

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

ARcare, Inc., an Arkansas Corporation,
on behalf of itself and all others similarly
situated

Plaintiff,

v.

Alere Home Monitoring, Inc.

Defendant.

No. 4:17-cv-147-KGB

CLASS ACTION SETTLEMENT AGREEMENT

Plaintiff, ARcare, Inc. (“Plaintiff” or “Settlement Class Representative”), on behalf of itself and the Settlement Class (as defined below), and Defendant Alere Home Monitoring, Inc. (“Defendant” or “AHM”) (collectively, the “Parties”), enter into this Class Action Settlement Agreement (“Settlement Agreement”), conditioned upon and subject to approval of the Court as required by Rule 23 of the Federal Rules of Civil Procedure. Settlement Class Counsel (as defined below), the Settlement Class Representative, on behalf of itself and the Settlement Class, and Defendant hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement and upon the Effective Date (as defined below), the Lawsuit (as defined below) and all Released Claims (as defined below) shall be finally and fully settled, compromised, and released, on the following terms and conditions:

RECITALS

1. Plaintiff brought the Lawsuit on behalf of itself and all those similarly situated based on AHM’s alleged transmission of unsolicited facsimiles concerning the availability or quality of its property, goods, or services. The Lawsuit alleges that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), by transmitting unsolicited

facsimile advertisements without providing the requisite opt-out notices. Defendant denies all of the claims and allegations made against AHM in the Lawsuit and denies any and all liability to the Plaintiff and the Settlement Class.

2. On October 24, 2018, the Parties and their respective counsel participated in a full-day mediation. As a result, the Parties were able to reach an agreement in principle to settle on the terms and conditions embodied in this Settlement Agreement.

3. Settlement Class Counsel has conducted investigation and confirmatory discovery relating to the Lawsuit, has analyzed the legal issues in the case, and has engaged in motion practice in connection with the Lawsuit. Settlement Class Counsel believes that the proposed settlement (the “Settlement”) of the Lawsuit, as set forth herein, is fair, reasonable, and adequate, and in the best interests of the Settlement Class and that this Settlement Agreement should be approved by the Court under Federal Rule of Civil Procedure 23(e).

4. Defendant is entering into this Settlement Agreement solely to avoid the costs and uncertainties of continued litigation of the Lawsuit and expressly denies any and all liability stemming from the Lawsuit. Defendant also believes that the Settlement is fair, reasonable, and adequate, and that the Settlement Agreement should be approved by the Court under Federal Rule of Civil Procedure 23(e).

5. The Settlement resolves the Lawsuit in its entirety, without any admission of liability. The Parties intend this Settlement Agreement to bind the Parties and all Settlement Class Members that have not timely and validly excluded themselves, as provided herein, from the Settlement Class.

DEFINITIONS

For purposes of this Settlement Agreement only, the words and terms used in this Settlement Agreement that are expressly defined in this Section or elsewhere in this Settlement Agreement shall have the meaning ascribed to them in those definitions.

6. “CAFA” means the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005), effective February 18, 2005.

7. “Claims” means any and all actual or potential claims, actions, causes of action, suits, counterclaims, cross claims, third-party claims, contentions, allegations, and assertions of wrongdoing, and any demands for any and all debts, obligations, liabilities, damages (whether actual, compensatory, statutory, treble, punitive, exemplary, or otherwise), attorneys’ fees, costs, expenses, restitution, disgorgement, injunctive relief, any other type of equitable, legal or statutory relief, any other benefits, or any penalties of any type whatever, whether known or unknown, suspected or unsuspected, contingent or non-contingent, or discovered or undiscovered, whether asserted in federal court, state court, arbitration, or otherwise, and whether triable before a judge or jury, including, without limitation, under the TCPA, or any other any state, federal, or local law, statute, regulation or common law.

8. “Claim Form” means the claim form to be sent to Settlement Class Members in the form of Exhibit “C” hereto.

9. “Court” means the United States District Court for the Eastern District of Arkansas.

10. “Defendant’s Counsel” means the law firms of Winston & Strawn LLP and Quattlebaum, Grooms & Tull PLLC.

11. “Effective Date” means the date on which all of the following events have occurred: (a) the Court has entered a final judgment approving this Settlement Agreement and

dismissing the Lawsuit, and (b) either: (i) the time to appeal from the Court's final judgment approving this Settlement Agreement has expired and no appeal has been taken; or (ii) if a timely appeal of the Court's final judgment approving this Settlement Agreement is taken, the date on which the final judgment is no longer subject to further direct appellate review if the final judgment has not been reversed in any way. The Settlement shall become final and effective on the Effective Date.

12. "Final Approval Hearing" means the hearing that the Court will conduct to consider whether to grant final approval to this Settlement Agreement. The Final Approval Hearing shall be held at a time, date, and location that will be stated in the Notice and the Preliminary Approval Order.

