

EXHIBIT “C”

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

HEATHER ROLL; COLLEEN
RONAN; and DAVID K. RONAN;
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Case No.: 6:20-cv-212-RBD-EJK

ENHANCED RECOVERY COMPANY, LLC
d/b/a ENHANCED RESOURCE CENTERS
d/b/a ERC,

Defendant/Third-Party Plaintiff,

v.

UNITED HEALTHCARE SERVICES,
INC.,

Third-Party Defendant.
_____ /

CLASS ACTION SETTLEMENT AND RELEASE

Plaintiffs HEATHER ROLL, COLLEEN RONAN, DAVID K. RONAN (collectively, “Plaintiffs”) and ENHANCED RECOVERY COMPANY, LLC d/b/a ENHANCED RESOURCE CENTERS and d/b/a ERC (“Defendant”) (collectively, the “Parties”), enter into this Class Action Settlement and Release (“Agreement”) to resolve all claims in this action, subject to the approval of the Court.

I. Recitals

1. On February 7, 2020, Plaintiffs initiated this civil suit by filing a Complaint asserting claims on behalf of themselves and a putative class against Defendant in the United States District Court for the Middle District of Florida, Orlando Division, Case No.: 6:20-cv-212-ORL-37EJK (the “Civil Action”), alleging violation of the Employee Retirement Income Security Act of 1974

(“ERISA”), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606 and seeking damages pursuant to 29 U.S.C. § 1132. Specifically, Plaintiffs contend that ERC failed to provide required notices of their and the putative class members’ right to continued health care coverage under ERISA and COBRA.

2. On October 9, 2020, the Parties participated in a mediation before Carlos J. Burruezo, Esq., and a potential class-wide resolution was reached, for which the Parties now seek preliminary court approval.

3. Class Counsel, who have substantial experience representing class representatives and prosecuting class actions, have investigated the law and facts relating to the claims asserted in the Complaint. Based on their experience in representing class representatives and litigating class action cases, Class Counsel has concluded that this Settlement is fair and reasonable and in the best interest of the Settlement Class. Class Counsel has given due consideration to the benefits of amicably resolving the Civil Action as described herein and the risks and delays associated with further litigation.

4. By entering into this Agreement Defendant does not admit, nor concede any fault or liability in connection with any facts or claims that have been or could have been alleged against it in the Civil Action. Defendant denies that it has any liability whatsoever to Plaintiffs or any members of the Settlement Class. Defendant has entered into this Agreement solely as a recognition of the substantial expense and burden of continued litigation and in light of the inherent uncertainty of litigation.

5. Subject to the approval of the Court, the Parties propose to settle the Civil Action on the terms set forth in this Agreement.

II. Definitions

6. As used in this Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

7. **Agreement or Settlement or Settlement Agreement:** this Class Action Settlement and Release.

8. **Class Notice Date:** the date that Notices of Settlement are initially mailed to Settlement Class Members.

9. **Deadline to Opt Out or Object:** the date the Court establishes as the deadline by which Settlement Class Members must postmark a written notice of their intent to opt out of the Settlement and by which any objections to the Settlement must be filed with the Court. Settlement Class Members shall have thirty (30) days after the Notice of Settlement is mailed to opt out of or object to the Settlement.

10. **Effective Date:** means the first day after the first date on which all of the following have occurred: (a) all Parties have executed this Agreement; (b) the Court has preliminarily approved this Agreement; (c) reasonable notice has been given to the Settlement Class Members, including providing them an opportunity to opt out, or object to the Settlement; (d) the expiration of Defendant's contingent options to rescind this Agreement pursuant to Paragraphs 34 and 43, below; (e) the Court has held a final approval hearing, entered a final Order approving the Agreement, and awarded Plaintiff's Counsel its reasonable attorneys' fees and costs; and, (f) only if there are written objections filed before the Final Approval Hearing and those objections are not withdrawn or overruled, the last of the following events to occur:

First, if no appeal of the Final Approval Order is filed by a timely objector, then the date on which objector's time to appeal the Final Approval Order has expired with no appeal;

Second, if an appeal of the Final Approval Order is filed by a timely objector, then after the Final Approval Order is affirmed by the appellate court, the date on which all applicable deadlines for filing any motions for rehearing or further appeal have expired without any such motion or further notice of appeal having been filed or any such motion for further appeal has been resolved with no possibility of subsequent appeal.

