

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

COLLEEN WITMER,

Plaintiff,

v.

H.I.G. CAPITAL, L.L.C.; H.I.G. SURGERY CENTERS, LLC; H.I.G. BAYSIDE DEBT & LBO FUND II; BCPE SEMINOLE HOLDINGS LP; BAIN CAPITAL INVESTORS, LLC; BAIN CAPITAL PRIVATE EQUITY, LP,

Defendants,

and

SURGERY PARTNERS, INC.,

Nominal Defendant.

C.A. No. 2017-0862-LWW

**STIPULATION AND AGREEMENT OF SETTLEMENT, COMPROMISE AND RELEASE**

This Stipulation and Agreement of Settlement, Compromise and Release (together with the exhibits hereto, the “*Stipulation*,” or “*Settlement Agreement*”), dated as of November 22, 2021, is entered into by and among the following parties, by and through their respective undersigned counsel, to the above-captioned action (the “*Action*”): (i) plaintiff Colleen Witmer (“*Plaintiff*”); (ii) defendants HIG Capital, L.L.C., H.I.G. Surgery Centers, LLC, and H.I.G. Bayside Debt & LBO Fund

II, LLP (collectively, “**HIG**”); (iii) defendants BCPE Seminole Holdings LP, Bain Capital Investors, LLC, and Bain Capital Private Equity, LP (collectively, “**Bain**” and, together with HIG, “**Defendants**” and each a “**Defendant**”); and (iv) nominal defendant Surgery Partners, Inc. (“**Surgery Partners**” or the “**Company**” and, together with Plaintiff and Defendants, the “**Settling Parties**” and each a “**Settling Party**”). Subject to the approval of the Court of Chancery of the State of Delaware (the “**Court**”) and the terms and conditions expressly provided herein, this Stipulation is intended to dismiss the Action with prejudice and to fully, finally, and forever compromise, discharge, settle, and release all Released Plaintiff’s Claims, Released Defendants’ Claims, and Released Defendants’ Cross-Claims (as those terms are defined below).

**WHEREAS:**

A. On May 9, 2017, Surgery Partners entered into three transactions whereby (i) Surgery Partners agreed to acquire National Surgical Healthcare, Inc. from Irving Place Capital for approximately \$760 million; (ii) HIG agreed to sell all of its common shares of Surgery Partners to Bain at a price of \$19 per share for a total purchase price of approximately \$502.7 million; and (iii) Surgery Partners agreed to issue and sell to Bain 310,000 shares of a newly created class of Series A Preferred Stock at a price of \$1,000 per share for a total purchase price of \$310 million (the “**Transactions**”);

B. On May 11, 2017, Surgery Partners filed a Form 8-K disclosing the terms of the Transactions;

C. On December 4, 2017, the original plaintiff, Melvyn Klein (“*Plaintiff Klein*”), filed a Verified Class Action and Derivative Complaint (the “*Complaint*”), purporting to bring claims directly on behalf of minority stockholders, and derivatively on behalf of Surgery Partners, against HIG, Bain, Michael Doyle, Matthew Lozow, Adam Feinstein, Teresa DeLuca, and Brent Turner;

D. The Complaint alleged, among other things, that HIG, as then-controlling stockholder of Surgery Partners, breached its fiduciary duty by causing Surgery Partners to enter into the Transactions and that Bain aided and abetted that alleged breach;

E. On January 2, 2018, Surgery Partners, HIG, Bain, Michael Doyle, Matthew Lozow, Adam Feinstein, Teresa DeLuca, and Brent Turner filed their motions to dismiss the Complaint;

F. On April 17, 2018, Plaintiff Klein voluntarily dismissed the claims against Adam Feinstein and Teresa DeLuca without prejudice;

G. On September 17, 2018, the Court entered an order approving a stipulation dismissing the claims against Matthew Lozow and Brent Turner with prejudice as to Plaintiff in this Action only;

H. On December 19, 2018, after briefing and oral argument, the Court issued a Memorandum Opinion denying the motions to dismiss with respect to the derivative claim for breach of fiduciary duty against HIG and the derivative claim for aiding and abetting that alleged breach of fiduciary duty against Bain, and granting the motions to dismiss with respect to all other claims, including a dismissal with prejudice of the breach of fiduciary duty claim asserted against Michael Doyle;

I. Following the Court's decision on the motions to dismiss, the Settling Parties engaged in extensive discovery. Plaintiff Klein served document requests and interrogatories on Defendants and Surgery Partners and document subpoenas on numerous non-parties. Defendants also served document requests and interrogatories on Plaintiff Klein. In total, Plaintiff's Counsel received and reviewed over 157,000 documents, totaling more than 2.5 million pages. Plaintiff's Counsel conducted 19 fact witness depositions of relevant parties and non-parties. Defendants deposed Plaintiff Klein. Plaintiff Klein and Defendants also exchanged opening and rebuttal expert witness reports (with Bain's expert witness also providing a third sur-rebuttal report), and conducted lengthy depositions of each expert witness;

J. On June 18, 2019, counsel for the Settling Parties participated in a mediation session before retired United States District Court Judge Layn R. Phillips. In advance of that session, the Settling Parties provided Judge Phillips with detailed

mediation statements and exhibits that addressed the issues of liability and damages in the Action. The session ended without any agreement being reached;

K. On May 12, 2021, counsel for the Settling Parties participated in a second mediation session before Judge Phillips and David Murphy, a former partner of the Wachtell Lipton law firm and a highly respected and experienced mediator in complex stockholder actions, following the completion of fact discovery. Plaintiff and Defendants provided Judge Phillips and Mr. Murphy with updated mediation statements and exhibits, but the session again ended without any agreement being reached;

L. On August 9, 2021, Defendants filed their respective Motions for Summary Judgment and supporting briefs and exhibits;

M. On August 24, 2021, HIG filed a Suggestion of Death upon learning that Plaintiff Klein had died the previous month. The same day, Plaintiff's counsel filed a Motion for Stay of the Action to arrange for an intervening substitute plaintiff;

N. On August 30, 2021, the Court entered a stipulated order granting Plaintiff Witmer's motion to intervene as representative plaintiff, and Plaintiff adopted the operative Complaint as her own;

O. Plaintiff filed her Omnibus Answering Brief in Opposition to Summary Judgment on September 13, 2021, and Defendants filed their respective Reply Briefs in Support of Summary Judgment on October 4, 2021;