13. "Final Approval Order and Judgment" means the final order and judgment, substantially in the form of Exhibit "D" hereto, by which the Court finally approves this Settlement Agreement, dismisses the Lawsuit with prejudice, enters a final judgment in accordance with this Settlement Agreement, and makes such other final rulings as are contemplated by this Settlement Agreement.

14. "Lawsuit" means the above-captioned action pending in the Court under Case No. 4:17-CV-00147-KGB.

15. "Net Settlement Fund" means the amount remaining in the Settlement Fund after payment of all notice and settlement administration costs, any Court-approved attorneys' fees and costs award to Settlement Class Counsel, any Court-approved service award to the Settlement Class Representative, and all other costs, expenses, taxes, and fees as contemplated by this Settlement Agreement or as otherwise reasonably incurred to effectuate the Settlement,

with the consent of both Settlement Class Counsel and Defendant's Counsel, or as approved by the Court.

16. "Notice" means the Court-approved notice to be sent to the Settlement Class Members, substantially in the form of Exhibit "B" hereto.

17. "Preliminary Approval Order" means the order, substantially in the form of Exhibit "A" hereto, by which the Court preliminarily approves this Settlement Agreement, directs Notice to the Settlement Class, sets a date for the Final Approval Hearing, and makes such other preliminary rulings as are contemplated by this Settlement Agreement.

18. "Releases" means the releases and covenant not to sue granted by the Releasing Parties to the Released Parties in paragraph 62 of this Settlement Agreement.

19. "Released Claims" means and includes any and all Claims, suits, actions, controversies, demands, and/or causes of action, whatsoever, of every kind, nature, or description, whether in law, in equity or administratively, known or unknown, whether arising under state, federal, or foreign law, that the Releasing Parties ever had, now have, or may have in the future arising out of or relating to the inclusion of any actual or alleged advertising, including but not limited to any language or other information or material advertising the commercial availability or quality of any property, goods, or services, in any and all facsimile transmissions sent by or on behalf of the Released Parties to the Settlement Class that related in any way to the business of AHM, and/or any products, goods, or services offered by AHM. The Released Claims include, but are not limited to, any claims for alleged violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. sec. 227, et seq., or any regulations, orders, or findings of the Federal Communications Commission promulgated pursuant to the TCPA.

20. “Released Parties” means Abbott Laboratories, Alere Inc., Alere Home Monitoring, Inc. (“AHM”), doing business as Acelis Connected Health Services as of February 4, 2019, and any and all of their present, past, or future, direct or indirect, predecessors, owners, successors, assigns, parents, subsidiaries, and affiliates, and any other related entities, associations, limited liability companies, and partnerships (collectively “Released Entities”), and any employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, members, investors, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, facsimile broadcasters (including but not limited to Concord III, L.L.C. and any of its affiliates, officers, directors, employees, and agents), successors in interest, heirs, executors, or assigns of the Released Entities, and any other persons, firms, trusts, corporations, or any other individuals or entities in which any of the above have a controlling interest, to which any of the above is related, or with which they are affiliated (collectively, the “Released Parties”).

21. “Releasing Parties” means the Settlement Class Representative and each and every Settlement Class Member (except as provided in the next sentence), on behalf of themselves and their respective predecessors, successors, assigns, parent corporations, subsidiaries, affiliates, holding companies, divisions, unincorporated business units, joint venturers, partners, insurers, officers, directors, owners, partners, principals, members, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates, trustees, heirs, and beneficiaries. “Releasing Parties” excludes any Settlement Class Member that has timely and validly excluded itself from the Settlement Class pursuant to paragraph 47 hereof.

22. “Settlement Administrator” means KCC LLC, which shall perform the services contemplated by this Settlement Agreement and such other reasonable services to effectuate this Settlement Agreement, as required by law, with the consent of both Settlement Class Counsel and Defendant’s Counsel, or as approved by the Court.

23. “Settlement Class” shall have the meaning set forth in paragraph 33 hereof.

24. “Settlement Class Counsel” means the law firm Carney Bates & Pulliam PLLC.

25. “Settlement Class Member” means a member of the Settlement Class.

26. “Settlement Class Member Eligible for Cash Payment” means a Settlement Class Member that (a) has not timely and validly excluded itself from the Settlement Class pursuant to paragraph 47 hereof, and (b) has timely submitted a valid and approved Claim Form in accordance with paragraph 45 hereof.

27. “Settlement Class Member List” means the list of Settlement Class Members and their last-known facsimile numbers and mailing addresses to be provided by Defendant to Settlement Class Counsel and the Settlement Administrator in the form of an Excel spreadsheet.

28. “Settlement Class Representative” means the Plaintiff, ARcare, Inc.

29. “Settlement Consideration” and “Settlement Fund” each means the total cash consideration of one million dollars (\$1,000,000.00) to be paid by Defendant under this Settlement Agreement.

PROCEDURES FOR APPROVAL OF THE SETTLEMENT

Confirmatory Discovery

30. Settlement Class Counsel has conducted reasonable confirmatory discovery to verify representations made by Defendant as part of the mediation process. Based upon this discovery and Settlement Class Counsel’s independent investigation of the relevant facts and

applicable law, Settlement Class Counsel is able to make a determination that this Settlement is fair, reasonable, and adequate.