If there are no objections filed, the Effective Date is the date the Court has held a final approval hearing, entered a final Order approving the Agreement, awarded the Plaintiff any incentive award, and awarded Class Counsel its reasonable attorneys' fees and costs.

11. **Final Approval Order:** the Court's order granting final approval of this Settlement on the terms provided herein, or as the same may be modified by subsequent written mutual agreement of the Parties.

12. **Gross Settlement Amount:** the amount of money that Defendant shall pay in settlement of the Civil Action pursuant to this Agreement, totaling One Hundred Thirty-Seven Thousand Seven Hundred Fifty Dollars (\$137,750.00). The Gross Settlement Amount shall be composed of (i) the Settlement Fund; (ii) Settlement Administrator Costs up to Five Thousand Dollars (\$5,000.00); and (iii) Plaintiffs' attorneys' fees and costs of Sixty-Five Thousand Dollars (\$65,000.00) and up to Two Thousand Five Hundred Dollars (\$2,500.00), respectively.

13. **Class Counsel:** Donna V. Smith, Esq., Wenzel Fenton Cabassa, P.A.

14. **Preliminary Approval Order:** the Court's order preliminarily approving this Settlement.

15. **Released Parties:** (i) Defendant and all of its past and present officers, directors, shareholders, managers, members, employees, agents, principals, heirs, representatives, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys; (ii) Defendant's third-party COBRA Administrator, United HealthCare Services, Inc. and all of its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives,

and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys; and (iii) Defendant's insurance carriers and all of its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys.

16. **Settlement Administrator:** the Parties have agreed to engage American Legal Claim Services, LLC, as a third-party settlement administrator for the purposes of administering the Settlement.

17. **Settlement Administrator Costs:** costs incurred by the Parties from the retention of the Settlement Administrator. The Settlement Administrator shall provide both Parties with all documentation of actual costs incurred.

18. **Settlement Class:** All participants and beneficiaries in the Defendant's Health Plan at Defendant's Melbourne, Florida facility who were not sent a timely COBRA notice by Defendant during the applicable statute of limitations period as a result of a qualifying event, as determined by Defendant.

19. **Settlement Fund:** Sixty-Five Thousand Two Hundred Fifty Dollars (\$65,250.00) from which Settlement Class Payments shall be made to Settlement Class Members.

20. **Settlement Class Members:** any individual who is a member of the Settlement Class.

21. **Settlement Class Payments:** payments in the amount of One Thousand Three Hundred Five Dollars (\$1,305.00) to be made to Settlement Class Members who do not submit a timely Exclusion Letter to opt out.

III. Monetary Benefits to Settlement Class

22. **Settlement Fund.** Within fifteen (15) business days of the Court's Preliminary Approval Order, Defendant shall deposit the Settlement Fund with the Settlement Administrator.

23. **Settlement Class Payments.** Within ten (10) business days of the Effective Date the Settlement Administrator shall send Settlement Class Payments to Settlement Class Members by U.S. Mail. For purposes of this mailing, the Settlement Administrator shall use the address information that Defendant provides for each Settlement Class Member subject to appropriate updating by the Settlement Administrator by cross-referencing the National Change of Address Database. If any Settlement Class Payment is returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will promptly re-mail the check to the forwarding address.

24. **Deadline for Cashing Settlement Class Payments.** Each Settlement Class Member shall have sixty (60) days from the date which appears on the face of the check issued to him/her to deposit and/or cash said check. After sixty (60) days, any unclaimed Settlement Class Payments shall be submitted to the Florida Department of Financial Services, Division of Unclaimed Property.

25. **Payments Not Considered Wages.** The Parties agree that the Settlement Class Payments are not wages and should not be treated as such for tax purposes. The Settlement Administrator will be responsible for issuing to Settlement Class Members, who did not submit a timely Exclusion Letter to opt out, IRS Form 1099 for their Settlement Class Payments.