P. On October 20, 2021, after arm's-length negotiations facilitated by Judge Phillips and Mr. Murphy, Plaintiff and Defendants, who were all represented by counsel with significant experience and expertise in stockholder litigation, agreed on the principal terms of this Stipulation and executed a term sheet (the "*Term Sheet*") summarizing the proposed terms under which this Action could be resolved. The Settlement set forth herein (the "*Settlement*") reflects the results of the Settling Parties' negotiations;

Q. Plaintiff brought her claims in good faith and continues to believe that her claims have merit but, based upon Plaintiff's and Plaintiff's Counsel's investigation, including a review of the documents produced in response to Plaintiff's discovery requests, the expert reports, and all of the deposition testimony, and taking into consideration the risks of continued litigation and the relative costs and benefits to Surgery Partners of continuing the Action, Plaintiff and Plaintiff's Counsel have determined that the Settlement is fair, reasonable, adequate, and in the best interests of Surgery Partners and its stockholders. Based on Plaintiff's oversight of the prosecution of the Action, and with the advice of Plaintiff's Counsel, Plaintiff has agreed to settle, compromise, waive and release the claims that were asserted or could have been asserted in the Action pursuant to the Settlement, after considering (a) the substantial financial benefit provided under the proposed Settlement; (b) the uncertain outcome, inherent delays, and significant risks of continued litigation; and

(c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation;

R. Defendants have defended this Action in good faith, and have denied, and continue to deny, each and all of the claims and contentions alleged by Plaintiff in the Complaint, including any and all allegations of wrongdoing, allegations of liability, and the existence of any damages asserted in the Complaint or arising from the Action or the claims asserted therein. Without limiting the generality of the foregoing, Defendants have denied, and continue to deny, that they have committed any breach of fiduciary duty or have aided and abetted any breach of fiduciary duty, and each Defendant expressly maintains that it has diligently and scrupulously complied with its statutory, fiduciary, and other legal duties;

S. Defendants, solely to avoid the burden, expense, disruption, and distraction of further litigation, and without admitting the validity of any allegations made by Plaintiff in the Complaint, or any liability with respect thereto, have concluded that it is desirable that the Released Plaintiff's Claims be settled on the terms reflected in this Stipulation; and

T. Each of the Settling Parties recognizes and acknowledges that the Action has been brought by Plaintiff in good faith and defended by Defendants in good faith and that the Action is being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, reasonable, and adequate.

**NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED,** by and among the Settling Parties, by and through their respective undersigned counsel and subject to the approval of the Court, that, in consideration of the benefits flowing to the Settling Parties from the Settlement, all Released Plaintiff's Claims as against the Released Defendants' Persons, and all Released Defendants' Claims as against the Released Plaintiff's Persons, and all Released Defendants' Cross-Claims as against other Released Defendants' Persons, shall be, and hereby are, compromised, settled, discharged and released, upon and subject to the terms and conditions set forth below.

### **DEFINITIONS**

1. In addition to the terms defined above, as used in this Stipulation, the following additional terms have the meanings specified below:

(a) "Bain Account" means a segregated, U.S.-based interest-bearing account designated for the deposit of the Bain Settlement Amount.

(b) "Bain Settlement Fund" means the Bain Settlement Amount plus any interest earned thereon.

(c) "Bain Settlement Amount" means \$12,500,000.

(d) "Bain's Counsel" means the law firms of Ross Aronstam & Moritz LLP and Paul, Weiss, Rifkind, Wharton & Garrison LLP.



(e) “Effective Date – Bain” means the first date by which all of the following events and conditions have been met and have occurred or have been waived:

- i. the Court has entered the Scheduling Order, substantially in the form set forth in Exhibit A attached hereto;
- ii. Bain has caused the Bain Settlement Amount to be paid into the Bain Account;
- iii. Plaintiff has not exercised her option to terminate the Settlement as to Bain pursuant to paragraph 23 below;
- iv. Bain has not exercised its option to terminate the Settlement pursuant to paragraph 23 below; and
- v. the Court has approved the Settlement as to Bain as described herein, following Notice to Surgery Partners stockholders and the Settlement Hearing, and entered the Judgment, substantially in the form set forth in Exhibit C attached hereto (or a substantially similar Judgment as to the Released Bain Persons only), and such Judgment has become Final.

(f) “Effective Date – Cross-Claims” means the first date by which both the Effective Date – HIG and the Effective Date – Bain have occurred.

(g) “Effective Date – HIG” means the first date by which all of the following events and conditions have been met and have occurred or have been waived:

- i. the Court has entered the Scheduling Order, substantially in the form set forth in Exhibit A attached hereto;
- ii. HIG has caused the HIG Settlement Amount to be paid into the HIG Account;
- iii. Plaintiff has not exercised her option to terminate the Settlement as to HIG pursuant to paragraph 23 below;
- iv. HIG has not exercised its option to terminate the Settlement pursuant to paragraph 23 below; and
- v. the Court has approved the Settlement as to HIG as described herein, following Notice to Surgery Partners stockholders and the Settlement Hearing, and entered the Judgment, substantially in the form set forth in Exhibit C attached hereto (or a substantially similar Judgment as to the Released HIG Persons only), and such Judgment has become Final.

(h) “Fee and Expense Application” means the application by Plaintiff’s Counsel to be filed with the Court for an award of attorneys’ fees and reimbursement of litigation expenses to Plaintiff’s Counsel.

(i) “Fee and Expense Award” means any attorneys’ fees or expenses awarded by the Court in response to the Fee and Expense Application.

(j) “Final” with respect to the Judgment (as defined below) or any other court order means: (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal of the Judgment or order; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the Judgment or order is finally affirmed on appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to attorneys’ fees or expenses shall not in any way delay or preclude the Judgment from becoming Final.

(k) “HIG Account” means a segregated, U.S.-based interest-bearing account designated for the deposit of the HIG Settlement Amount.

(l) “HIG Settlement Fund” means the HIG Settlement Amount plus any interest earned thereon.

(m) “HIG Settlement Amount” means \$32,500,000.

(n) “HIG’s Counsel” means the law firms of Young Conaway Stargatt & Taylor, LLP and Quinn Emanuel Urquhart & Sullivan, LLP.

(o) “Judgment” means the final judgment, substantially in the form attached hereto as Exhibit C, to be entered by the Court approving the Settlement.

