare's alleged operation of a pyramid scheme, any tortious conduct relating to the operation of a pyramid scheme, any consumer fraud, or any misrepresentation or omission, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

#### IV. CLASS CERTIFICATION

A. Promptly after the Execution Date, the Class Representative will seek, and AdvoCare will not oppose, the Court's preliminary certification of the Class for settlement purposes only pursuant to Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

B. AdvoCare agrees that the Class Representative will seek to be appointed as representative of the Class and that Class Counsel seek to be appointed to serve as class counsel, and AdvoCare agrees not to oppose these appointments.

C. The "**Class**" shall be all Distributors who paid fees, purchased a "distributor kit," and/or purchased products from AdvoCare between March 9, 2013, and May 17, 2016, who lost money from their participation in the AdvoCare alleged scheme, and whose distributorships were suspended without reinstatement or terminated by May 17, 2016. Distributors who made no purchases from AdvoCare after May 17, 2016, and paid no dues after May 17, 2016, will be considered terminated as of May 17, 2016. Distributors will be considered to have lost money if the sum of the fees they paid AdvoCare, the money they paid AdvoCare for sales aids, and the money they paid AdvoCare for product (net of refunded amounts), reduced by 65% of the amount paid for product, is greater than the money they received from AdvoCare (other than for product refunds). Distributors who meet this definition and do not opt out from membership in the Class are "**Class Members**" and individually each a "**Class Member.**" Excluded from the Class are Distributors who were not, at the time they were Distributors, residents of the United States or its territories or U.S. military stationed overseas.

**D.** The Parties' agreement as to certification of the Class is only for purposes of effectuating this Settlement and for no other purpose. AdvoCare retains all of its objections, arguments, and defenses with respect to any other request for class certification, and reserves all rights to contest class certification if (i) the Settlement Agreement does not receive the Court's preliminary or final approval, (ii) the Court's approval is reversed or vacated on appeal, or (iii) this Settlement Agreement is terminated as provided herein.

**V. SETTLEMENT APPROVAL**

The Parties agree to take all necessary steps to obtain preliminary and final approval of this Settlement Agreement and take the actions described below.

**A. Preliminary Approval:**

1. Promptly after Execution Date, proposed Class Counsel shall make a motion to the Court for entry of a Preliminary Approval Order, substantially in the form annexed hereto as Exhibit A. The requested Preliminary Approval Order will, *inter alia*, preliminarily approve this Settlement Agreement, find that the Class should be certified for settlement purposes, appoint Class Counsel, appoint the Class Representative, and approve the proposed Notice Plan. The requested Preliminary Approval Order will schedule, on such date that is at least 105 days after the Court issues the Preliminary Approval Order, a hearing for final approval (the "**Fairness Hearing**") at which the Court may consider the fairness, reasonableness, or adequacy of the proposed Settlement Agreement, whether it should be finally approved by the Court, and whether to approve any requests for a Fee Award or Service Award;

2. The Settlement Notice and Claims Form have dates that depend on the date set by the Court for the Fairness Hearing and the date the Court issues the Preliminary Approval Order. Class Counsel will complete these documents with the addition of the dates derived from

the date set for the Fairness Hearing in the Preliminary Approval Order and the date the Preliminary Approval Order issues. The dates to be set are as follows:

- Fairness Hearing;
- Deadline for Notice of Appearance by Objecting Class Member or Class Member's Counsel: 14 days prior to Fairness Hearing;
- Objections Deadline and Opt-Out Deadline: 21 days prior to Fairness Hearing;
- Deadline for Mailing Settlement Notices and Claims Forms: 77 days before the Fairness Hearing; and
- Claims Deadline: postmarked, emailed, or filed via the Settlement Website 75 days after the Settlement Administrator initially emails the Claims Forms.

**B. Final Approval:** If the Court issues the Preliminary Approval Order, the Class Representative shall move the Court to enter the Final Order And Judgment substantially in the form annexed hereto as Exhibit D.

**C. Appeal:** In the event of an appeal from a Final Order And Judgment, the Parties will work cooperatively to defend the Final Order And Judgment on appeal.

**D. Cooperation:** The Parties agree to cooperate fully with one another with respect to the Class Representative seeking (1) the Court's preliminary approval of the Settlement Agreement and class certification; (2) the Court's approval of the Notice Program; and (3) the Court's final approval of the Settlement Agreement. The Parties agree to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement Agreement.

## **VI. NOTICE PROGRAM**

**A. Distributor Master List:** Within 14 days of the Execution Date, AdvoCare will provide proposed Class Counsel and the Settlement Administrator with an Excel spreadsheet (the "**Distributor Master List**") containing necessary information regarding Distributors.