IV. Attorneys' Fees and Expenses; Costs of Administration

26. **Unopposed Motion for Attorneys' Fees and Expenses.** At least ten (10) days prior to the final approval hearing, to be scheduled by the Court, Plaintiffs will seek an order from the Court awarding Class Counsel reasonable attorneys' fees in the sum total of Sixty-Five Thousand Dollars (\$65,000.00). Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00). These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and

all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. In the event that the Court reduces or does not approve the requested Class Counsel's attorneys' fees or costs, Plaintiffs shall not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding (although Plaintiffs shall have the right to appeal such ruling).

27. **Payment of Approved Attorneys' Fees and Expenses.** Within ten (10) business days of the Effective Date, and subject to the stated limits herein, Defendant shall pay Class Counsel by check the attorneys' fees and costs awarded in accordance with the Court's order granting such award, to the trust account of Wenzel Fenton Cabassa, P.A.

28. **Cost of Administration.** Defendant agrees to pay the Settlement Administrator Settlement Administrator Costs up to Five Thousand Dollars (\$5,000.00). Any Settlement Administration Costs exceeding Five Thousand Dollars (\$5,000.00) shall be paid by Plaintiffs.

V. Release of Claims

29. **Plaintiffs and Class Release.** Plaintiffs and every member of the Settlement Class (except those who submit a timely Exclusion Letter to opt out) will fully release and discharge the Released Parties from any and all claims, whether in law or at equity, arising out of the facts alleged in the Civil Action, including, but not limited to any and all claims relating to or arising from ERISA and COBRA. The aforementioned release shall become effective on the Effective Date of this Settlement Agreement.

VI. Notice and Right to Opt Out or Object

30. **Notice to Settlement Class Members.** The Settlement Administrator shall use the Court-approved Notice of Settlement, which will be the only form utilized by the Settlement Administrator. Within ten (10) business days after receipt of the Court-approved Notice of

Settlement from the Parties, the Settlement Administrator will mail said notice to all Settlement Class Members via first-class U.S. Mail.

31. **Manner of Distributing Notice.** For purposes of distributing the Court-approved Notice of Settlement, the Settlement Administrator shall use the address information that Defendant provides for each Settlement Class Member subject to appropriate updating by the Settlement Administrator by cross-referencing the National Change of Address Database. If any Notice of Settlement is returned by the U.S. Postal Service with a forwarding address, the Settlement Administrator will promptly re-mail the Notice to the forwarding address.

32. **Right to Opt Out.** Settlement Class Members who wish to exclude themselves from the Settlement must submit a written statement requesting exclusion from the Settlement (“Exclusion Letter”) within thirty (30) days of the date of the initial mailing of the Notice of Settlement. The Exclusion Letter must: (1) contain the name, address, telephone number, and last four digits of the Social Security number of the Settlement Class Member, as well as the unique Class Member ID number printed on his or her Notice of Settlement; (2) contain a statement that the Settlement Class Member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked within thirty (30) days of the date of the initial mailing of the Notice of Settlement and mailed to the Settlement Administrator at the address specified in the Notice of Settlement. If the Exclusion Letter does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement. The date of the postmark on the Exclusion Letter shall be the exclusive means used to determine whether an Exclusion Letter has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

Neither Plaintiffs, Class Counsel, Defendant, nor Defendant's counsel will, directly or indirectly, solicit, request, or otherwise encourage any Settlement Class Member to opt out of the Settlement.

33. **Remaining Settlement Fund.** Within fourteen (14) days of the close of the "Opt Out Period," defined as thirty (30) days from the date of the initial mailing of the Notice of Settlement, the Settlement Administrator shall return to Defendant the Settlement Class Payments that were deposited for Settlement Class Members who submitted timely Exclusion Letters. The sum total returned shall be calculated by multiplying the number of timely Exclusion Letters received from individual Settlement Class Members by the Settlement Class Payment, One Thousand Three Hundred Five Dollars (\$1,305.00).