(p) “Notice” means the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B.

(q) “Notice Costs” means all costs, fees, and expenses related to providing notice of the Settlement to Company stockholders.

(r) “Person” means any individual, corporation, professional corporation, limited liability company, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, heir, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, or any other business or legal entity.

(s) “Plaintiff’s Counsel” means the law firms of Block & Leviton LLP and Heyman Enerio Gattuso & Hirzel LLP.

(t) “Released Defendants’ Claims” means all claims and causes of action of every nature and description that any Released Defendants’ Person may have, whether known claims or Unknown Claims, including, but not limited to, any claims arising under state or federal statutory or common law or equity, that arise out of, are based upon, or relate to the institution, prosecution, or settlement of the claims asserted in the Action; *provided, however,* that the Released Defendants’ Claims shall not include any claims arising out of, based upon, or relating to the enforcement of this Stipulation or the Settlement, and shall not include claims, if any, that any Released Defendants’ Person(s) may have against its or their insurer(s), but only with respect to such insurers’ obligation(s) to fund any portion of the HIG Settlement Amount or Bain Settlement Amount, as relevant, or to reimburse attorneys’ fees or expenses related to the Action, and subject to any separate agreement(s) with such insurer(s).

(u) “Released Defendants’ Cross-Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, including, but not limited to, any claims for contribution arising under state or federal statutory or common law or equity, that any Released Defendants’ Person may have against any other Released Defendants’ Person that are based upon, arise out of, relate in any way to, or involve directly or indirectly, any matters that were alleged or could have been alleged in the Action, including but not limited to all

causes of action arising from or relating to the Transactions; *provided, however*, that the Released Defendants' Cross-Claims shall not include any claims to enforce this Stipulation or the Settlement and shall not include claims, if any, that any Released Defendants' Person(s) may have against its or their insurer(s), but only with respect to such insurer(s) obligations to fund any portion of the HIG Settlement Amount or Bain Settlement Amount, as relevant, or to reimburse attorneys' fees or expenses related to the Action, and subject to any separate agreement(s) with such insurer(s).

(v) "Released Bain Persons" means Bain (as defined above) and each of their respective current and former members, principals, parents, affiliates, associated entities, subsidiaries, officers, directors, agents, advisors, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, fiduciaries, immediate family members, insurers, reinsurers, financial advisors, accountants and attorneys.

(w) "Released Defendants' Persons" means the Released Bain Persons, the Released HIG Persons, all persons named at any time as defendants in this Action, the Company, and the Company's current and former parents, affiliates, associated entities, subsidiaries, officers, directors, agents, advisors, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, fiduciaries, immediate family members, insurers, reinsurers, financial advisors, accountants, and attorneys.

(x) “Released HIG Persons” means HIG (as defined above) and each of their respective current and former members, principals, parents, affiliates, associated entities, subsidiaries, officers, directors, agents, advisors, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, fiduciaries, immediate family members, insurers, reinsurers, financial advisors, accountants and attorneys.

(y) “Released Persons” means each and any of the Released Defendants’ Persons and each and any of the Released Plaintiff’s Persons.

(z) “Released Plaintiff’s Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including any known or Unknown Claims, that (i) Plaintiff or Plaintiff’s predecessor asserted in the Complaint; (ii) the Released Plaintiff’s Persons could have asserted directly on their own behalf; or (iii) Plaintiff, Plaintiff’s predecessor, any Released Plaintiff’s Person, or any other stockholder could have asserted derivatively on behalf of the Company, or that the Company

could have asserted directly, in any court, tribunal, forum or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other applicable law or rule, arising out of, in connection with, based upon, or relating in any way to, or involving directly or indirectly, any facts, matters, events, representations, acts or omissions that were alleged or could have been alleged in the Action, including, but not limited to, all causes of action arising out of, in connection with, based upon, or relating to the Transactions; *provided, however*, that the Released Plaintiff's Claims shall not include any claims to enforce this Stipulation or the Settlement. For the avoidance of doubt, the Released Plaintiff's Claims include only claims belonging to Plaintiff or Surgery Partners, or that could be asserted derivatively on behalf of Surgery Partners, and any direct claims that could be asserted by Released Plaintiff's Persons, and do not include (i) any direct claims of any other stockholder of Surgery Partners, including any claims arising out of, based upon, or relating to the federal or state securities laws; or (ii) any claims, if any, that any party may have against any insurer with respect to obligations to fund the Bain Settlement Amount or HIG Settlement Amount or any portion thereof.

(aa) "Released Plaintiff's Persons" means Plaintiff, Melvyn Klein (and his estate and/or successors-in-interest), and their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors,



assigns, assignees, partnerships, partners, trustees, trusts, employees, immediate family members, heirs, insurers, reinsurers, and attorneys.

(bb) “Releases” means the releases set forth in paragraphs 7 - 10 of this Stipulation.

(cc) “Scheduling Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court scheduling the Settlement Hearing (as defined herein) and directing that notice of the Settlement be provided to Company stockholders.

(dd) “Settlement Hearing” means the hearing set by the Court to, among other things, consider final approval of the Settlement.

(ee) “Surgery Partners’ Counsel” means Ropes & Gray LLP and Potter Anderson & Corroon LLP.

(ff) “Total Settlement Amount” means \$45,000,000.

(gg) “Unknown Claims” means any Released Plaintiff’s Claims which any Plaintiff or Released Plaintiff’s Person does not know or suspect to exist in his, her or its favor at the time of the release of such claims and any Released Defendants’ Claims or Released Defendants’ Cross-Claims which any Defendant or Surgery Partners does not know or suspect to exist in its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all

Released Plaintiff's Claims, Released Defendants' Claims, and Released Defendants' Cross-Claims, the Settling Parties stipulate and agree that they shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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.

The Settling Parties acknowledge that the foregoing waiver was separately bargained for and a key element of the Settlement.

### **THE SETTLEMENT CONSIDERATION**

2. In consideration for the full settlement, satisfaction, compromise, and release of all Released Plaintiff's Claims against the Released Defendants' Persons and the dismissal with prejudice of the Action, the Settling Parties have agreed to the following:

- (a) Not later than ten (10) business days prior to the date of the Settlement Hearing:
  - i. Bain shall provide Plaintiff's Counsel with satisfactory evidence that the Bain Settlement Amount has been

deposited in the Bain Account for payment on the schedule specified herein in the event the Settlement as to Bain is approved by the Court. The Bain Settlement Fund, less any Fee and Expense Award as described in paragraphs 18 - 21 of this Stipulation, and/or less any reserve to account for any potential future awards to Plaintiff's Counsel, and less any applicable federal, state, and/or local taxes on any interest earned by the Bain Settlement Amount while on deposit in the Bain Account, shall be transferred from the Bain Account to Surgery Partners no later than five (5) business days following the Effective Date – Bain.