1. AdvoCare shall include on the Distributor Master List information regarding all Distributors meeting the following criteria:

- The Distributor paid AdvoCare money for product, fees, or sales aids between March 9, 2013, and May 17, 2016;
- The Distributor did not pay AdvoCare money after May 17, 2016; and
- The Distributor received less money from AdvoCare than the Distributor paid AdvoCare for product (net of refunds), fees, or sales aids over the entire course of the Distributor's relationship with AdvoCare (including transactions pre-dating March 9, 2013), accounting for the 65% product credit.

In assessing these criteria, the calculations will be based on each Distributor's AdvoCare account without regard to the source of the payment.

2. The Distributor Master List will include the following information for the Distributors, if available in AdvoCare's database:

- Name;
- AdvoCare Distributor ID number;
- Date of birth;
- Mailing address;
- Telephone number(s);
- Email address(es);
- Total payments to AdvoCare made at any time, broken down by purpose (*i.e.*, fees, product, sales aids);
- Total payments from AdvoCare made at any time for refunds;
- Total payments from AdvoCare made at any time for earnings; and
- Total payments to AdvoCare made between March 9, 2013 and May 17, 2016.

3. The Class Representative and the Settlement Administrator shall keep the aforementioned information confidential except as necessary to comply with the terms of this agreement and otherwise provide notice to the Class consistent with this agreement. AdvoCare will verify in a declaration or affidavit under oath that the information provided on the Distributor Master List is true and accurate to the best of its knowledge.

**B. Notice by Settlement Administrator:** No less than 77 days before the Fairness Hearing, and as soon as possible after AdvoCare provides the Distributor Master List, the Settlement Administrator will provide notice to the Distributors in the following manner:

1. Sending a copy of the Settlement Notice and the Claims Form via email to the Distributors using the email addresses in the Distributor Master List;
2. Sending a copy of the Settlement Notice and the Claims Form via U.S. regular mail using the mailing addresses in the Distributor Master List to all Distributors whose noticing emails sent pursuant to the previous paragraph “bounced back” or were otherwise undeliverable;
3. Resending a second copy of the Settlement Notice and Claims Form via email to all Distributors whose emails did not bounce and did not submit a Claims Form 14 days before the Claims Deadline; and
4. Attempting to contact via telephone and email Distributors to learn updated contact information when the notice documents sent via U.S. Mail are returned as invalid or undeliverable, then providing additional notice as necessary.

**C. Additional Notice to Certain Distributors by Class Counsel:** No less than 77 days before the Fairness Hearing, in addition to the Notice by the Settlement Administrator, Class Counsel will send notice via email to those Distributors who have contacted Class Counsel previously regarding this Action. Class Counsel’s email will direct Distributors to the Class Action Website for more information regarding the Settlement Agreement and submission of a Claims Form. Class Counsel will provide AdvoCare with a copy of the email Class Counsel intends to provide to these Distributors in advance of sending the email, and Class Counsel will advise AdvoCare as to the number of Distributors to whom Class Counsel will send the email.

**D. Notice to Government Officials:** The Settlement Administrator will provide notice to the required state and federal officials as set out in 28 U.S.C. § 1715(b), within 10 days of Plaintiffs filing the motion for entry of the Preliminary Approval Order.

**E. Class Action Website:** Prior to sending out the initial notice, the Settlement Administrator will prepare and publish a website (the “**Class Action Website**”) that will post documents relating to the Action and the Settlement Agreement. The documents will include the following, as they become available:

- The SAC;
- The FTC Complaint;
- The FTC Judgment;
- The Settlement Agreement;
- The motions for issuance of the Preliminary Approval Order, any Fee Award, and any Service Award;
- Any orders of the Court on the foregoing motions; and
- The Settlement Notice and the Claims Form.

Distributors will be able to fill out and submit their Claims Form via the Class Action Website. They may also opt out through the website. The Settlement Notice will direct the Distributors to this website. The Settlement Administrator may publish additional materials on the website to provide the Distributors with updated information regarding the Settlement Agreement, such as various deadlines and the motion for entry of the Final Order And Judgment, as directed by Class Counsel.

## **VII. OBJECTION TO THE PROPOSED SETTLEMENT AGREEMENT**

**A.** Any Class Member who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement must, by the date specified in the Settlement Notice (which will be no later than 21 days before the Fairness Hearing or such other time as the Court may direct) deliver to Class Counsel and Defense Counsel and file with the Court a statement of such objection, as well as the specific reasons for each objection, including any legal and evidentiary

support the Class Member wishes to bring to the Court's attention. Class Members may object on their own or through counsel hired at their own expense.

**B.** Any Class Member who files and serves a written objection and who intends to make an appearance at the Fairness Hearing, either in person or through counsel at that Class Member's expense, must deliver to Class Counsel and Defense Counsel and file with the Court by the date specified in the Settlement Notice, which will be no later than 14 days before the Fairness Hearing, or as the Court may otherwise direct, a notice of intention to appear and a statement identifying any documents the Class Member will seek to introduce or witnesses the Class Member will seek to call at the Fairness Hearing.

