

**SETTLEMENT AGREEMENT**

This Settlement Agreement (this “Agreement”) is made by and between North Tampa Anesthesia Consultants, PA (“NTAC”), Christopher Lombardi, MD (“Lombardi”), Gabriel Perez (“Perez”), and Carlos Giammattei (“Giammattei”) (“the Defendants”) and Scott Babcock and David Montney, Jr., who represent a class of Student Registered Nurse Anesthetists who received clinical credit from Wolford College, LLC by rotating at anesthesia facilities operated by NTAC (“Class Representatives”) (As used in this Agreement, the Defendants and the Class Representatives are each a “Party” and are referred to collectively herein as the “Parties”).

WHEREAS, Class Representatives and those similarly situated were former Student Registered Nurse Anesthetists who received clinical credit from Wolford College, LLC by rotating at NTAC facilities and who were not paid at least the minimum wage pursuant to Fla. Const. Art. X. §24(c).

WHEREAS, prior to the Voluntary Petition, the Class Representatives filed a lawsuit captioned *Scott Babcock and David Montney, Jr. v. North Tampa Anesthesia Consultants, et al.*, Case No. 13-CA-011371 in the Circuit Court of the Thirteenth Judicial District in and for Hillsborough County, FL (“State Court Class Action”).

WHEREAS, on October 29, 2018, the class was certified, Scott Babcock and David Montney, Jr. were appointed Class Representatives, and Ryan Barack and Bradley Rothman were appointed Class Counsel.

WHEREAS, the Defendants have filed an answer and affirmative defenses in the State Court Class Action through which they vigorously deny liability for the claims asserted by the Class Representatives.

EXHIBIT "1"

WHEREAS, NTAC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on March 18, 2020, which has been assigned Case No. 8:10-bk-02101-CPM before the United States Bankruptcy Court for the Middle District of Florida, Tampa Division.

WHEREAS, the Defendants removed the State Court Class Action to Bankruptcy Court pursuant to 28 U.S.C. § 1452, and the State Court Class Action is presently pending before the Bankruptcy Court.

WHEREAS, the Class Representatives filed Proof of Claim No. 6-1 (the “POC”) in the amount of \$6,128,000.00 for damages allegedly arising out of the State Court Class Action and NTAC filed an objection to the POC (the “Objection”), which remains pending before the Bankruptcy Court.

WHEREAS, the Bankruptcy Court entered an Order Confirming the Debtors’ Joint Amended Subchapter V Plan for Reorganization Dated December 14, 2020 (Doc. No. 221) (the “Confirmation Order”) on March 5, 2021, and the Class Representatives commenced an appeal of the Confirmation Order that remains pending before the United States District Court for the Middle District of Florida, Tampa Division (the “Appeal”).

WHEREAS, the Parties have determined that, in light of the facts and circumstances which each such party has considered and evaluated, and in order to avoid the delay, expense and risk of litigation, settlement upon the terms and conditions set forth hereinafter is in the best interest of the Parties.

NOW THEREFORE, for good and sufficient consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Class Treatment.** The Court in the State Court Class Action has already (a) certified a class; (b) appointed Class Representatives; (c) appointed counsel for the Class (“Class

Counsel"); and (d) provided an opportunity for members of the Class to opt out, therefore this matter shall be resolved on a class basis. The Bankruptcy Court shall, consistent with Rule 23, permit class members to object and be heard with respect to this settlement. The Bankruptcy Court shall also hear Class Counsel's motion for attorneys' fees and costs.

**2. Payment.** NTAC shall pay up to the maximum amount of Three Hundred and Fifty Thousand and No/100 Dollars (\$350,000.00) (the "Settlement Amount") on or before June 30, 2022 in full satisfaction and release of all liabilities between the Parties as of the Effective Date of this Agreement.

**3. Settlement Procedures.** The Settlement Amount shall be calculated and paid pursuant to the following procedures.

(a) The Settlement Amount shall include (1) an aggregate total of \$128,152.11 in attorneys' fees and costs, which amount the Parties agree constitutes reasonable attorneys' fees and costs for the services performed by Class Counsel; and (2) up to a maximum of \$7,500.00 to retain and compensate a mutually acceptable settlement administrator ("Settlement Administrator") to assist with the administration of this Agreement.