- ii. HIG shall provide Plaintiff's Counsel with satisfactory evidence that the HIG Settlement Amount has been deposited in the HIG Account for payment on the schedule specified herein in the event the Settlement as to HIG is approved by the Court. The HIG Settlement Fund, less any Fee and Expense Award as described in paragraphs 18 - 21 of this Stipulation, and/or less any reserve to account for any potential future awards to Plaintiff's Counsel, and less any applicable federal, state, and/or local taxes on any

interest earned by the HIG Settlement Amount while on deposit in the HIG Account, shall be transferred from the HIG Account to Surgery Partners no later than five (5) business days following the Effective Date – HIG.

3. HIG's only monetary obligations under the Settlement shall be to cause the HIG Settlement Amount to be deposited into the HIG Account and to cause the transfer of the HIG Settlement Fund to Surgery Partners as described above in Paragraph 2(a)(ii). Bain's sole monetary obligation under the Settlement shall be to cause the Bain Settlement Amount to be deposited into the Bain Account and to cause the transfer of the Bain Settlement Fund to Surgery Partners as described above in Paragraph 2(a)(i).

4. If Bain materially defaults in its payment of the Bain Settlement Amount or other obligations under the Settlement, the Settlement as to the claims against the Released Bain Persons will be of no force and effect, but the Settlement as to the claims against the Released HIG Persons will remain effective upon the Effective Date – HIG, and in such event, any damages awarded against the Released Bain Persons shall be reduced, in accordance with 10 *Del. C.* § 6304(a)&(b), by the greater of the HIG Settlement Amount or HIG's *pro rata* share of liability, with Plaintiff providing any release necessary for that purpose, to ensure that HIG is not made to pay any amount greater than the HIG Settlement Amount.

5. If HIG materially defaults in its payment of the HIG Settlement Amount or other obligations under the Settlement, the Settlement as to the claims against the Released HIG Persons will be of no force and effect but the Settlement as to the claims against the Released Bain Persons remain effective upon the Effective Date – Bain, and in such event, any damages awarded against the Released HIG Persons shall be reduced, in accordance with 10 *Del. C.* § 6304(a)&(b), by the greater of the Bain Settlement Amount or Bain’s *pro rata* share of liability, with Plaintiff providing any release necessary for that purpose, to ensure that Bain is not made to pay any amount greater than the Bain Settlement Amount.

6. It is expressly agreed and understood that the Total Settlement Amount is an “all-in” payment, and that neither Defendant shall be required to make any payments or contributions to the Total Settlement Amount in excess of its respective Settlement Amount defined in paragraphs 1(c) and 1(m). HIG and Bain shall not be liable for any other amounts, including any petition by Plaintiff’s Counsel for attorneys’ fees and expenses. HIG and Bain agree that Surgery Partners will not directly or indirectly pay any portion of the HIG Settlement Amount or Bain Settlement Amount, or indemnify any Defendant for payment that such Defendant may be required to make toward the Total Settlement Amount.

## RELEASE OF CLAIMS

7. The obligations incurred pursuant to this Stipulation are in consideration of the full and final disposition of the Action as against Defendants and the Releases provided for herein.

8. Without further action by anyone, upon the Effective Date – Bain:

(a) Surgery Partners, the Released Plaintiff's Persons, and all of their respective current or future estates, successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, whether now existing or later determined, and each and every stockholder of Surgery Partners, derivatively on behalf of Surgery Partners, and on behalf of themselves and their respective agents, spouses, heirs, executors administrators, trustees, personal representatives, predecessors, successors, transferors, transferees, representatives, and assigns, shall be deemed to have, and by operation of law and of the Judgment, shall have, fully, finally, and forever compromised, discharged, settled, relinquished, dismissed with prejudice, and released their right to

assert any or all of the Released Plaintiff's Claims against any of the Released Defendants' Persons (except for the Released HIG Persons in the event the Effective Date – HIG has not also occurred), and shall forever be enjoined from commencing or prosecuting any or all of the Released Plaintiff's Claims against any of the Released Defendants' Persons (except for the Released HIG Persons in the event the Effective Date – HIG has not also occurred); and

- (b) Surgery Partners and the Released Bain Persons, on behalf of themselves and their respective agents, spouses, heirs, executors, administrators, personal representatives, predecessors, successors, transferors, transferees, representatives, and assigns, in their capacities as such only, shall be deemed to have, and by operation of the Judgment approving this Settlement shall have, completely, fully, finally, and forever, compromised, settled, released, discharged, extinguished, relinquished, and dismissed with prejudice, and shall forever be enjoined from

prosecuting, any and all Released Defendants' Claims against the Released Plaintiff's Persons.

9. Without further action by anyone, upon the Effective Date – HIG:
- (a) Surgery Partners, the Released Plaintiff's Persons, and all of their respective current or future estates, successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, whether now existing or later determined, and each and every stockholder of Surgery Partners, derivatively on behalf of Surgery Partners, and on behalf of themselves and their respective agents, spouses, heirs, executors administrators, trustees, personal representatives, predecessors, successors, transferors, transferees, representatives, and assigns, shall be deemed to have, and by operation of law and of the Judgment, shall have, fully, finally, and forever compromised, discharged, settled, relinquished, dismissed with prejudice, and released their right to assert any or all of the Released Plaintiff's Claims against any of the Released Defendants' Persons (except



for the Released Bain Persons in the event the Effective Date – Bain has not also occurred), and shall forever be enjoined from commencing or prosecuting any or all of the Released Plaintiff’s Claims against any of the Released Defendants’ Persons (except for the Released Bain Persons in the event the Effective Date – Bain has not also occurred); and

- (b) Surgery Partners and the Released HIG Persons, on behalf of themselves and their respective agents, spouses, heirs, executors, administrators, personal representatives, predecessors, successors, transferors, transferees, representatives, and assigns, in their capacities as such only, shall be deemed to have, and by operation of the Judgment approving this Settlement shall have, completely, fully, finally, and forever compromised, settled, released, discharged, extinguished, relinquished, and dismissed with prejudice, and shall forever be enjoined from prosecuting, any and all Released Defendants’ Claims against the Released Plaintiff’s Persons.