**C.** Any Class Member who fails to comply with subsections A and B of this Section VII shall waive and forfeit any and all rights that Class Member may have to appear separately or object, or to take any appeal of the orders of judgment in this action, and shall be bound by all terms of this Agreement, should the Court enter the Order And Final Judgment.

**D.** Distributors who opt out of the Settlement Agreement are not Class Members and may not object to the Settlement Agreement.

**E.** Class Counsel and Defense Counsel will promptly furnish each other with copies of any and all objections to the Settlement Agreement that might come into their possessions and that are not filed with the Court.

#### **VIII. EFFECTIVE DATE OF SETTLEMENT; TERMINATION**

**A.** The "**Effective Date**" of the Settlement Agreement shall be the date when both of the following have occurred:

1. Entry by the Court of the Final Order And Judgment, substantially in the form set forth in Exhibit D annexed hereto, or the entry of a final judgment other than the Final

Order And Judgment and none of the Parties hereto elect to terminate the Settlement Agreement (in which case such different judgment becomes the Final Order And Judgment); and

2. Expiration of the time for judicial review and, in the event of an appeal, affirmance of the Final Order And Judgment either on appeal or after remand from an appellate court.

**B. Termination:** Any Party shall have the right to terminate this Settlement Agreement by providing written notice of their election to do so to all other Parties hereto within 7 days of (a) the Court's denying the motion for entry of the Preliminary Approval Order or modifying it in any material respect, (b) the Court's denial of the motion for entry of the Final Order And Judgment or modifying it in any material respect, (c) denial of certification or modification of the scope of the proposed Class, or (d) an appellate court's reversal of the Final Order And Judgment.

**C. Reversion to Status Quo:** Except as otherwise provided herein, in the event the Settlement Agreement is terminated or ultimately fails to become effective for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective positions in the Action as of September 5, 2020, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement had not been entered into.

#### **IX. SETTLEMENT ADMINISTRATOR**

**A.** Subject to approval by the Court, Class Counsel will retain Analytics LLC as the neutral settlement administrator (the "**Settlement Administrator**").

**B.** The Settlement Administrator's fees and expenses will be paid out of the Settlement Fund. The Settlement Administrator's fees and expenses will be subject to review and approval by Class Counsel. In the event Class Counsel and the Settlement Administrator are unable to agree

as to the amount of appropriate fees and expenses, either may request resolution of the issue by the Court with each side to bear their own fees and expenses.

C. The Settlement Administrator's fees and expenses incurred prior to the Effective Date will be paid from the Settlement Account after the Effective Date. In the event the Court does not issue a Final Order And Judgment, or a Final Order And Judgment is reversed on appeal, Class Counsel and AdvoCare will split the cost of the Settlement Administrator's fees and expenses.

D. AdvoCare is not liable for settlement administration, or any acts or omissions of the Settlement Administrator and/or Class Counsel in connection with settlement administration.

#### X. SETTLEMENT ACCOUNT

A. Within 5 days of the entry of the Preliminary Approval Order, Class Counsel and the Settlement Administrator will open an interest-bearing account (the "**Settlement Account**") at a financial institution agreeable to both Class Counsel and the Settlement Administrator.

B. The Settlement Administrator will have the sole ability to issue checks from or order transfers from the Settlement Account. However, the Settlement Administrator may only issue checks from or order transfers from the Settlement Account with the approval of Class Counsel.

C. AdvoCare will make the Cash Payment and provide security towards the funding of the Settlement Account as follows:

1. Within 14 days after the Court enters the Preliminary Approval Order:
  - a. AdvoCare will pay four million dollars (\$4,000,000.00) into the Settlement Account; and
  - b. AdvoCare will provide to the Class an irrevocable letter of credit (the "**LOC**") to secure the Cash Payment. The issuing bank will be Comerica Bank, N.A.

(“Comerica”). The LOC will be in the total amount of \$6,500,000.00. Class Counsel, as agent and attorney for Megan Cornelius, on her behalf and on behalf of the Class, will be beneficiary of the LOC. If AdvoCare, for any reason whatsoever, fails to pay, in whole or part, the installment payments toward the Cash Payment described below, the Class (through Class Counsel) shall have the right to present the LOC to Comerica and to receive from Comerica the difference between the amount (if any) AdvoCare paid beyond the initial \$4,000,000.00 payment and \$6,500,000.00. To be clear, if AdvoCare misses any of the payments described below, Class Counsel may draw down on the LOC to the full extent of the \$6,500,000.00, less any payments made beyond the initial \$4,000,000.00 payment, even if the date for a payment described below has not yet passed. At the time of the presentation of the LOC by Class Counsel to Comerica, the Class will provide to Comerica a declaration from Class Counsel setting forth the amount of money received from AdvoCare toward the Cash Payment. The LOC shall not expire until (a) February 28, 2023, (b) AdvoCare’s fulfillment of its payment obligations described below, as certified in writing by Class Counsel or (c) the termination of this Settlement Agreement pursuant to Section VII.B, above.