31. Within 30 days after the Effective Date, Settlement Class Counsel and the Settlement Administrator shall return to Defendant, or certify their destruction of, all documents and materials provided by Defendant pursuant to the mediation and Settlement Agreement, including the Settlement Class Member List.

Preliminary Approval of the Settlement

32. No later than May 31, 2019, the Settlement Class Representative and Settlement Class Counsel shall submit this Settlement Agreement to the Court and request entry of the Preliminary Approval Order. Entry of the Preliminary Approval Order substantially in the form set forth in Exhibit “A” is a material term of this Settlement Agreement.

33. For purposes of settlement only, the Parties stipulate that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied and that, subject to Court approval, the following Settlement Class should be provisionally certified:

Subscribers of facsimile telephone numbers to which there was a successful transmission of one or more facsimiles by or on behalf of any of the Released Parties from January 1, 2013 through the date of Preliminary Approval of the Settlement Agreement that related in any way to the business of AHM, and/or any products, goods, or services offered by AHM.

Excluded from the class are the Released Parties, attorneys and immediate family members of law firms representing Plaintiff or any judge who may preside over the case.

34. For purposes of settlement only, the Parties stipulate that Plaintiff shall be appointed the Settlement Class Representative and the following attorney shall be appointed Settlement Class Counsel:

Randall K. Pulliam
CARNEY BATES & PULLIAM,
PLLC
519 W. 7th St.
Little Rock, AR 72201

35. Preliminary certification of the Settlement Class and appointment of the Settlement Class Representative and Settlement Class Counsel by the Court shall be binding only with respect to the proposed Settlement. In the event that the proposed Settlement is not approved or does not become final for any reason, including without limitation whether due to a failure or refusal of the Court to approve this Settlement Agreement, a reversal, vacatur, or modification of the Court's approval of this Settlement on appeal, or any other reason, then (a) the Parties shall litigate the Lawsuit as though the Settlement Agreement had never been entered and the Settlement Class had never been certified; (b) the Parties shall revert to their respective positions prior to their execution of this Settlement Agreement and precedent agreement in principle to settle; and (c) the Parties agree that they shall retain all rights, claims and defenses as existed, including all rights to oppose class certification, and that the case shall be returned to the *status quo ante*, prior to October 24, 2018.

36. Upon the Court's preliminary approval of this Settlement Agreement as provided herein, all proceedings in the Lawsuit shall be stayed until further order of the Court; provided, however, that the Parties may conduct such limited proceedings as reasonably necessary to effectuate the terms of this Settlement Agreement.

NOTICE AND SETTLEMENT ADMINISTRATION

Settlement Administrator

37. The Settlement Administrator shall administer various aspects of the proposed Settlement as described in the next paragraphs hereafter and as specified elsewhere in this

Settlement Agreement, including without limitation providing Notice to Settlement Class Members as described in paragraph 42 hereof, establishing and maintaining the Settlement Website, administering the claims and request for exclusion processes and protocols, distributing the Settlement Fund, and returning the remainder of the Settlement Fund to Defendant in the event the proposed Settlement does not become final for any reason.

38. The duties of the Settlement Administrator, in addition to any other responsibilities that are described in this Settlement Agreement, shall include:

- a. Providing Notice to Settlement Class Members as set forth in this Settlement Agreement;
- b. Serving the CAFA notice required under 28 U.S.C. § 1715 within 10 days of the filing of the motion for preliminary approval;
- c. Establishing and maintaining a Post Office Box for (i) the submission of Claim Forms; and (ii) mailed requests for exclusion from Settlement Class Members;
- d. Establishing and maintaining the Settlement Website as a means for Settlement Class Members to obtain notice of and information about the Settlement;
- e. Responding to any inquiries from Settlement Class Members;
- f. Processing and determining the validity of any requests for exclusion by Settlement Class Members;
- g. Providing interim reports on request, and, within 10 days after the Exclusion/Objection Deadline (as defined in paragraph 48 hereof), a Final Report to Settlement Class Counsel and Defendant's Counsel summarizing the

number of requests for exclusion received from Settlement Class Members during that period, the total number of exclusion requests received to date, the names and addresses of all Settlement Class Members who made a request for exclusion, and any other pertinent information requested by Settlement Class Counsel or Defendant's Counsel;

- h. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court affirming its compliance with the notice (including CAFA) and settlement administration provisions of this Settlement Agreement and identifying any Settlement Class Member who timely and validly requested exclusion from the Settlement Class;
- i. Reviewing, determining the validity of, and responding to all Claim Forms submitted, including instituting deficiency protocols, if necessary;
- j. Processing and transmitting distributions from the Settlement Fund as provided in this Settlement Agreement;
- k. Providing interim reports on request and, within 10 days after the Claims Form Deadline (as defined in paragraph 45 hereof), a Final Report to Settlement Class Counsel and Defendant's Counsel that summarizes the number of claims received from Settlement Class Members since the prior reporting period, the total number of claims received to date, the number of any claims granted and denied since the prior reporting period, the total number of claims granted and denied to date, and any other pertinent information requested by Settlement Class Counsel or Defendant's Counsel;

- l. Paying any invoices, expenses, taxes, fees, and other costs as contemplated by this Settlement Agreement or required by law; and
- m. Performing any other settlement administration-related functions reasonably necessary to effectuate this Settlement Agreement, with the consent of both Settlement Class Counsel and Defendant's Counsel, or as approved by the Court.