10. Without further action by anyone, upon the Effective Date – Cross-Claims, the Released Defendants’ Persons, on behalf of themselves and their respective current or future agents, spouses, heirs, estates, trustees, executors, administrators, representatives, predecessors, successors, transferors, transferees, representatives, and assigns, in their capacities as such only, shall be deemed to have, and by operation of the Judgment approving this Settlement shall have, completely, fully, finally, and forever, compromised, settled, released, discharged, extinguished, relinquished, and dismissed with prejudice, and shall forever be enjoined from prosecuting, any and all Released Defendants’ Cross-Claims against any other Released Defendants’ Persons.

11. Notwithstanding paragraphs 7 - 10 above, nothing in any Judgment shall bar any action by any of the Settling Parties to enforce the terms of this Stipulation or the Judgment. Further, no direct claims of any Surgery Partners stockholder, other than direct claims of the Released Plaintiff’s Persons, including any claims arising out of, based upon, or relating to the federal or state securities laws, are being released by the Settlement.

### **SCHEDULING ORDER AND NOTICE**

12. Promptly upon execution of this Stipulation, the Settling Parties shall submit this Stipulation to the Court and shall jointly apply for entry of the Scheduling Order. The Settling Parties agree to jointly seek the scheduling of the Settlement

Hearing to take place no earlier than sixty (60) calendar days from provision of Notice to the stockholders of Surgery Partners.

13. In accordance with the terms of the Scheduling Order to be entered by the Court, no later than ten (10) calendar days following the later of (a) the Court setting a hearing date for the Settlement Hearing; or (b) the Court approving the form of the Notice (the “Notice Date”), Surgery Partners shall take all necessary steps to cause the Notice, substantially in the form attached hereto as Exhibit B, to be mailed to all stockholders of record as of the close of business on the date the Scheduling Order is entered by the Court as shown on the stock records maintained on behalf of Surgery Partners. All stockholders of record who are not also the beneficial owners of the shares of Surgery Partners’ common stock held by them of record shall be requested to forward the Notice to such beneficial owners of those shares.

14. Not later than the Notice Date, Surgery Partners shall post a copy of the Stipulation and the Notice on the “Investment Information” section of Surgery Partners’ website, <https://www.surgerypartners.com>, and such documents shall remain posted to that website until the Settlement becomes final and non-appealable.

15. Surgery Partners shall assume all administrative responsibility for and will pay any and all Notice Costs, regardless of whether the Court approves the Settlement or whether the Effective Date – Bain or the Effective Date – HIG fails to occur. Neither Plaintiff nor Defendants, including their respective counsel, shall be

responsible for administering the Notice or any Notice Costs, nor shall any Notice Costs be paid from the HIG Settlement Fund or Bain Settlement Fund.

### **TERMS OF THE JUDGMENT**

16. Upon approval of the Settlement Agreement as between Plaintiff and either HIG or Bain or both, those Settling Parties for whom the Settlement Agreement has been approved shall jointly request that the Court enter the Judgment, substantially in the form attached hereto as Exhibit C. In the event that the Settlement Agreement is not approved as between Plaintiff and Bain, or in the event Bain withdraws or materially defaults on its obligations under this Settlement Agreement, HIG, Surgery Partners, and Plaintiff shall submit a modified form of the Judgment that extinguishes all claims against the Released HIG Persons but does not extinguish any claims against the Released Bain Persons. In the event the Settlement Agreement is not approved as between Plaintiff and HIG, or in the event HIG withdraws or materially defaults on its obligations under this Settlement Agreement, Bain, Surgery Partners, and Plaintiff shall submit a modified form of the Judgment that extinguishes all claims against the Released Bain Persons but does not extinguish any claims against the Released HIG Persons.

17. Upon entry of the Judgment, the Action shall be dismissed in its entirety with prejudice, with each Settling Party to bear his, her, or its own fees, costs, and expenses, except as expressly provided herein.

## **ATTORNEYS' FEES AND LITIGATION EXPENSES**

18. Plaintiff's Counsel intends to submit to the Court the Fee and Expense Application based upon the benefits provided to Surgery Partners and stockholders of Surgery Partners from the Settlement. It is not a condition of this Stipulation, the Settlement, or the Judgment that the Court award any attorneys' fees or expenses to Plaintiff's Counsel. Defendants and Surgery Partners reserve the right to oppose any part or all of the Fee and Expense Application. In the event that the Court does not award attorneys' fees or expenses, or in the event the Court makes an award in an amount that is less than the amount requested by Plaintiff's Counsel or is otherwise unsatisfactory to Plaintiff's Counsel, or in the event that any such award is vacated or reduced on appeal, this Stipulation and the Settlement, including the effectiveness of the Releases and other obligations of the Settling Parties under the Settlement, nevertheless shall remain in full force and effect.

19. Unless the Settlement is terminated as to one or more Settling Parties pursuant to paragraph 23 of this Stipulation, then:

- (a) The Fee and Expense Application shall be the only petition for attorneys' fees and expenses to Plaintiff's Counsel, or counsel purporting to represent any other stockholder of Surgery Partners in connection with the

Action, the Settlement, or any Released Plaintiff's Claims.

- (b) Within five (5) business days following the Court's entry of any Fee and Expense Award, and notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, Defendants (or their successors-in-interest) shall cause the full amount of any Fee and Expense Award to be paid to Plaintiff's Counsel, with thirteen-eighteenths of such awarded amount being paid from the HIG Settlement Amount in the HIG Account, and five-eighteenths of such awarded amount being paid from the Bain Settlement Amount in the Bain Account.
- (c) The payment of any Fee and Expense Award to Plaintiff's Counsel shall be subject to the obligation of Plaintiff's Counsel to make appropriate refunds or repayments to Surgery Partners or the HIG Account or Bain Account, as appropriate, if the Settlement is terminated or if, as a result of any appeal or further

proceedings on remand or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the Fee and Expense Award has become Final. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than five (5) business days after (a) receiving from Defendants' Counsel notice of the termination of the Settlement as described in paragraph 23 of this Stipulation; or (b) any Court order reducing or reversing the Fee and Expense Award has become Final.