2. On the earlier of (a) seven days after the date of entry of the Distribution Order or (b) September 30, 2022, AdvoCare will pay an additional two-million five hundred thousand dollars (\$2,500,000.00) into the Settlement Account.

3. On the earlier of (a) seven days after the date of entry of the Distribution Order or (b) November 30, 2022, AdvoCare will pay an additional two-million dollars (\$2,000,000.00) into the Settlement Account.

4. On the earlier of (a) seven days after the date of entry of the Distribution Order or (b) January 31, 2023, AdvoCare will pay an additional two-million dollars (\$2,000,000.00) into the Settlement Account.

**D.** Any fees for the maintenance of the Settlement Account will be paid out of the Settlement Account.

**E.** The Settlement Administrator must make the following payments, and only the following payments, out of the Settlement Account:

1. The Final Claims Payments to Class Members;
2. Any Service Award approved by the Court;
3. Any Fee and Expense Award approved by the Court;
4. Any fees and expenses incurred by the Settlement Administrator (including notice costs) in performing its obligations under this Agreement and approved by Class Counsel or the Court;
5. Any fees imposed by the financial institution holding the Settlement Account; and
6. A reversion of funds to AdvoCare if any remain after all of the above have been paid in full.

**F. Closing the Account:** After the balance of the Settlement Account reaches \$0, the Settlement Administrator will close the Settlement Account.

**G. Taxes on Settlement Account:** The Settlement Fund shall constitute a qualified settlement fund within the meaning of Treasury Regulations Sections 1.468B-1 through 1.468B-5, 26 C.F.R. §§ 1.468B-1 through 1.468B-5 (1992). The Parties shall treat the Settlement Fund as qualified settlement funds for all reporting purposes under the federal tax laws. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Settlement Administrator, which is acting as an escrow agent. The Settlement Administrator, as escrow agent, shall timely and properly file

all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation, the returns described in Treas. Reg. Sec. 1.468B-2(k)). Such returns shall be consistent with this subsection and in all events shall reflect that all taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the income earned by the Settlement Fund. Taxes and tax expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and paid without prior order from the Court. The Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from the income earned by the Settlement Fund any funds necessary to pay such taxes, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. Section 1.468B-2(1)(2)). The Settlement Administrator shall maintain accurate records of all expenditures made pursuant to this subsection, and shall provide the records upon request to Class Counsel, Defense Counsel, and the Court. None of the Parties or any of their counsel shall have any responsibility for the payment of taxes described in this subsection. The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this subsection.

**H.** The Settlement Fund shall be within the control and jurisdiction of the Court until such time as it is distributed pursuant to this Settlement Agreement.

**XI. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD**

**A.** Class Counsel shall apply to the Court for a Fee Award, and the Class Representative shall apply to the Court for a Service Award, prior to the Fairness Hearing with sufficient notice to the Class Members for objections to be filed. The fact of and the amount of

these requests, as well as the deadline for Class Members to oppose such requests, will be noted in the Settlement Notice provided to Class Members.

**B.** Any Fee Award and Service Award will be paid out of the Settlement Fund. AdvoCare will not pay any amount of any Fee Award or Service Award, except that AdvoCare will make the Cash Payment that will fund the Settlement Fund. The parties agree that the Service Award shall not exceed \$20,000.

**C.** Class Counsel agree to seek Fee Award of no more than 35% of the amount of the total Cash Payment. Other than this limitation, the Parties have not made any agreement regarding what amount of Fee Award should be paid, nor whether AdvoCare will object to or support any application for a Fee Award.

**D.** Any orders or proceedings relating to any request for a Fee Award or a Service Award shall not operate to terminate or cancel this Settlement Agreement and shall have no effect on the finality of the Final Order And Judgment.

**E.** The Settlement Administrator will pay any Fee Award from the Settlement Account by wire transfer as directed by Class Counsel. Unless the Court directs otherwise, the Settlement Administrator will make that payment within 5 business days of the latter of (a) the expiration of time to appeal the Court's order approving the Fee Award, (b) the Effective Date, and (c) AdvoCare's making the first installment of the Cash Payment.

**F.** The Settlement Administrator will pay any Service Award by check, written in the name of the Class Representative, and will deliver that check via Federal Express to:

R. Adam Swick  
Reid Collins & Tsai LLP  
1301 Capital of Texas Highway, Suite C300  
Austin, Texas 78746

Unless the Court directs otherwise, the Settlement Administrator will make that payment within 5 business days of the latter of (a) the expiration of time to appeal the Court's order approving the Service Award, (b) the Effective Date, and (c) AdvoCare making the first installment of the Cash Payment.

## **XII. FINAL CLAIMS PAYMENTS**

Class Members submitting a valid Claims Form may receive a payment from the Settlement Fund in the amount of their Final Claims Payment. Section XIII.G. provides specific details regarding how the Final Claims Payments are to be calculated.