39. All fees, costs, and other expenses, without limitation, relating to the Settlement Administrator's implementation and administration of this Settlement Agreement (collectively, the "Notice and Settlement Administration Costs") shall be paid from the Settlement Fund. An advance on Notice and Administration Costs shall be paid to the Settlement Administrator in an amount of \$50,000.00 (the "Notice and Settlement Administration Costs Advance"), within 15 days of the entry date of the Preliminary Approval Order. The Notice and Settlement Administration Costs Advance shall be paid and deducted from the Settlement Fund, and shall not increase Defendant's monetary obligation under this Settlement Agreement.

40. In the event this Settlement Agreement is not approved or is terminated, or the proposed Settlement fails to become final and effective for any reason, including without limitation if the final order and judgment is reversed, vacated or modified following any appeal taken therefrom, the Settlement Administrator shall return to Defendant the Notice and Settlement Administration Costs Advance, less notice and settlement administration costs actually incurred.

Notice to Settlement Class Members

41. Defendant shall provide the Settlement Class Member List to the Settlement Administrator and Settlement Class Counsel within 10 days of entry of the Preliminary Approval

Order.

42. Within 30 days of the entry of the Preliminary Approval Order (the “Notice Date”), the Settlement Administrator shall disseminate Notice as follows:

- a. Fax Notice. For those Settlement Class Members for which a facsimile number is available in the Settlement Class Member List, the Fax Notice, in the form attached as Exhibit “E”, shall be disseminated via facsimile, using the facsimile numbers provided in the Settlement Class Member List. In the event the initial facsimile transmission is unsuccessful, one additional attempt to send the Fax Notice via facsimile shall be made.
- b. Mailed Notice. For those entities for which a facsimile number is not available in the Settlement Class Member List and/or Fax Notice was unsuccessful after two attempts, the Notice, in the form attached as Exhibit “B”, shall be disseminated via first class mail, postage prepaid, using the addresses provided on the Settlement Class Member List, as updated through the United States Postal Service’s National Change of Address database. If any mailed Notice is returned as undeliverable with a forwarding address, then the Notice is to be forwarded by mail to the listed forwarding address. If any mailed Notice is returned as undeliverable without a forwarding address, then the Settlement Administrator must attempt to locate the correct address through a reasonable search and must forward the Notice to the address if one is obtained from the search.
- c. Settlement Website. The Settlement Administrator shall post the Notice on the Settlement Website, www.AHMfaxcase.com, and shall ensure that the

Settlement Website contains this Settlement Agreement, the Notice, the Court's Orders, and other appropriate information about the Settlement. The Settlement Administrator shall maintain the Settlement Website until the Effective Date.

43. Settlement Class Counsel reserves all rights to communicate with individual members of the Settlement Class, after certification of the Settlement Class in the Preliminary Approval Order, to assist them in understanding the claims administration process and making a well-informed decision, and nothing herein shall be construed as restricting those rights and responsibilities. Nothing in this Settlement Agreement will affect the right of Defendant and other Released Parties to communicate with Settlement Class Members in the ordinary course of business relating to matters other than the Lawsuit or the proposed Settlement. Any limitations on Defendant and Released Parties' right to communicate with Settlement Class Members regarding the Lawsuit or the proposed Settlement after certification of the Settlement Class in the Preliminary Approval Order are expressly subject to paragraph 71 of this Settlement Agreement.

Submission of Claims by Settlement Class Members

44. Settlement Class Members will be provided an opportunity to submit a Claim Form seeking a distribution from the Settlement Fund calculated in accordance with paragraphs 57-58 hereof. Claim Forms shall be included with the Notices disseminated to Settlement Class Members as provided in this Settlement Agreement. In addition, the Settlement Administrator will provide the Claim Form to any Settlement Class Member upon request and make the form available on the Settlement Website.

45. To be considered for payment, a Claim Form must be completed and signed (either by manual or electronic signature) as detailed herein, and (a) submitted online at the

Settlement Website no later than 120 days after the date of the Preliminary Approval Order, or (b) mailed to the Settlement Administrator at the address specified in the Claim Form and postmarked no later than 120 days after the date of the Preliminary Approval Order (collectively, the “Claims Form Deadline”). A Claim Form will be deemed to have been submitted when posted if received with a postmark date indicated on the envelope, mailed first-class postage prepaid, and addressed in accordance with the instructions. Neither Claims nor Claim Forms are assignable. Settlement Class Members are entitled to submit one (1) Claim Form for each unique facsimile number.