20. In the event that the Effective Date – Bain occurs but HIG does not materially comply with all of its obligations under the Settlement Agreement and the settlement as to HIG becomes void, then:

- (a) The Fee and Expense Application shall be the only petition for attorneys' fees and expenses to Plaintiff's Counsel, or counsel purporting to represent any other stockholder of Surgery Partners in connection with the Action as to any recovery from Bain.
- (b) Within five (5) business days following the Court's entry of any order awarding attorneys' fees and expenses, and

notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, Bain (or its successors-in-interest) shall cause the full amount of any Fee and Expense Award to be paid to Plaintiff's Counsel, with such awarded amount being paid from the Bain Settlement Amount in the Bain Account.

- (c) The payment of any Fee and Expense Award to Plaintiff's Counsel shall be subject to the obligation of Plaintiff's Counsel to make appropriate refunds or repayments to Surgery Partners or the Bain Account, as appropriate, if the Settlement is terminated as to Bain or if, as a result of any appeal or further proceedings on remand or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the Fee and Expense Award has become Final. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than five (5) business days after (a) receiving from Bain's Counsel



notice of the termination of the Settlement as described in paragraph 23 of this Stipulation; or (b) any Court order reducing or reversing the Fee and Expense Award has become Final.

21. In the event that the Effective Date – HIG becomes effective but Bain does not materially comply with all of its obligations under the Settlement Agreement and the settlement as to Bain becomes void, then:

- (a) The Fee and Expense Application shall be the only petition for attorneys' fees and expenses to Plaintiff's Counsel, or counsel purporting to represent any other stockholder of Surgery Partners in connection with the Action as to any recovery from HIG.
- (b) Within five (5) business days following the Court's entry of any order awarding attorneys' fees and expenses, and notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, HIG (or its successors-in-interest) shall cause the full amount of any Fee and Expense Award to be paid to Plaintiff's Counsel, with such awarded amount being

paid from the HIG Settlement Amount in the HIG Account.

- (c) The payment of any Fee and Expense Award to Plaintiff's Counsel shall be subject to the obligation of Plaintiff's Counsel to make appropriate refunds or repayments to Surgery Partners or the HIG Account, as appropriate, if the Settlement is terminated as to HIG or if, as a result of any appeal or further proceedings on remand or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the Fee and Expense Award has become Final. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than five (5) business days after (a) receiving from HIG's Counsel notice of the termination of the Settlement as described in paragraph 23 of this Stipulation; or (b) any Court order reducing or reversing the Fee and Expense Award has become Final.

**CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION OR  
DEFAULT**

22. Pending approval of the Settlement, the Settling Parties agree to stay this Action and not to initiate any proceedings other than those incident to the Settlement itself. The Settling Parties will request the Court to order in the Scheduling Order that, pending approval of the Settlement, (i) Surgery Partners, the Released Plaintiff's Persons and all other Surgery Partners stockholders are barred and enjoined from commencing, prosecuting, instituting, or in any way participating in the commencement or prosecution of any action asserting any Released Plaintiff's Claims, either directly, representatively, derivatively, or in any other capacity, against any Released Defendants' Persons; (ii) Surgery Partners and Defendants are barred and enjoined from commencing, prosecuting, instituting, or in any way participating in the commencement or prosecution of any action asserting any Released Defendants' Claims, either directly, representatively, derivatively, or in any other capacity, against any Released Plaintiff's Persons; and (iii) the Released Defendants' Persons are barred and enjoined from commencing, prosecuting, instituting, or in any way participating in the commencement or prosecution of any action asserting any Released Defendants' Cross-Claims, either directly, representatively, derivatively, or in any other capacity, against one another. In the event that any of the Released Plaintiff's Claims are commenced against any of the Released Defendants' Persons prior to either or both of the Effective Date – Bain or

the Effective Date – HIG, Plaintiff agrees to use reasonable best efforts to assist Defendants and Surgery Partners in securing the dismissal (or a stay in contemplation of dismissal following approval of the Settlement) of such claims.

23. Each Settling Party shall have the right to terminate his, her, or its participation, rights and obligations under the Settlement by providing written notice of his, her, or its election to do so (“Termination Notice”) to the other Settling Parties within thirty (30) calendar days of (a) the Court’s refusal to enter the Scheduling Order in any respect that materially alters the rights and obligations of the Settling Parties with respect to the Settlement; (b) the Court’s refusal to approve the Settlement or any material part thereof; (c) the Court’s refusal to enter the Judgment in any material respect as to the Settlement; or (d) the date upon which an order vacating, modifying, revising or reversing the Judgment becomes Final, whichever shall occur first, *provided that*, as set forth above, (i) if Bain materially defaults in its payment of the Bain Settlement Amount or other obligations under the Settlement, Plaintiff shall have the right to terminate the Settlement as to the claims against the Released Bain Persons only, and the Settlement will be of no force and effect as to the Released Bain Persons, but that default shall not, standing alone, give HIG, Plaintiff, or Surgery Partners the right to terminate the Settlement as to the claims against the Released HIG Persons, which will remain effective upon the Effective Date – HIG; (ii) if HIG materially defaults in its payment of the HIG

Settlement Amount or other obligations under the Settlement, Plaintiff shall have the right to terminate the Settlement as to the claims against the Released HIG Persons only, and the Settlement will be of no force and effect as to the Released HIG Persons, but that default shall not, standing alone, give Bain, Plaintiff or Surgery Partners the right to terminate the Settlement as to the claims against the Released Bain Persons, which will remain effective upon the Effective Date – Bain.

24. If Plaintiff exercises her right to terminate the Settlement pursuant to paragraph 23 above, then (a) the Settlement and the relevant portions of this Stipulation shall be canceled as between Plaintiff and whichever Defendant or Defendants for which Settlement has been terminated; (b) those Settling Parties for which the Settlement has been terminated shall each revert to their respective litigation positions in the Action as of immediately prior to the date of execution of the Term Sheet on October 20, 2021; (c) the terms and provisions of the Term Sheet and this Stipulation, with the exception of this paragraph 24 and paragraphs 15, 18 - 21, 27, 45, and 46 hereof, shall have no further force and effect with respect to those Settling Parties for which the Settlement has been terminated and shall not be used in the Action or in any other proceeding for any purpose, and those Settling Parties shall proceed in all respects as if the Term Sheet and this Stipulation had not been entered; and (d) the Judgment and any other order entered by the Court in accordance

with the terms of this Stipulation shall be treated as vacated as between those Settling Parties for which the Settlement has been terminated, *nunc pro tunc*.