**A. Final Claims Payments:** The “**Final Claims Payment**” for each Class Member is the Base Claim, subject to the FTC Payment Reduction and the Pro Rata Reduction.

**B. Base Claim:** The Base Claim is the total amount of the Class Member's loss during their entire tenure with AdvoCare, capped by the amount of payments made to AdvoCare during the Class Period, according to the Distributor Master List. Calculation of the Base Claim amount is described in more detail in Section XIII.F, below.

**C. FTC Payment Reduction:** A Class Member's Base Claim will be reduced by the amount paid (if any) to the Class Member from an FTC Fund by the FTC Distribution Deadline to yield the Adjusted Base Claim. Application of the FTC Payment Reduction depends upon AdvoCare obtaining from the FTC reliable and sufficient data regarding payments from the FTC Fund, as described below in Section XIII.F.2. The FTC Distribution Deadline is originally set at September 30, 2022. However, in the event (a) AdvoCare was not reasonably able to obtain data from the FTC regarding payments from the FTC Fund by the existing FTC Distribution Deadline and (b) AdvoCare has good reason to believe it can obtain such data within three months of the existing FTC Distribution Deadline, the Parties may agree to extend the existing FTC Distribution Deadline by three months. If the Parties are unable to agree whether conditions for changing the

existing FTC Distribution Deadline are met, AdvoCare may bring the issue to the Mediator for binding resolution. The FTC Distribution Deadline can be extended more than once.

AdvoCare may not unreasonably delay in seeking information regarding FTC distributions from the FTC Fund, nor may it unreasonably delay in providing that information to the Settlement Administrator. If the Parties are unable to agree whether AdvoCare has unreasonably delayed in this respect, Class Counsel may bring the issues to the Mediator for binding resolution.

**D. Pro Rata Reduction:** If the total amount of Adjusted Base Claims for all Class Members who submit Accepted Claims exceeds the Net Settlement Fund, each Class Member's Adjusted Base Claim will be reduced on a pro rata, proportionate basis, until the total Adjusted Base Claims equals the Net Settlement Fund. The Adjusted Base Claims after any Pro Rata Reductions are the Final Claims Payments.

### **XIII. CLAIMS PROCESS**

**A. Claims Deadline:** Class Members must submit a valid and timely Claims Form to be eligible to receive settlement funds as described herein. To be valid, a Claims Form must be submitted by mail, email, or via the Class Action Website to the Settlement Administrator by the Claims Deadline. To be timely, Claims Forms submitted by mail must be postmarked by the Claims Deadline and received by the Settlement Administrator within 10 days of the Claims Deadline.

Any Class Member who fails to submit a Claims Form before the Claims Deadline will not be entitled to receive any settlement funds but will otherwise be bound by the terms of this Settlement Agreement, including the terms of any Final Order And Judgment and the releases provided for herein.

**B.** The Settlement Notice and the Claims Form will request that the Class Member return the Claims Form to the Settlement Administrator. However, if a Class Member returns a

Claims Form to Class Counsel, Defense Counsel, or AdvoCare, they will forward that Claims Form to the Settlement Administrator, which will treat the Claims Form as if it were sent to the Settlement Administrator by the Class Member as of the date received by Class Counsel, Defense Counsel, or AdvoCare.

**C. Identifying Information:** The Claims Form will ask the Class Members to provide the following information:

- Name;
- Name when the Class Member was an AdvoCare Distributor, if different;
- AdvoCare Distributor ID;
- Date of birth;
- Current mailing address;
- Mailing address when the Class Member was an AdvoCare Distributor, if different;
- Current telephone number;
- Telephone number when the Class Member was an AdvoCare Distributor, if different;
- Current email address the Settlement Administrator can use for contacting the Class Member; and
- Email address at the time the Class Member was an AdvoCare Distributor, if different.

This information is requested for identification and communication purposes only. The failure of a Class Member to provide all of the requested information will not be grounds for a denial of an award, so long as the Settlement Administrator is reasonably satisfied that the claimant is a Class Member. The Settlement Administrator may contact claimants by phone or email to attempt to resolve deficiencies in Claims Forms.

**D. Excluded Forms:** The Settlement Administrator will exclude all Claims Forms that (1) were not submitted by the Claims Deadline, (2) did not contain sufficient information for the Settlement Administrator to become reasonably satisfied that the claimant is a Class Member, or (3) were submitted by persons who are not Class Members.

1. Within 14 days of the Effective Date, the Settlement Administrator will provide electronic copies of all excluded Claims Forms to Class Counsel and lists of (a) all claimants whose Claims Forms were excluded; and (b) all claimants whose Claims Forms were not excluded.