46. If a claimant is not included in the Settlement Class Member List, then the Settlement Administrator shall immediately forward the claim to Defendant, through its counsel, to conduct a reasonable investigation to determine whether the claim is valid. Defendant shall complete the investigation within 14 days of such notice.

Requests for Exclusion and Objections to the Settlement

47. Settlement Class Members have the right to exclude themselves from the Settlement Class and pursue an independent remedy against the Defendant only by complying with the exclusion provisions set forth in this paragraph. A Settlement Class Member may exclude himself, herself, or itself from the Settlement Class by mailing to the Settlement Administrator a written request for exclusion that is postmarked no later than 120 days after the date of the Preliminary Approval Order (the “Exclusion/Objection Deadline”). To be effective, the request for exclusion must include (a) the Settlement Class Member’s full name, facsimile number, telephone number, and mailing address; (b) a clear and unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class; (c) the style of the Lawsuit: “*ARcare, Inc. v. Alere Home Monitoring Inc.*, Case No. 4:17-CV-00147-KGB”; and (d) a signature of an individual authorized to act on the Settlement Class Member’s behalf.

The Settlement Administrator shall provide copies of all timely and valid exclusion requests to Settlement Class Counsel and Defendant's Counsel.

48. Settlement Class Members who do not request exclusion from the Settlement Class have the right to object to the proposed Settlement only by complying with the objection provisions set forth in this paragraph. Settlement Class Members who object to the proposed Settlement shall remain Settlement Class Members, and shall have voluntarily waived their right to pursue any independent remedy against the Defendant and other Released Parties. Any Settlement Class Member who wishes to object to the proposed Settlement must file with the Court, and serve upon Settlement Class Counsel and Defendant's Counsel, a written notice of intent to object that is postmarked no later than the Exclusion/Objection Deadline, i.e. no later than 120 days after the date of the Preliminary Approval Order. To be effective, a notice of intent to object to the proposed Settlement must (a) include the style of the Lawsuit: "*ARcare, Inc. v. Alere Home Monitoring Inc.*, Case No. 4:17-CV-00147-KGB"; (b) contain the full name, mailing address, facsimile number, and telephone number of the Settlement Class Member filing the objection, and signature of an individual authorized to act on its behalf; (c) indicate the specific reasons for the objection; (d) contain the name, address, bar number and telephone number of counsel for the objecting member of the Settlement Class, if represented by an attorney; and (e) state whether the objecting member of the Settlement Class (the "Objector") intends to appear at the Final Approval Hearing either in person or through counsel. Any Settlement Class Member that does not file a timely notice of intent to object in accordance with this paragraph shall waive the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the proposed Settlement. To the extent any Settlement Class Member objects to the proposed Settlement, and such objection is overruled in whole or in part, such

member of the Settlement Class will be forever bound by the Final Approval Order and Judgment.

49. In addition to the information required by the preceding paragraph, a notice of intent to object must contain the following information, if the Objector or its attorney requests permission to speak at the Final Approval Hearing: (a) a list of any and all witnesses whom the Objector may call at the Final Approval Hearing, with the address of each witness and a summary of any proposed testimony; and (b) a detailed description of any and all evidence the Objector may offer at the Final Approval Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Final Approval Hearing. Any Objector must be available for deposition within 40 miles of his, her or its residence, by Class Counsel and/or Defendant's Counsel within 10 business days following the filing of the objection, and the objection must include each date within that period when the Objector will be available and present for deposition. In the event that any Settlement Class Member objects in the manner prescribed herein, Plaintiff and Defendant shall be afforded full opportunity to respond to such objections.

50. Defendant shall have the unilateral right to terminate this Settlement Agreement and all of its payment obligations hereunder, except notice and settlement administration costs actually incurred, if, in the aggregate, more than five percent (5%) of Settlement Class Members elect to exclude themselves from the Settlement Class pursuant to paragraph 47 hereof. Defendant may exercise this right only by delivering written notice of intention to terminate to Settlement Class Counsel no later than seven (7) days following the Exclusion/Objection Deadline.

FINAL APPROVAL OF SETTLEMENT

51. The Settlement is contingent upon entry of a final order and judgment approving the terms and conditions of this Settlement Agreement. No later than 45 days before the date of the Final Approval Hearing, the Settlement Class Representative and Settlement Class Counsel shall file a motion seeking the Court's final approval of the Settlement Agreement. Defendant will not oppose the motion for final approval. Entry by the Court of a final order and final judgment substantially in the form of the Final Approval Order and Judgment set forth in Exhibit "D" is a material term of this Settlement Agreement.

TOTAL SETTLEMENT PAYMENT

52. In consideration for the complete and final settlement of the Lawsuit, the Releases, and other promises and covenants set forth in this Settlement Agreement, and subject to the other terms and conditions thereof, Defendant agrees to pay the Settlement Consideration of one million dollars (\$1,000,000.00), which shall constitute the total amount of the Settlement Fund. In no event shall Defendant be required to pay more than one million dollars (\$1,000,000.00) under this Settlement Agreement. Defendant shall have no other monetary obligation under this Settlement Agreement.