25. If HIG exercises its right to terminate the Settlement pursuant to paragraph 23 above, then (a) the Settlement and the relevant portions of this Stipulation as they pertain to HIG only shall be canceled; (b) HIG and Plaintiff shall revert to their respective litigation positions in the Action as of immediately prior to the date of execution of the Term Sheet on October 20, 2021; (c) the terms and provisions of the Term Sheet and this Stipulation, with the exception of this paragraph 25 and paragraphs 15, 18 - 21, 27, 45, and 46 hereof, shall have no further force and effect with respect to HIG and Plaintiff and shall not be used in the Action or in any other proceeding for any purpose, and HIG and Plaintiff shall proceed in all respects as if the Term Sheet and this Stipulation had not been entered; and (d) the Judgment and any other order entered by the Court in accordance with the terms of this Stipulation as they pertain to HIG only shall be treated as vacated, *nunc pro tunc*. For avoidance of doubt, if only HIG exercises its right to terminate pursuant to paragraph 23 above, the Settlement as to the claims against Bain will remain effective.

26. If Bain exercises its right to terminate the Settlement pursuant to paragraph 23 above, then (a) the Settlement and the relevant portions of this Stipulation as they pertain to Bain only shall be canceled; (b) Bain and Plaintiff shall

revert to their respective litigation positions in the Action as of immediately prior to the date of execution of the Term Sheet on October 20, 2021; (c) the terms and provisions of the Term Sheet and this Stipulation, with the exception of this paragraph 26 and paragraphs 15, 18 - 21, 27, 45, and 46 hereof, shall have no further force and effect with respect to Bain and Plaintiff and shall not be used in the Action or in any other proceeding for any purpose, and Bain and Plaintiff shall proceed in all respects as if the Term Sheet and this Stipulation had not been entered; and (d) the Judgment and any other order entered by the Court in accordance with the terms of this Stipulation as they pertain to Bain only shall be treated as vacated, *nunc pro tunc*. For avoidance of doubt, if only Bain exercises its right to terminate pursuant to paragraph 23 above, the Settlement as to the claims against HIG will remain effective.

### **NO ADMISSION OF WRONGDOING**

27. Neither the Term Sheet, this Stipulation, or the negotiations leading to the execution of the Term Sheet or this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, this Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

- (a) shall be offered against any of the Released Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission

by any of the Released Defendants' Persons with respect to any fact alleged by Plaintiff in the Complaint or during the Action or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation, or that damages would have been recoverable under the Complaint in an amount greater than, less than or equal to the Total Settlement Amount, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Persons, or in any way referred to for any other reason as against any of the Released Defendants' Persons, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the Settlement; or

- (b) shall be offered against any of the Released Plaintiff's Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Released Plaintiff's Persons that any of their claims are without merit, that any of the Released



Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Total Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiff's Persons, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the Settlement.

#### **MISCELLANEOUS PROVISIONS**

28. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

29. The Settling Parties intend this Stipulation and the Settlement to be a full, final, and complete resolution of the Released Plaintiff's Claims. Accordingly, the Settling Parties and their counsel agree not to assert in any forum that this Action was brought by Plaintiff or defended by Defendants in bad faith or without a reasonable basis. The Settling Parties agree that the Settlement consideration and the other terms of the Settlement were negotiated at arm's-length and in good faith

by the Settling Parties and were reached voluntarily after extensive negotiations and consultation with legal counsel who had extensive experience and expertise in stockholder litigation and were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

30. Defendants and Defendants' Counsel shall retain their right to deny that Defendants committed, or aided and abetted in the commission of, any violation of law or duty or engaged in any wrongful acts whatsoever, but neither Defendants nor Defendants' Counsel nor the Company will, in any statement made to any media representative (whether or not for attribution), assert that the Action was commenced or prosecuted in bad faith nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. Likewise, Plaintiff and Plaintiff's Counsel shall retain their right to maintain that their claims have merit, but neither Plaintiff nor Plaintiff's Counsel nor the Company will assert in any forum that the Action was defended in bad faith nor will they deny that the Action was defended in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, the Settling Parties and their counsel shall not make any accusations of wrongful or actionable conduct by any Settling Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

31. The Parties agree that they will refrain from making, disseminating, posting, publishing, or otherwise distributing any derogatory or disparaging comments about the other Parties or any Person released from any Released Plaintiff's Claims or any Released Defendants' Claims relating to any matter asserted in or related to the Action.

32. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of each of the Settling Parties (or their successors-in-interest).

33. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

34. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and litigation expenses to Plaintiff's Counsel and enforcing the terms of this Stipulation.

35. The waiver by one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

36. This Stipulation, including the exhibits hereto, constitutes the entire agreement among the Settling Parties concerning the subject matter hereof. All

Settling Parties acknowledge that no other agreements, representations, warranties, or inducements have been made by any Settling Party hereto concerning this Stipulation other than those contained and memorialized in this document and the attachments hereto.

37. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tiff image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

38. This Stipulation will be executed by counsel for each of the Settling Parties, each of whom represent and warrant that they have the authority from their client(s) to enter into this Stipulation and bind their clients hereto.

39. This Stipulation reflects the final and binding agreement between and among the Settling Parties and supersedes all other prior agreements, whether written or oral, including the Term Sheet.

40. This Stipulation shall be binding upon and inure to the benefit of the predecessors, successors, and assigns of the Settling Parties, including any and all Released Persons and any corporation, partnership, or other entity into or with which any Settling Party hereto may merge, consolidate or reorganize. The Settling Parties acknowledge and agree, for the avoidance of doubt, that the Released Persons are

intended beneficiaries of this Stipulation and are entitled to enforce the releases contemplated by this Stipulation.