34. **Defendant's Right to Withdraw.** In the event ten percent (10%) or more of the Settlement Class timely file Exclusion Letters, then Defendant shall, in its sole discretion, have the option to rescind this Agreement in its entirety by providing written notice of such rescission to Class Counsel within fourteen (14) calendar days after notification from the Settlement Administrator of the number of the Settlement Class Members who have timely filed Exclusion Letters, and any and all amounts then constituting the Gross Settlement Amount (including all interest earned thereon) shall be returned forthwith to Defendant, less only such costs incurred by the Settlement Administrator in accordance with this Agreement.

35. **Objections.** Settlement Class Members who do not request exclusion may object to this Settlement Agreement as explained in the Notice of Filing by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Defendant's counsel and Class Counsel, who shall file all such objections with the Court) within thirty (30) calendar days of the date of the initial mailing of the Notice of Settlement. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must: (1) contain the objecting Settlement Class Member's full name and

current address, as well as contact information for any attorney representing the objecting Settlement Class Member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than thirty (30) calendar days of the date of the initial mailing of the Notice of Settlement. A Settlement Class Member who wishes to object but who fails to comply with the objection procedures set forth herein shall be deemed not to have objected. Neither Plaintiffs, Class Counsel, Defendant, nor Defendant's counsel will, directly or indirectly, solicit, request, or otherwise encourage any Settlement Class Member to object to the Settlement.

VII. Settlement Approval

36. **Stipulation for Certification of Settlement Class.** On or before October 31, 2020, the Parties shall execute a stipulation regarding the class as defined in this Settlement Agreement and file the same with the Court.

37. **Preliminary Approval Motion.** On or before October 31, 2020, the Parties shall file with the Court a Joint Motion for Preliminary Approval of this Settlement Agreement. The Parties agree to collaborate in good faith in the preparation and finalization of said Joint Motion for Preliminary Approval of this Settlement Agreement. The motion will request that the Court (a) enter a Joint Proposed Preliminary Approval Order, drafted by the Parties; (b) certify the Settlement Class for settlement purposes; (c) appoint Plaintiffs as Class Representatives and Donna V. Smith, Esq., Wenzel Fenton Cabassa, P.A. as Class Counsel for settlement purposes; (d) authorize the distribution of the Notice of Settlement to the Settlement Class; (e) approve American Legal Claim Services, LLC, as Settlement Administrator; and (f) set a date for a Final Approval hearing.

38. **CAFA Notices.** The Settlement Administrator shall submit the notices required under the Class Action Fairness Act, 28 U.S.C. § 1715, to the applicable state and federal officials within ten (10) days of the filing of the Preliminary Approval Motion.

39. **Final Approval Motion.** Following the close of the period for filing requests for exclusions, objections, or disputes under this Settlement Agreement and at least ten (10) days before the Final Approval hearing, Class Counsel shall file an Unopposed Motion for Final Approval of the Settlement Agreement.

40. **Right to Terminate Settlement.** The Parties shall each have the right to unilaterally terminate this Agreement by providing written notice of their election to do so within ten (10) business days after all of the following have occurred: (a) the Court's refusal to grant preliminary approval of the Settlement after the Parties have attempted to re-submit the Preliminary Approval Motion at least one time addressing any issues raised by the Court as to the first Preliminary Approval Motion and/or Settlement Agreement; (b) the Court's refusal to grant final approval of the Settlement (or if the Final Approval Order agreed to by the Parties is materially modified in a manner unacceptable to either Party); or (c) only if any objection(s) are timely made, and, as a result of said objection, the date upon which the Final Approval Order is reversed, or if the Final Order is materially modified in a manner unacceptable to either Party by the U.S. Court of Appeals for the Eleventh Circuit or the U.S. Supreme Court. If there are no objections, Paragraph 40(c) is inapplicable.

41. **Dismissal with Prejudice.** Within five (5) days of the Court's Final Approval of this Settlement, Plaintiff shall file a Motion to Dismiss the Civil Action, with prejudice. The Parties agree to request that the Court retain jurisdiction to enforce the Settlement Agreement.

VIII. Miscellaneous

42. **Mediation; Dispute Resolution.** In the event that the Parties disagree upon the terms of this Settlement Agreement or as to any matter concerning the administration of this Settlement, the Parties agree to use their best efforts to amicably resolve the dispute and to participate in mediation before an agreed upon mediator prior to seeking relief from the Court.