(b) At least 30 days prior to the fairness hearing, the Parties shall transmit a notice of fairness hearing ("Hearing Notice") and claim form ("Claim Form") in substantially the form attached hereto as **Exhibits "A" and "B"** (collectively, the "Class Notice") to the members of the State Court Class Action.

(c) Members of the Class Action who wish to receive a distribution must timely complete and return the Claim Form. Class members who timely submit a claim form in the required format and provide the required tax information will be presumed entitled to receive the average minimum wage *times* the number of weeks that the claimant is reflected to have rotated at

NTAC facilities subsequent to September 5, 2008 based on the available records *times* 40 hours per week. NTAC may rebut this presumption by demonstrating, at its own expense, that based on the available records a particular class member is entitled to lesser than the amount set forth above based on the number of actual hours rotated at NTAC facilities. Class members who do not timely and properly complete and return a Claim Form will not be entitled to a distribution under this Agreement. All claim forms must be returned within 30 days of mailing by the Settlement Administrator, or by March 1, 2022, whichever is sooner.

(d) If the sum of the amounts set forth in paragraphs 3(a) and (c) exceeds \$350,000.00, the amount payable to each class member will be subject to reduction based on the number of actual hours the claimant is reflected to have rotated at NTAC. If the available records demonstrate that any such reductions are appropriate, such claimant's distribution shall be reduced by an appropriate amount. If, after applying such reductions, the aggregate sum due under this Agreement exceeds \$350,000.00, the amount due each claimant shall be reduced pro rata so that the total amount due under this Agreement does not exceed \$350,000.00.

(e) If the aggregate sum of the amounts set forth in paragraphs 3(a) and (c) does not exceed \$350,000, the Settlement Amount shall be automatically reduced by a corresponding amount and NTAC shall have no obligation to pay more than such reduced Settlement Amount under this Agreement.

**4. Responsibilities of the Settlement Administrator.** The Settlement Administrator shall be responsible for providing the Class Notice to the members of the Class Action and for collecting the returned Claim Forms. In the event that a Class Notice is returned as undeliverable, the Settlement Administrator shall re-mail the Class Notice to the corrected address, if any, of the

intended recipient as may be determined by the Settlement Administrator through a search of a national database or as may otherwise be obtained by the Parties.

**5. Responsibilities of the Parties.**

(a) Class Counsel shall be initially responsible, subject to NTAC's review and approval, for defining the population of the Class entitled to receive payments and for calculating the gross amount due to each Class member pursuant to the terms of this Agreement.

(b) NTAC shall determine, subject to Class Counsel's review and approval, the (1) payroll tax and withholding amounts for each of the individual payments to each member of the Class; and (2) net amount due to each member of the Class.

(c) NTAC will be responsible for (1) paying the Settlement Amount, including the preparation and mailing of settlement checks to each member of the Class pursuant to the terms of this Agreement, on or before June 30, 2022; and (2) withholding, paying, and reporting, as appropriate, of all payroll taxes, and preparing and mailing of all W-2s.

**6. Taxes.**

(a) Payments to Class Members shall be made net of all applicable employment taxes to be withheld from such payments as determined to be due by NTAC, including, without limitation, FICA tax and federal, state, and local income tax withholding.

(b) Payments of Class Counsel's fees in the amount approved by the Court shall be made to Class Counsel without withholding and reported to the IRS and the payee under the payee's name and taxpayer identification number, which such payee shall provide for this purpose, on an IRS Form 1099.

(c) NTAC shall prepare and file all returns, reports, information references, other reporting and other documents with, and remit all necessary taxes to, the tax authorities in

connection with the payments to be made under this settlement so as to ensure compliance with all federal and state tax laws and related reporting requirements. NTAC shall pay the employer portion of any taxes due and such employer portions are not part of the \$350,000.00 settlement amount.

(d) NTAC agrees that they will pay the employer's portions of all taxes due. The Class members shall pay any and all additional taxes that may be due as a result of the payments made by NTAC, and the Class acknowledges that while NTAC will apply applicable withholding to the payments, there may be additional withholdings due. As such, the Class agrees and affirms that they are not relying on any representation made by NTAC concerning whether or not the payment(s) is taxable as wages, as income, or otherwise, or concerning the amount of taxes that they may be required to pay as a result of the payment(s). The Class agrees that they will not be entitled to any additional consideration under this Agreement as a result of any assessment of, or liability for, taxes as a result of the payment(s).