41. This Settlement Agreement, the Settlement, and any and all disputes arising out of or relating in any way to any of them, whether in contract, tort, or otherwise, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the laws that might otherwise govern under applicable conflicts of laws principles

42. Each of the Settling Parties: (a) irrevocably submits to the personal jurisdiction of the Court, as well as to the jurisdiction of all courts to which an appeal may be taken from such Court, in any suit, action, or proceeding arising out of or relating to this Settlement Agreement and/or the Settlement; (b) agrees that all claims in respect of such suit, action, or proceeding shall be brought, heard, and determined exclusively in the Court (provided that, in the event that subject matter jurisdiction is unavailable in the Court, then all such claims shall be brought, heard, and determined exclusively in any other state or federal court sitting in Delaware); (c) agrees that he, she or it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court; (d) agrees not to bring any action or proceeding arising out of or relating to this Settlement Agreement or the Settlement in any other court; and (e) expressly waives, and agrees not to plead or to make, any claim that any such action or proceeding is subject (in whole or in part)

to a jury trial. Each of the Settling Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding brought in accordance with this Paragraph. Each of the Settling Parties further agrees to waive any bond, surety, or other security that might be required of any other Settling Party with respect to any such action or proceeding, including an appeal thereof.

43. Counsel for the Settling Parties agree to cooperate fully with one another in seeking Court approval of the Settlement, as embodied in this Stipulation.

44. Any Settling Party may give notice or service to another Settling Party under this Stipulation. Such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery, facsimile, or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiff or Plaintiff's Counsel: Block & Leviton LLP  
Attn: Jason M. Leviton, Esq.  
260 Franklin Street, Suite 1860  
Boston, MA 02110  
Telephone: (617) 398-5600  
Fax: (617) 507-6020  
Email: [jason@blockleviton.com](mailto:jason@blockleviton.com)

Heyman Enerio Gattuso & Hirzel LLP  
Attn: Kurt M. Heyman, Esq.  
300 Delaware Avenue, Suite 200  
Wilmington, DE 19801  
Telephone: (302) 472-7300  
Fax: (302) 472-7300  
Email: [kheyman@hegh.law](mailto:kheyman@hegh.law)

If to HIG or HIG's Counsel:

Quinn Emanuel Urquhart & Sullivan, LLP  
Attn: Adam Abensohn, Esq.  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Fax: (212) 849-7100  
Email: adamabensohn@quinnemanuel.com

Young Conaway Stargatt & Taylor, LLP  
Attn: Elena C. Norman, Esq.  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Telephone: (302) 581-6600  
Fax: (302) 576-3402  
Email: enorman@ycst.com

If to Bain or Bain's Counsel:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
Attn: Lewis R. Clayton, Esq.  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 373-3000  
Fax: (212) 757-3990  
Email: lclayton@paulweiss.com

Ross Aronstam & Moritz LLP  
Attn: S. Michael Sirkin, Esq.  
100 S. West Street, Suite 400  
Wilmington, DE 19801  
Telephone: (302) 576-1600  
Fax: (302) 576-1100  
Email: msirkin@ramllp.com

If to Surgery Partners or Surgery  
Partners' Counsel:

Ropes & Gray LLP  
Attn: David B. Hennes, Esq.  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Telephone: (212) 596-9000  
Fax: (212) 596-9090  
Email: david.hennes@ropesgray.com

Potter Anderson & Corroon LLP  
Attn: Stephen C. Norman, Esq.  
Hercules Plaza, 6th Floor  
1313 North Market Street  
Wilmington, Delaware 19899  
Telephone: (302) 984-6000  
Fax: (302) 658-1192  
Email: snorman@potteranderson.com

45. Except as otherwise provided herein, each Settling Party shall bear its own costs.

46. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date – Bain, the Effective Date – HIG, or the Effective Date – Cross-Claims occurs, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

47. The Stipulation will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

48. The Settling Parties agree to continue to preserve the confidentiality of documents within their possession, custody, or control pursuant to the Stipulation and Order for the Production and Exchange of Confidential and Highly Confidential Information entered in the Action.



**IN WITNESS WHEREOF**, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of November 22, 2021.

**BLOCK & LEVITON LLP**

OF COUNSEL:

/s/ Nathan A. Cook  
Nathan A. Cook (# 4841)  
3801 Kennett Pike, Suite C-305  
Wilmington, DE 19807  
(302) 499-3600

**BLOCK & LEVITON LLP**

Jason M. Leviton  
Joel A. Fleming  
Amanda Crawford  
260 Franklin Street, Suite 1860  
Boston, MA 02110  
(617) 398-5600

**HEYMAN ENERIO GATTUSO  
& HIRZEL LLP**

/s/ Kurt M. Heyman  
Kurt M. Heyman (# 3054)  
Melissa N. Donimirski (# 4701)  
Aaron M. Nelson (# 5941)  
300 Delaware Avenue, Suite 200  
Wilmington, DE 19801  
(302) 472-7300

*Attorneys for Plaintiff Colleen  
Witmer*

**YOUNG CONAWAY  
STARGATT & TAYLOR, LLP**

OF COUNSEL:

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**

Michael Carlinsky  
Adam Abensohn  
Nora Feher  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10010  
(212) 849-7000

/s/ Elena C. Norman  
Elena C. Norman (# 4780)  
Alberto E. Chávez (# 6395)  
1000 North King Street  
Wilmington, Delaware 19801  
(302) 571-6600

*Attorneys for Defendants H.I.G.  
Bayside Debt & LBO Fund II,  
H.I.G. Capital, LLC, and H.I.G.  
Surgery Centers, LLC*

**ROSS ARONSTAM & MORITZ  
LLP**

OF COUNSEL:

**PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP**

Lewis R. Clayton  
Jessica S. Carey  
Paul A. Paterson  
1285 Avenue of the Americas  
New York, New York 10019  
(212) 373-3000

/s/ S. Michael Sirkin  
David E. Ross (# 5228)  
S. Michael Sirkin (# 5389)  
100 South West Street, Suite 400  
Wilmington, Delaware 19801  
(302) 576-1600

*Attorneys for Defendants Bain  
Capital Investors, LLC, Bain Capital  
Private Equity, LP, and BCPE  
Seminole Holdings LP*

**POTTER ANDERSON &  
CORROON LLP**

OF COUNSEL:

**ROPES & GRAY LLP**

David B. Hennes  
Martin J. Crisp  
1211 Avenue of the Americas  
New York, New York 10036  
(212) 596-9000

/s/ Stephen C. Norman  
Stephen C. Norman (# 2686)  
Jaclyn C. Levy (# 5631)  
Hercules Plaza, 6th Floor  
1313 North Market Street  
Wilmington, Delaware 19899  
(302) 984-6000

*Attorneys for Nominal Defendant  
Surgery Partners, Inc.*