2. If Class Counsel disagrees with any of the Settlement Administrator's exclusion determinations, Class Counsel may confer with the Settlement Administrator regarding the reexamination of a particular exclusion determination. Class Counsel must do this within 7 days of receipt of the information described in the preceding paragraph. If Class Counsel and the Settlement Administrator are unable to resolve a question of which forms should be excluded, Class Counsel may bring the issue to the Court for resolution. The unexcluded claimants will be the "**Accepted Claimants.**"

**E. Accepted Claims List:** Within 7 days of the deadline for Class Counsel to instruct the Settlement Administrator to reexamine an exclusion determination, the Settlement Administrator will provide a list of the accepted claims ("**Accepted Claims List**") to Class Counsel.

**F. Calculating Final Claims Payments:** The Settlement Administrator will calculate Final Claims Payments using the following process:

1. The Settlement Administrator will assess the Base Claims for each Class Member on the Accepted Claims List.

a. The Settlement Administrator will rely on the data provided by AdvoCare regarding Distributor payments and receipts on the Distributor Master List.

b. The Settlement Administrator will calculate Base Claims as follows:

- i. Total the amount of fees the Class Member paid AdvoCare at any time and the amount the Class Member paid AdvoCare for sales aids at any time.
- ii. Total the amount of money the Class Member paid AdvoCare for product at any time (less the amount of fees in (i)). Reduce this amount by the amount of refunds the Class Member received from AdvoCare at any time. Discount this result by 65%. Add the result of (i). This yields the “**Discounted Total Paid.**”
- iii. Total the amount of money the Class Member received from AdvoCare at any time, other than amounts paid for refunds. This is the “**Total Received.**”
- iv. Subtract the Total Received from the Discounted Total Paid. This is the Class Member’s “**Net Loss.**”
- v. Total the amount the Class Member paid AdvoCare during the Class Period for fees, sales aids, and product. This is the “**Claim Cap.**”
- vii. If the Net Loss exceeds the Claim Cap, the Claim Cap becomes the Class Member’s **Base Claim**. If the Claim Cap equals or exceeds the Net Loss, the Net Loss becomes the **Base Claim**.

b. The Settlement Administrator will add a column for the Base Claims to the Accepted Claims List and provide it to Class Counsel (who will also promptly provide it to counsel for AdvoCare) within 14 days of Class Counsel and the Settlement Administrator finalizing the Accepted Claims List.

c. If Class Counsel disagrees with any of the Base Claims, Class Counsel may confer with the Settlement Administrator regarding the reexamination of a particular Base Claim calculation. Class Counsel must do this within 7 days of receipt of the information described in the preceding paragraph. If Class Counsel and the Settlement Administrator are unable to resolve a calculation of Base Claims, Class Counsel may bring the issue to the Court for resolution. In addition, if AdvoCare disagrees with any of the Base Claims, within 5 days of

receipt of the information, it may raise this issue for Class Counsel to confer with the Settlement Administrator, and if AdvoCare and Class Counsel are unable to resolve any issues they may dispute between them on the calculation of Base Claims, then AdvoCare may bring the issue to the Court for resolution.

d. Class Counsel provided to AdvoCare a spreadsheet entitled “Anticipated Distributor Base Claims” on January 20, 2021. The Parties agree that the Base Claims as calculated by the Settlement Administrator should exactly or substantially equal the amounts set forth in column M of this spreadsheet. If the Base Claim for any Class Member differs from the amount set forth in column M, Class Counsel, AdvoCare, and the Settlement Administrator will confer to reach a resolution as to what the Base Claim for the Class Member should be based on accurate information consistent with how Base Claims are calculated as set forth above. Any unresolved differential may be raised with the Court per the preceding paragraph.

2. Once the Settlement Administrator has established the Base Claims for the Accepted Claimants, the Settlement Administrator will determine whether FTC Payment Reductions are necessary.

a. For the Settlement Administrator to apply FTC Payment Reductions, by the FTC Distribution Deadline, AdvoCare must obtain data directly from the FTC establishing which Class Members to whom the FTC directed payments and the amount of those payments from the FTC Fund. Plaintiffs will reasonably cooperate in AdvoCare’s efforts to obtain this information, but AdvoCare’s inability to obtain the information will not preclude further administration of the Settlement. Should the Parties dispute whether Plaintiffs have reasonably

cooperated in AdvoCare's efforts to obtain the information, they may submit the dispute to binding resolution by the Mediator.

b. If AdvoCare is able to provide the data described in the preceding paragraph by the FTC Distribution Deadline to the Settlement Administrator and Class Counsel, the Settlement Administrator will apply the FTC Payment Reductions, meaning the Settlement Administrator will reduce each Base Claim by the amount each Accepted Claimant is identified as having been sent an award from the FTC Fund.

c. After the Settlement Administrator makes its determination based on the applicability of any FTC Payment Reductions, it will provide the information relating to the FTC Payment Reductions to Class Counsel (who will also promptly provide it to counsel for AdvoCare).