53. Within 30 days of entry of the Final Approval Order and Judgment, Defendant shall transfer by wire the Settlement Consideration, less the amount of the Notice and Settlement Administration Costs Advance previously paid by Defendant pursuant to the Preliminary Approval Order and paragraph 39 hereof, into an account held by an FDIC-insured financial institution (the "Settlement Fund Account"). Settlement Class Counsel and Defendant shall agree on the FDIC-insured financial institution at which the account shall be established.

54. The Settlement Fund Account shall be maintained by the Settlement Administrator as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 *et*

seq. of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund Account or otherwise, including any taxes or tax detriments that may be imposed upon Settlement Class Counsel, Released Parties, or Defendant's Counsel with respect to income earned by the Settlement Fund Account for any period during which the Settlement Fund Account does not qualify as a Qualified Settlement Fund for purposes of federal or state income taxes or otherwise, shall be paid out of the Settlement Fund. The Settlement Class Representative and Settlement Class Counsel, and Defendant and Defendant's Counsel, shall have no liability or responsibility for any taxes arising with respect to the Settlement Fund Account.

55. Any bank fees associated with the Settlement Fund Account shall be paid by the Settlement Administrator from the Settlement Fund.

56. Upon the Effective Date, the Settlement Fund shall vest in, become the property and inure to the benefit of the Settlement Class, to be managed in accordance with this Settlement Agreement, and upon such further orders as the Court may enter.

DISTRIBUTION OF SETTLEMENT FUND TO SETTLEMENT CLASS

57. Within 5 business days after the later of (a) the Effective Date or (b) the date on which all motions for attorneys' fees and service fees are no longer directly appealable, the Settlement Administrator shall determine the amount of the Net Settlement Fund by deducting from the Settlement Fund:

- a. The amount of any attorneys' fees and costs awarded to Settlement Class Counsel;
- b. The amount of any service award to the Settlement Class Representative;

- c. The total amount of Notice and Settlement Administration Costs, inclusive of the amount of the Notice and Settlement Administration Costs Advance;
- d. The amount of any taxes and fees paid pursuant to paragraphs 54 and 55 hereof; and
- e. The amount of any and all other costs, expenses, and other payments not specifically enumerated in subsections (a) through (d) of this paragraph that are expressly contemplated under this Settlement Agreement or are otherwise reasonably necessary to effectuate the Settlement Agreement, with the consent of both Settlement Class Counsel and Defendant's Counsel, or as approved by the Court.

58. The Settlement Administrator shall then calculate the amount to be paid each Settlement Class Member Eligible for Cash Payment from the Net Settlement Fund on a pro rata basis (the "Cash Payment").

59. Within 14 business days after the later of (a) the Effective Date or (b) the date on which all motions for attorneys' fees and service fees are no longer directly appealable, each Settlement Class Member Eligible for Cash Payment shall be mailed the Cash Payment drawn from the Settlement Fund Account.

60. The Cash Payment will be made by check with an appropriate legend to indicate that it is from the Settlement. The Settlement Administrator will prepare and mail checks to Settlement Class Members Eligible for Cash Payment, which shall be valid for 120 days after issuance. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of a Cash Payment whose check is returned by the Postal Service as undeliverable, and will re-mail it once to the updated address.

61. For any unclaimed amounts remaining in the Settlement Fund Account after the first distribution (in other words, any checks that remain uncashed more than 120 after they were mailed to Settlement Class Members Eligible for Cash Payment), a second distribution shall be made to Settlement Class Members that cashed their initial checks if economically feasible. If Settlement Class Counsel and the Settlement Administrator deem a second distribution economically infeasible or if there are funds remaining in the Settlement Fund Account after the stale check date for the second distribution, Settlement Class Counsel shall move the Court for distribution of the remaining funds as a *cy pres* award to a charity agreed to by the Parties and approved by the Court. In no event shall any unclaimed amounts remaining in the Settlement Fund Account after distribution revert to Defendant.

RELEASES AND DISMISSAL OF LAWSUIT

62. For and in consideration of the terms and undertakings herein, the Releasing Parties, their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, employees, officers, directors, owners, and all persons acting for or on their behalf, hereby fully, finally, and forever release, relinquish, and give up (and agree not to directly or indirectly file, retain any recovery for, or pursue) the Released Claims as against the Released Parties. This is a full and general release by the Releasing Parties with respect to the matters described in the Released Claims, including but not limited to Claims for, and recovery of, all damages, costs, losses, attorneys' fees, litigation expenses, and demands of whatever character now known or hereinafter arising out of or in any way related to the allegations in the Lawsuit. This release extends to and includes any claims for civil damages (tort or contract), exemplary or punitive damages, and direct or derivative claims, for any monetary recovery or injunctive relief. Without limiting the foregoing, the Released Claims pursuant to this Settlement Agreement specifically extend to the Released Claims that the

