

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims (the “Agreement”) is made and entered into by and between John Bone (“Mr. Bone”), the National Federation of the Blind, Inc. (“NFB”), Disability Rights North Carolina (“DRNC”), and Nash Hospitals, Inc. (“Nash”). Mr. Bone, NFB, and DRNC are referred to collectively herein as the “Plaintiffs.” NFB and DRNC are referred to collectively herein as the “Organizational Plaintiffs.” Mr. Bone, NFB, DRNC, and Nash are referred to collectively herein as the “Parties” and individually as a “Party.”

### **RECITALS**

**WHEREAS**, Mr. Bone received healthcare services from Nash in December 2016 and June/July 2017;

**WHEREAS**, Mr. Bone, Timothy Miles (“Mr. Miles”), and the Organizational Plaintiffs filed a lawsuit against Nash and the University of North Carolina Health Care System (“UNCHCS”) in an action in the United States District Court for the Middle District of North Carolina, which is styled as case number 1:18-CV-994 (the “Lawsuit”), which includes detailed allegations in support of the Plaintiffs’ claims, all of which are disputed;

**WHEREAS**, the Organizational Plaintiffs’ claims against Nash were dismissed on March 5, 2020, for lack of standing;

**WHEREAS**, Mr. Miles and UNCHCS are not parties to this Agreement;

**WHEREAS**, in order to avoid the uncertainty inherent in litigation, and the attorneys’ fees and other expenses that would be associated with the prosecution and defense of the Lawsuit and other pending and foreseeable disputes, and after good-faith negotiations and the exchange of information, the Parties have agreed to resolve and to settle all controversies between them, including any claims each may have asserted or could have asserted in the Lawsuit, according to the terms and conditions set forth below; and

**WHEREAS**, the Parties further declare and represent that no promise, inducement, or agreement, other than those herein expressed, has been made to the other, and that this Agreement contains the entire agreement between the Parties hereto, and that the terms of this Agreement are contractual and not a mere recital.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the above recitals, which are agreed to be true and are incorporated herein, and the mutual promises and considerations

set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Nature of Agreement. This Agreement is a mutual release and settlement agreement that resolves all disputes between the Parties relating to the Plaintiffs' Claims, as defined below.

2. Exchanges of Consideration. In consideration for the releases and other obligations in this Agreement, the sufficiency of which is acknowledged:

- a. *Immediate Informal Stay.* The Parties agree to postpone all litigation activities in the Lawsuit and to immediately inform the Court that Plaintiffs' claims against Nash have been settled.
- b. *Releases.* The Plaintiffs release claims against the Releasees, as defined below, as further specified below.
- c. *Dismissal.* Plaintiffs' counsel shall promptly move for an order of dismissal under Fed. R. Civ. P. 41(a)(2) with respect to all claims against Nash in the Lawsuit; and this settlement shall not be effective until the Court has granted the motion and ordered the dismissal with prejudice (the "Effective Date").
- d. *Costs and Fees.* Except as may be specifically provided herein, each Party shall bear its own costs and fees incidental in the Lawsuit and preparation of and performance under this Agreement.
- e. *Payment.* Within 21 days of the Effective Date, Nash shall cause the following payments to be delivered:
  - i. To Plaintiffs' Counsel, Holly Stiles, Disability Rights North Carolina, 3724 National Drive, Suite 100, Raleigh, NC 27612: Payment of FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00) by certified check made out to John Bone, which shall be inclusive of all damages from Nash to Mr. Bone; and
  - ii. To Plaintiffs' Counsel, Jessica P. Weber, Brown, Goldstein & Levy, LLP, 120 E. Baltimore Street, Suite 1700, Baltimore, MD 21202: Payment of ONE HUNDRED AND TEN THOUSAND AND NO/100 DOLLARS (\$110,000.00) by wire transfer or certified check made out to Brown, Goldstein & Levy, LLP, which shall be inclusive of all attorneys' fees and costs from Nash to Plaintiffs' counsel.

- f. *Debt Forgiveness.* Any money owed to Nash by Mr. Bone as of the Effective Date is forgiven. As of the date it is signing this Agreement, Nash has in its possession a letter from Sound Physicians of North Carolina, PLLC confirming that it will be forgiving all money owed to it by Mr. Bone as of the Effective Date. Nash shall provide Mr. Bone with a copy of this letter within ten (10) days of the Effective Date.
  - g. *No Confidentiality.* The Parties have expressly negotiated and agree that the terms of this Agreement are not confidential.
3. Releases.
- a. *As to Mr. Bone.* Mr. Bone and his heirs, successors, assigns and attorneys hereby irrevocably release, acquit, and forever discharge Nash, its predecessors, successors, and assigns, and its past and present parent companies, subsidiary companies, affiliates, partners, shareholders, commissioners, directors, officers, employees, attorneys, agents, contractors, medical providers, insurers, representatives, divisions and all other past and present affiliated companies and/or entities, but not including the UNCHCS, (the “Releasees”) from any and all actions, causes of action, claims, demands, liabilities, damages of any kind whatsoever, known or unknown, absolute or contingent, asserted in the Amended Complaint, or unasserted in the Amended Complaint, that arose prior to the Execution Date of this document (“Mr. Bone’s Claims”), and any expenses arising out of or relating to Mr. Bone’s Claims, however denominated. This Release includes any appeal right Mr. Bone may have against Nash. Notwithstanding the foregoing, the Parties do not release the other from any obligations expressly created in this Agreement.
  - b. *As to the Organizational Plaintiffs.* The Organizational Plaintiffs and their respective owners, direct and indirect parents, officers, employees, predecessors, present or former affiliates, heirs, successors, assigns and attorneys hereby irrevocably release, acquit, and forever discharge Nash, its predecessors, successors, and assigns, and its past and present parent companies, subsidiary companies, affiliates, partners, shareholders, commissioners, directors, officers, employees, attorneys, agents, contractors, medical providers, insurers, representatives, divisions and all other past and present affiliated companies and/or entities, but not including the UNCHCS, (the “Releasees”) from any and all actions, causes of action, claims, demands, liabilities, damages of any kind whatsoever, known or unknown, absolute or contingent, asserted in the Amended Complaint, or unasserted in the Amended Complaint, that arose prior to the Execution