d. If Class Counsel disagrees with any of the FTC Payment Reductions identified by the Settlement Administrator, Class Counsel may confer with the Settlement Administrator regarding the reexamination of a particular FTC Payment Reduction. Class Counsel must do this within 7 days of receipt of the information described in the preceding paragraph. If Class Counsel and the Settlement Administrator are unable to resolve an issue regarding the FTC Payment Reduction, Class Counsel may bring the issue to the Court for resolution. In addition, if AdvoCare disagrees with any of the FTC Payment Reductions, within 5 days of receipt of the information, it may raise this issue for Class Counsel to confer with the Settlement Administrator, and if AdvoCare and Class Counsel are unable to resolve any issues they may dispute between them on the FTC Payment Reductions, then AdvoCare may bring the issue to the Court for resolution.

e. The Settlement Administrator will not pay any Final Claims Payments to Accepted Claimants until after the FTC Distribution Deadline, or until after AdvoCare provides the data described above regarding distributions from the FTC Fund, whichever comes first.

3. Once the Settlement Administrator has assessed Base Claims and made any necessary FTC Payment Reductions on the Accepted Claim List, the Settlement Administrator will provide a revised Accepted Claims List to Class Counsel (who will also promptly provide it to AdvoCare). The Settlement Administrator will include in the List identification and contact information regarding each Class Member on the List, their Base Claim Amounts, their FTC Payment Reductions (if any), and their Base Claim Amounts adjusted for the FTC Payment Reductions (the “**Adjusted Base Claims**”). This spreadsheet will also total the Adjusted Base Claims.

4. If Class Counsel disagrees with any of the Adjusted Base Claims, Class Counsel may confer with the Settlement Administrator regarding the reexamination of particular Adjusted Base Claims. If Class Counsel and the Settlement Administrator are unable to resolve an issue regarding the Adjusted Base Claims Amounts, Class Counsel may bring the issue to the Court for resolution. In addition, if AdvoCare disagrees with any of the Adjusted Base Claims, within 5 days of receipt of the information, it may raise this issue for Class Counsel to confer with the Settlement Administrator, and if AdvoCare and Class Counsel are unable to resolve any issues they may dispute between them on the Adjusted Base Claims, then AdvoCare may bring the issue to the Court for resolution.

5. Within 7 days of Class Counsel notifying the Settlement Administrator that their review of the Accepted Claims List is complete or resolution of any reexamination, whichever

is later, the Settlement Administrator will prepare an invoice for its incurred but unpaid fees and expenses (the “**Unpaid Fees and Expenses**”) and a binding estimate of fees and expenses (the “**Estimated Fees and Expenses**”) the Settlement Administrator will incur in distributing Final Claims Payments to the Class Members and otherwise completing its work as Settlement Administrator.

a. At the time the Settlement Administrator provides this invoice and binding estimate to Class Counsel, the Settlement Administrator will calculate the Net Settlement Fund by subtracting the Unpaid Fees and Expenses and the Estimated Fees and Expenses from the amount then existing in the Settlement Account.

b. If, for some reason, any Fee Award or Service Award has not yet been paid, the Settlement Administrator will subtract such amount from the amount existing in the Settlement Account, also. The Settlement Administrator will not distribute Final Claims Payments to Accepted Claimants until any Fee Award and any Service Award has been set by a final, non-appealable order of the Court.

c. The amount of the Settlement Account less the two subtractions described in the preceding two paragraphs, as well as any unpaid account service fees, will be the “**Net Settlement Fund.**”

6. Seven (7) days after providing Class Counsel with the statement of Unpaid Fees and Expenses and the Estimated Fees and Expenses, the Settlement Administrator will calculate the Final Claims Payments. If the total of the Adjusted Base Claims does not exceed the Net Settlement Fund, then the amount of the Adjusted Base Claims become the Accepted Claimants’ Final Claims. Otherwise, the Settlement Administrator must reduce each Adjusted Base Claim on a pro rata basis so that the total of the Adjusted Base Claims equals the Net

Settlement Fund, and those reduced Adjusted Base Claims become the Accepted Claimants' Final Claims. The Settlement Administrator will provide Class Counsel with a spreadsheet (the "**Final Claim List**") including the Final Claims on the Accepted Claim List.

**G. Paying Final Claims Payments and Closing the Settlement Account:**

1. After receiving the Final Claims List, Class Counsel will apply to the Court, on notice to Defense Counsel, for an order (the "**Distribution Order**") approving the Settlement Administrator's administrative determinations concerning: (i) the acceptance and rejection of the claims submitted herein; (ii) the amount of Final Claims Payments; and (iii) approving any fees and expenses not previously applied for.

2. Within 21 days of the entry of the Distribution Order, the Settlement Administrator will cause checks to be issued payable to the Accepted Claimants from the Settlement Account in the amount of their Final Claims as set forth on the Final Claim List. The Settlement Administrator will send, via U.S. Mail to the address indicated on the Claims Form, checks to the appropriate recipients.

3. The checks disseminating the Final Claims Payments will expire 60 days after issuance, and that fact will be noted on the checks. If any of the checks providing Final Claims Payments are not cashed within 60 days of the Claims Administrator issuing the checks, those uncashed checks will become null and void.