Releasing Parties do not know or suspect to exist in their favor as of or prior to the Effective Date. The Released Parties and the Releasing Parties agree that this paragraph constitutes a waiver of Section 1542 of the California Civil Code and any similar or comparable provisions, rights, and benefits conferred by the law of any state or territory of the United States or any jurisdiction, and any principle of common law. Section 1542 of the California Civil Code provides:

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

The Releasing Parties understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement Agreement, but that they release fully, finally, and forever all Released Claims, and in furtherance of such intention, the release will remain in effect notwithstanding the discovery or existence of any such additional or different facts. The Parties acknowledge (and the Releasing Parties by operation of law shall be deemed to have acknowledged) that the release of unknown Released Claims as set forth herein was separately bargained for and was a key element of the Settlement Agreement.

63. For and in consideration of the terms and undertakings herein, Defendant agrees to fully and irrevocably release and forever discharge the Settlement Class Representative and Settlement Class Counsel from any Claims that have been or could have been asserted in

connection with the Lawsuit that arise from or are related to the Claims alleged in the Lawsuit, and any Claims that arise from or relate to the filing or prosecution of the Lawsuit.

64. Upon entry of the Final Approval Order and Judgment, and pursuant to the terms thereof, the Lawsuit will be dismissed with prejudice as to Defendant, and the Settlement Class Representative and all Settlement Class Members that have not timely and validly excluded themselves from the Settlement Class shall be bound by the final judgment. Dismissal of the Lawsuit with prejudice is a material term of this Settlement Agreement.

NO ADMISSION OF LIABILITY

65. Defendant is entering into this Settlement Agreement and agreeing to the form and content of the related documents solely to compromise and settle the claims brought in the Lawsuit and to avoid the expense and uncertainty of continued litigation in the Lawsuit. Neither this Settlement Agreement nor any of the related documents should be construed as an admission of liability or any type of wrongdoing or misconduct, and Defendant and the Released Parties expressly deny any wrongdoing, misconduct, or liability in the Lawsuit.

ATTORNEYS' FEES, COSTS, AND SETTLEMENT CLASS REPRESENTATIVE SERVICE AWARDS

66. Settlement Class Counsel's entitlement, if any, to an award of attorneys' fees, costs, and/or expenses and Settlement Class Representative's entitlement, if any, to a service award will be determined by the Court. The Settlement shall not be conditioned on Court approval of an award of attorneys' fees, costs, and/or expenses, and/or a service award for Settlement Class Representative. In the event the Court declines any request or awards less than the amounts sought, but otherwise approves the Settlement, the remaining provisions of this Settlement Agreement will continue to be effective and enforceable by the Parties, provided,

however, that Settlement Class Counsel and the Settlement Class Representative retain the right to appeal an award in an amount that is less than requested.

67. No later than 45 days before the date of the Final Approval Hearing, Settlement Class Counsel will file a motion with the Court requesting an award of attorneys' fees not to exceed one-third of the Settlement Consideration, plus reasonable litigation expenses not to exceed \$25,000.00. Settlement Class Counsel will also move for a service award, not to exceed \$5,000.00, for the Settlement Class Representative.

68. Defendant will take no position on any request by Settlement Class Counsel to the Court for an award of attorneys' fees and costs as provided in the preceding paragraph, payable from the Settlement Fund, and a Settlement Class Representative Service Award, not to exceed \$5,000.00, payable from the Settlement Fund.

69. Within 7 days after the later of (a) the Effective Date or (b) the date on which all motions for attorneys' fees and service fees are no longer directly appealable, the Settlement Administrator shall pay from the Settlement Fund Account any Court-approved award of attorneys' fees and costs to Settlement Class Counsel and Court-approved service award to the Settlement Class Representative.

MISCELLANEOUS

Agreement to Effectuate this Settlement

70. This Settlement Agreement is contingent upon the preliminary and final approval of the Settlement by the Court. The Parties agree to use their best efforts to obtain approval of the Settlement and entry of the orders contemplated herein, including, without limitation, the granting of leave to file, for settlement purposes only, papers seeking certification of a Settlement Class and entry of preliminary and final approval orders, and shall do nothing inconsistent therewith. Settlement Class Counsel shall prepare initial drafts of all papers required to obtain

preliminary and final approval. Defendant may, but is not required to, submit a memorandum in support of preliminary and/or final approval.

**Reservation of Rights if this Settlement Agreement
is Not Approved or Becomes Void**

71. If the Settlement is not approved, or fails to become effective for any reason, including without limitation in the event the Final Approval Order and Judgment is reversed, vacated, or modified following any appeal taken therefrom, then: (a) this Settlement Agreement shall become void and have no legal effect, including without limitation paragraph 33 hereof relating to class certification; (b) no act, statement, or filing in furtherance of this Settlement Agreement may be used to support or oppose the certification of any class in the Lawsuit; (c) all the Parties shall be returned to the same position in the Lawsuit that they were in prior to executing the agreement in principle to settle; (d) Defendant shall be entitled to object to certification of any class in this Lawsuit; and (e) the Settlement Administrator shall return to Defendant the full amount paid by Defendant into the Settlement Fund, less reasonable settlement administrative costs and expenses actually incurred.