**7. Approval of Settlement and Plan Modification.** The Parties shall jointly move for approval of this Agreement under Federal Rules of Bankruptcy Procedure 9019 and 7023, and NTAC shall move to amend and/or modify the NTAC's plan of reorganization and Confirmation Order to incorporate the terms of this Agreement. This Agreement shall become effective upon the entry of a Final and Non-Appealable order approving this Agreement following a fairness hearing and NTAC's proposed modifications and/or amendments to the plan and Confirmation Order. (the "Effective Date"). As used herein, "Final and Non-Appealable Order" shall mean an order of the United States Bankruptcy Court that has not been reversed, stayed, modified, or amended, and as to which (i) the time to appeal, petition for certiorari, or move for reargument, rehearing, or a new trial has expired and no appeal, petition for certiorari, or motion for reargument,

rehearing, or a new trial, respectively, has been timely filed, or (ii) any appeal, any petition for certiorari, or any motion for reargument, rehearing, or a new trial that has been or may be filed has been resolved by the highest court (or any other tribunal having appellate jurisdiction over the order) to which the order was appealed or from which certiorari or reargument, rehearing, or a new trial was sought, and the time to take any further appeal, petition for certiorari, or move for reargument, rehearing, or a new trial shall have expired without such actions having been taken. If the Effective Date does not occur prior to June 30, 2022, this Agreement shall be deemed null and void and of no further force or effect.

**8. Release.** Upon the Effective Date, all members of the Class, except for any Class Members who Opted-Out (collectively, the “Releasing Parties”), do hereby fully and forever release and discharge the Defendants and their officers, shareholders, directors, members, managers, employees, attorneys, accountants, and other agents, as well as their parents, subsidiaries, affiliates, predecessors, successors, estates, trusts, heirs, and assigns, of and from any and all theories, causes of action, damages or other relief that were brought or asserted or could have been brought or asserted under Fla. Const. Art. X. § 24 and/or Section 448.110 of the Florida Statutes or any other wage-related statute, whether known or unknown, disclosed or concealed, accrued or unaccrued, suspected or unsuspected, real or imagined, asserted or unasserted, contingent or fixed, liquidated or unliquidated, meritorious or scandalous, from the beginning of time through the Effective Date of this Agreement against the Defendants directly or indirectly.

**9. Dismissal of Appeal and State Court Class Action, Resolution of POC and Objection.** Promptly following the Effective Date, the Class Representatives shall cause the Appeal and State Court Class Action to be dismissed, with prejudice, each party to bear its own fees and costs. The Parties agree that following the Effective Date, the POC shall be allowed in

the part and disallowed in part pursuant to the terms of this Agreement, and that the Objection shall be sustained in part and overruled in part consistent with the terms of this Agreement.

**11. Termination.** This Agreement shall terminate without further action of the parties if approval of this Agreement is denied by a Final and Non-Appealable Order of the Court, or the Court's approval of this Agreement is reversed on appeal.

**12. Modification.** This Agreement can be modified only in a writing signed by all of the parties. This Agreement shall constitute the entire understanding between the parties concerning the subject matter of this Agreement and supersedes and replaces all prior negotiations, proposed agreements, and agreements, written or oral, relating to this subject.

**13. Successors.** This Agreement shall bind and benefit each of the parties and their respective predecessors, successors, and assigns.

**14. Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

**15. Execution of Counterparts.** Separate counterparts of this Agreement may be executed by the parties with the same force and effect as if all such parties had executed a single copy of this Agreement.

**16. No Admission of Liability and Limitations on Scope.** This Agreement is intended to settle and dispose of the claims for Minimum Wage under Florida Constitution, Art. X, Sec. 24. of the Class. The Parties' agreement to enter into this Agreement shall not be deemed an admission of liability or wrongdoing.

**17. Further Assurances.** The Parties shall cooperate fully and shall execute and deliver any and all supplemental papers, documents, instruments, and other reasonable assurances,