4. After the expiration date of the issued Final Claims Payment checks, should the Settlement Account contain any funds after the Settlement Administrator has paid in full (1) the Final Claims Payments to the Accepted Claimants, (2) any Fee Award, (3) any Service Award, (4) any fees charged by the financial institution holding the account, and (5) the Settlement

Administrator's fees and expenses, then the Settlement Administrator will revert those funds to AdvoCare.

**H. Cooperation:** Class Counsel and Defense Counsel shall work together in good faith, as necessary, to resolve any disputes regarding the administration of the Settlement Agreement. AdvoCare agrees to provide reasonable information from its files, as necessary, for Class Counsel and the Settlement Administrator to assess and distribute the appropriate funds to Class Members and otherwise administer the Settlement Agreement.

**I. Movable Deadlines:** The deadlines set forth in this "Claims Process" section requiring action by the Settlement Administrator within a particular period of time may be adjusted by agreement of Class Counsel and Defense Counsel as becomes reasonably necessary. However, the Parties and the Settlement Administrator agree to pursue a prompt distribution of the settlement funds to Class Members.

#### **XIV. MISCELLANEOUS**

**A. Privacy:** The Settlement Administrator shall take reasonable measures to the extent permitted by law to assert and to protect the privacy rights of the Distributors and claimants submitting Claim Forms, including by maintaining the confidentiality and security of, and preventing the unauthorized access or acquisition of, personal information received from AdvoCare or submitted in connection with any claim for benefits pursuant to this Settlement Agreement. In the event of any unauthorized access to or acquisition of personal information concerning any Distributor or claimant as a direct result of the intentional or negligent acts or omission of the Settlement Administrator, the Settlement Administrator shall be responsible for complying with any privacy, data security, or breach notification obligations under state or federal

law, and will be solely responsible for directly providing notice to state agencies, affected Distributors, and/or other persons or entities.

**B. Best Efforts to Effectuate this Settlement:** The Parties agree to cooperate fully with one another in seeking Court approval of the Settlement Agreement and to promptly agree upon and execute all such other documentation as reasonably may be required to obtain final approval by the Court of the Settlement Agreement.

**C. Entire Agreement:** No representations, warranties, or inducements have been made to any of the Parties other than as expressly set forth in this Settlement Agreement. This Settlement Agreement and the exhibits attached hereto constitute the entire agreement between the Parties regarding the subject matter contained herein, and all prior negotiations and understandings between the Parties shall be deemed merged into this Settlement Agreement. The Parties agree that they are not relying on any representation other than those in this Settlement Agreement.

**D. Governing Law:** This Settlement Agreement shall be governed by and interpreted according to the law of the State of Texas with respect to issues of contractual interpretation. Issues relating to class certification, approval of this Settlement Agreement by the Court, Fee Awards, and Service Awards are subject to federal law.

**E. Notice:** Except as otherwise set forth herein, whenever this Settlement Agreement requires or contemplates that the Parties, or any of them, shall give notice to the other, notice shall be provided as follows:

If to Plaintiffs or Class Counsel, then to:

J. Benjamin King: [bking@reidcollins.com](mailto:bking@reidcollins.com)  
R. Adam Swick: [aswick@reidcollins.com](mailto:aswick@reidcollins.com)

If to AdvoCare, then to:

Thomas M. Melsheimer: [tmelsheimer@winston.com](mailto:tmelsheimer@winston.com)

Steven H. Stodghill: sstodghill@winston.com  
John C.C. Sanders, Jr.: jsanders@winston.com  
Rex A. Mann: rmann@winston.com

**F. Authority of Signatories:** The person signing this Settlement Agreement on behalf of each Party represents, warrants, and covenants that he or she has the authority to sign this Settlement Agreement on behalf of that Party and bind that Party to the Settlement Agreement.

**G. Attorneys Consulted:** The Parties have fully discussed the terms and meaning of the signing of this Settlement Agreement with their respective attorneys and fully understand all the provisions and effects of this Settlement Agreement.

**H. No Admission or Waiver:** AdvoCare does not admit any liability by entering this Settlement Agreement, nor that Plaintiffs' substantive claims have any basis, nor that the proposed class should be certified outside the context of settlement. By entering this Settlement Agreement Plaintiffs do not admit that any of AdvoCare's defenses or procedural arguments have any basis.

**I. Admissibility:** This Settlement Agreement and all drafts thereof are subject to Federal Rule of Evidence 408.

**J. Confidentiality and Document Destruction:** Class Counsel and the Settlement Administrator will maintain the Distributor Master List and any individual information received from AdvoCare regarding the Class Members in strict confidence. The Parties will also maintain this Agreement as confidential until such time as this Agreement is submitted to the Court in support of Plaintiffs' Motion for Preliminary Approval.

Dated: January 25, 2021

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