Integration Clause

72. This Settlement Agreement, and all exhibits to it, constitute the entire agreement between the Parties and can be modified only in writing. This Settlement Agreement supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter of this Settlement Agreement. The Settlement Agreement is an integrated agreement, and no promise, inducement, or agreement separate from this Settlement Agreement has been made to the Parties. The terms of this Settlement Agreement, and all exhibits to it, are binding upon and inure to the benefit of each of the Parties and their respective successors, heirs, and assigns.

Execution in Counterparts

73. This Settlement Agreement may be executed in counterparts, and each counterpart, when executed, shall be deemed to be an original.

Authority to Execute

74. Each signatory to this Settlement Agreement represents and warrants that he or she has authority to execute the Settlement Agreement on behalf of each Party on whose behalf he or she has signed. Each of the Parties agrees that, in return for the agreements herein, such Party is receiving good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged.

No Construction Against the Drafter

75. Each Party has participated in negotiating and drafting this Settlement Agreement through counsel, so if an ambiguity or question of intent or interpretation arises, this Settlement Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party.

Headings

76. The section headings contained in this Settlement Agreement are for the convenience of the reader and shall not affect the meaning or interpretation of this Settlement Agreement. Any inconsistency between the headings used in this Settlement Agreement and the text of the paragraphs of this Settlement Agreement shall be resolved in favor of the text.

Effect of Weekends and Holidays

77. If any date or deadline in this Settlement Agreement falls on a Saturday, Sunday, or federal holiday, the next business day following the date or deadline shall be the operative date.

Choice of Law, Forum, and Stipulation to Jurisdiction

78. This Settlement Agreement, and all exhibits to it, shall be governed by the laws of the State of Arkansas, without regard to the principles thereof regarding choice of law, and the Parties to this Settlement Agreement stipulate that the Court shall retain personal and subject matter jurisdiction over the implementation and enforcement of this Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order and Judgment.

Notices

79. Notices to counsel for the Parties required under this Settlement Agreement shall be sent to:

Randall K. Pulliam, Esq.
CARNEY BATES & PULLIAM,
PLLC
519 W. 7th St.
Little Rock, AR 72201
Settlement Class Counsel

Sean G. Wieber, Esq.
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601
Defendant's Counsel

Receipt of Advice of Counsel

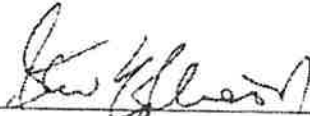
80. Each Party acknowledges, agrees, and specifically warrants that it has fully read this Settlement Agreement, including the Releases, received independent legal advice with respect to the advisability of entering into this Settlement Agreement, and the legal effects of this Settlement Agreement, and fully understands the effect of this Settlement Agreement.

Title: _____ Date _____
For ARcare, Inc.

Title: _____ Date _____
*For Alere Home Monitoring, Inc., doing
business as Acelis Health Connected
Services*

Randall K. Pulliam _____ Date _____
*Counsel for Plaintiff
and the Settlement Class*

Sean G. Wieber _____ Date _____
*Counsel for Defendant Alere Home
Monitoring, Inc.*

 5/3/19

Date

Title: CHIEF EXECUTIVE OFFICER
For ARcare, Inc.

Date

Title:
For Alere Home Monitoring, Inc., doing
business as Acelis Health Connected

 05/08/2019

Date

Randall K. Pulliam
Counsel for Plaintiff
and the Settlement Class

Date

Sean G. Wieber
Counsel for Defendant Alere Home
Monitoring, Inc.

Title:

For ARcare, Inc.

Date

Title:

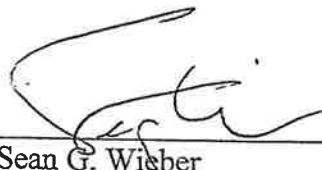
*For Alere Home Monitoring, Inc., doing
business as Acelis Health Connected
Services*

Date

Randall K. Pulliam

*Counsel for Plaintiff
and the Settlement Class*

Date



Sean G. Wieber

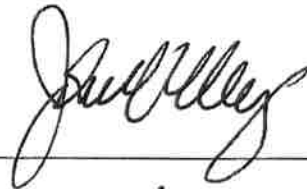
*Counsel for Defendant Alere Home
Monitoring, Inc.*

Date

5/7/2019

Title:
For ARcare, Inc.

Date



5/7/2019

Date

Title: *Vice President & Assistant Treasurer*
For Alere Home Monitoring, Inc., doing
business as Acelis Health Connected
Services

Randall K. Pulliam
Counsel for Plaintiff
and the Settlement Class

Date

Sean G. Wieber
Counsel for Defendant Alere Home
Monitoring, Inc.

Date