43. **Escalator Clause.** Defendant represents that there are fifty (50) Settlement Class Members. Within fourteen (14) days of execution of this Agreement, Defendant will verify the class size and the names of the Settlement Class Members. If the actual number of Settlement Class Members is greater than fifty (50) individuals, Defendant agrees to increase the Gross Settlement Amount by One Thousand Three Hundred Five Dollars (\$1,305.00) for each individual. The One Thousand Three Hundred Five Dollars (\$1,305.00) will be applied to the Settlement Fund and distributed as proscribed by this Agreement. However, if Defendant discovers ten (10) or more new class members, then Defendant shall, in its sole discretion, have the option to rescind this Agreement in its entirety by providing written notice of such rescission to Class Counsel within fourteen (14) calendar days of verifying the number of Settlement Class Members.

44. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

45. **Authority.** The signatories below represent that they are fully authorized to enter into this Agreement. All Settlement Class Members who do not opt out are bound by the signatures of the Plaintiffs as to any settlement and/or judgment.

46. **Best Reasonable Efforts and Mutual Full Cooperation.** The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including, but not limited to,

executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this Settlement. The Parties will use their best reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary as ordered by the Court, or otherwise, to effectuate this Agreement and to secure the Court's approval of the Settlement.

47. **Communication with Settlement Class Members.** The Parties and their respective counsel shall not, directly or indirectly, discourage any Settlement Class Member from Participating in this Settlement or lobby or encourage any Settlement Class Member to opt out of or object to the Settlement.

48. **Binding Effect on Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

49. **Construction.** The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arms'-length negotiations between the Parties, and that this Agreement will not be construed in favor of or against any party by reason of the extent to which any party or party's counsel participated in the drafting of this Agreement.

50. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

51. **Governing Law.** This Settlement Agreement shall be governed by the laws of the State of Florida without giving effect to the conflict laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

52. **Venue.** The Parties hereby agree that any action brought upon the enforcement of this Agreement shall be commenced or filed in the United States District Court for the Middle District of Florida, Orlando Division.

53. **Extensions.** The Parties may agree, in writing, subject to the approval of the Court where required, to reasonable extension time to carry out the provisions of this Settlement Agreement.

54. **Effect of Captions and Headings.** Paragraph titles, captions, or headings in this Agreement are inserted as a matter of convenience and for reference purposes only, and in no way define, limit, extend, or describe the scope of this Agreement or any provision in it. Each term of this Agreement is contractual and is not merely a recital.

55. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiffs: Donna V. Smith of Wenzel Fenton Cabassa, P.A.
1110 North Florida Avenue, Suite 300, Tampa, FL 33602
dsmith@wfcclaw.com

if to Defendant: Yash B. Dave of Smith, Gambrell & Russell LLP
50 Laura Street, Suite 2600, Jacksonville, FL 32202
ydave@sgrlaw.com

56. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

57. **Class Signatories.** The Parties Agree that because the Settlement Class Members are so numerous, it is impossible and impractical to have each Settlement Class Member execute this Agreement. Therefore, the Notice will advise all Settlement Class Members of the binding

nature of the release and will have the same force and effect as if executed by each Settlement Class Member.

58. **Authority of Court.** The administration and implementation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, enforcement of the Release contained in the Agreement. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals.

**ENHANCED RECOVERY COMPANY,
LLC d/b/a ENHANCED RESOURCE
CENTERS and d/b/a ERC**

By: 

Samuel R. Rehm
Print Name

Chief Financial Officer
Title

Date: October 30, 2020

Heather Roll

Date: _____

Colleen Ronan

Date: _____

David K. Ronan


Date: _____

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals.

**ENHANCED RECOVERY COMPANY,
LLC d/b/a ENHANCED RESOURCE
CENTERS and d/b/a ERC**



Heather Roll

Date: 10 / 30 / 2020

By: _____

Print Name


Colleen M. Ronan

Colleen Ronan

Date: 10 / 30 / 2020

Title

Date: _____



David K. Ronan

Date: 10 / 30 / 2020