Date of this document and are related to Nash's alleged failure to provide alternative formats of print documents ("Organizational Plaintiffs' Claims"), and any expenses arising out of or relating to any Organizational Plaintiffs' Claims, however denominated. This Release includes any appeal right any Organizational Plaintiff may have against Nash. Notwithstanding the foregoing, the Parties do not release the other from any obligations expressly created in this Agreement. Nothing in this Agreement prevents DRNC from advocating for or pursuing claims on behalf of individuals with disabilities, other than those claims released herein.

4. No Admissions. The settlement contemplated by this Agreement is in compromise of disputed claims, and the compromises are not to be construed as admissions of liability on the part of Nash. Nash denies liability and intends merely to avoid litigation and buy its peace.

5. Non-assignment. The Parties each represent that they have not assigned, pledged, or otherwise transferred, in whole or in part, to any person or entity any claim, debt, obligation, loss, right, demand, cause of action, suit, cost, damage, expense, compensation or liability of any kind that would have been covered by their releases set forth above, were it not for such assignment or transfer.

6. Breach of Agreement. The Parties agree and acknowledge that if any party materially breaches any of the commitments made in this Agreement, the non-breaching party or parties may take action to enforce this Agreement and will be entitled to all remedies available under applicable law.

7. Authority. Each Party represents and warrants that (a) it has the power and authority to execute, deliver and perform this Agreement, (b) this Agreement has been duly executed and delivered by it and constitutes its valid and legally binding obligation, enforceable against it in accordance with its terms, (c) the person(s) signing this Agreement have authority to do so, and (d) it has the power and authority to release its claims.

8. Captions/Headings Have No Effect. The captions and headings of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction.

9. Amendments. This Agreement may be amended only by an agreement in writing signed by a duly-authorized representative of each of the Parties.

10. Severability. If any provision of this Agreement is declared illegal, invalid, or unenforceable by a court having competent jurisdiction, it is mutually

agreed that this Agreement shall endure except for the part declared invalid or unenforceable by order of such court; provided, however, that in the event that the terms and conditions of this Agreement are materially altered, the Parties will, in good faith, renegotiate the terms and conditions of this Agreement to reasonably replace such invalid or unenforceable provisions in light of the intent of this Agreement.

11. Waiver. Any delay or failure in enforcing a Party's rights under this Agreement, or any acquiescence as to a particular default or other matter, shall not constitute a waiver of such Party's rights to the enforcement of such rights, nor operate to bar the exercise or enforcement thereof at any time or times thereafter, except as to an express written and signed waiver as to a particular matter for a particular period of time.

12. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed to constitute an original and all of which, when taken together, shall constitute one and the same Agreement. A facsimile or electronically scanned copy of a signature to this agreement shall be deemed and treated for all purposes to be as valid as an original signature hereto.

13. Representations and Warranties. Each Party hereby represents and warrants that he or it (a) has read this Agreement in its entirety, or in the case of Mr. Bone it has been read to him, and that it fully understands and voluntarily adopts as its own the representations and statements it makes herein, (b) has had the opportunity to confer with legal counsel concerning the terms and conditions of the Agreement, (c) has had the benefit of advice and assistance of counsel with respect to the terms and conditions of this Agreement and with respect to the negotiation of such terms and conditions, (d) knowingly and voluntarily, of its own free will and without any duress, being fully informed after due deliberation, accepts the terms and conditions of this Agreement and signs the same as its own free act, for the purpose of making full withdrawal, compromise, and settlement of all claims, and (e) agrees to be bound by the terms and conditions of this Agreement.

14. Construction. The terms and language of this Agreement are the result of arm's length negotiations between the Parties and each Party has had the opportunity to participate in the drafting of this Agreement. Consequently, there shall be no presumption that any ambiguity in this Agreement should be resolved in favor of one Party against the other. Any controversy concerning the construction of this Agreement shall be decided neutrally without regard to authorship.

15. Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any and all prior agreements and understandings,

whether oral or written, between the Parties with respect to the subject matter of this Agreement.

16. Enforcement; Governing Law. The Parties agree that any dispute arising under this Agreement shall be heard exclusively in the State Courts seated in Guilford County, North Carolina or Federal Courts seated in the Middle District of North Carolina. This Agreement shall be construed in accordance with and be governed by the internal laws of the State of North Carolina, without regard to principles of conflicts of law.

**IN WITNESS WHEREOF**, and intending to be legally bound, this Agreement has been executed by the duly authorized representatives of the Parties.

This the 30th day of November \_\_\_\_\_, 2020.

[SIGNATURE PAGE TO FOLLOW]

THE NATIONAL FEDERATION OF  
THE BLIND, INC.

DISABILITY RIGHTS NORTH  
CAROLINA

By: 

By: 

Name: Mark A. Riccobono

Name: Holly Stiles

Title: President

Title: Litigation Counsel

NASH HOSPITALS, INC.

By: 

Name: L. Lee Isleup

Title: President and CEO



John Bone