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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOHN HARBOUR, TAMI WISNESKY, J.
DOE, and JOWELI VUNISA, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

CALIFORNIA HEALTH & WELLNESS,
HEALTH NET OF CALIFORNIA, INC.,
HEALTH NET LIFE INSURANCE
COMPANY, HEALTH NET COMMUNITY
SOLUTIONS, INC., HEALTH NET, LLC,
CENTENE CORPORATION, and
ACCELLION, INC.,

Defendants.

Case No. 5:21-cv-03322-EJD

Hon. Edward J. Davila

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

The Parties, who intend to fully, finally, and forever resolve, discharge, and settle all of Plaintiffs’ Released Claims, by and through their respective counsel, in consideration for and subject to the promises, terms, and conditions contained in this Class Action Settlement Agreement and Release (“Settlement Agreement”), hereby warrant, represent, acknowledge, covenant, stipulate and agree, subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure, as follows:

1. DEFINITIONS

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1. “Actions” means the class actions captioned *Doe v. Health Net of California, Inc. et al.*, No. 5:21-cv-2975, *Harbour et al. v. California Health & Wellness Plan et al.*, No. 5:21-cv-3322, and *Vunisa v. Health Net, LLC et al.*, No. 5:21-cv-3425 now pending before the Honorable Edward J. Davila in the United States District Court for the Northern District of California.

1.2. “Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all Notice Expenses, locating Settlement Class Members, determining the eligibility of any person to be a Settlement Class Member, administrating and processing Settlement Class Member claims and Claim Forms, and administering, calculating, and distributing the Settlement Fund or the Credit Monitoring and Insurance Services to the Claimants with Approved Claims.

1.3. “Agreement,” “Settlement Agreement,” and “Settlement” mean this Class Action Settlement Agreement and Release (including all recitals, exhibits and attachments hereto).

1.4. “Approved Claim(s)” means a claim as evidenced by a Claim Form submitted by a Settlement Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is physically signed or electronically verified by the Settlement Class Member; (c) satisfies the conditions of eligibility for a Settlement Benefit as set forth herein; and (d) has been approved by the Settlement Administrator.

1.5. “Claimant” means a Settlement Class Member who submits a Claim Form for a

1 Settlement Payment.

2 1.6. "Claim Form" means the form attached hereto as **Exhibit A**, as approved by the
3 Court. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the
4 Settlement Website) by Settlement Class Members who wish to file a claim for their given share of
5 the Settlement Benefits pursuant to the terms and conditions of this Agreement. The Claim Form
6 shall be available for download from the Settlement Website. The Settlement Administrator shall
7 mail a Claim Form, in hardcopy form, to any Settlement Class Member who so requests.

8 1.7. "Claims Deadline" means the date by which all Claim Forms must be received to be
9 considered timely and shall be set as the date 90 days after the Notice Date. The Claims Deadline
10 shall be clearly set forth in the Long Form Notice, the Summary Notice, the Claim Form, and the
11 Court's order granting Preliminary Approval.

12 1.8. "Claims Period" means the period of time during which Settlement Class Members
13 may submit Claim Forms to receive their given share of the Settlement Benefits and shall
14 commence on the Notice Date and shall end on the date 90 days thereafter.

15 1.9. "Class Counsel" means attorneys Tina Wolfson, Robert Ahdoot, and Andrew Ferich
16 of Ahdoot & Wolfson, PC; Laurence D. King, Matthew B. George, and Joel B. Strauss of Kaplan
17 Fox & Kilsheimer LLP; and Timothy G. Blood, Paula R Brown, and Jennifer L MacPherson of
18 Blood Hurst & O'Reardon, LLP.

19 1.10. "Class Representatives" and "Plaintiffs" mean, collectively, John Harbour, Tami
20 Wisnesky, J. Doe, and Joweli Vunisa.

21 1.11. "Complaints" mean, collectively, the Complaint filed in case No. 5:21-cv-2975 on
22 April 23, 2021, ECF No. 1; and the Complaint filed in case No. 5:21-cv-3322 on May 4, 2021, ECF
23 No. 1; the Complaint in case No. 5:21-cv-3425 filed in the Superior Court of California for the
24 County of Santa Clara on April 6, 2021 and removed to the United States District Court for the
25 Northern District of California on May 7, 2021, ECF No. 1, Exhibit 1; and any amendments thereto.

26 1.12. "Court" means the United States District Court for the Northern District of
27 California, the Honorable Edward J. Davila (or any judge sitting in his stead or to whom the Action
28 may be transferred) presiding.

1 1.13. “Credit Monitoring and Insurance Services” and “CMIS” mean the services to be
2 provided to Participating Settlement Class Members who are entitled to and so select such services
3 on their Claim Form, and as further described in Section 4.2.1, herein.

4 1.14. “Defendants’ Counsel” means attorneys Peter B. Morrison, William E. Ridgway,
5 Zachary M. Faigen, and other attorneys at the law firm Skadden, Arps, Slate, Meagher & Flom
6 LLP, on behalf of the Health Net Defendants.

7 1.15. “Documented Loss” refers to monetary losses incurred by a Settlement Class
8 Member and supported by Reasonable Documentation for attempting to remedy or remedying
9 issues that are more likely than not traceable to the FTA Data Breach, and that are not otherwise
10 recoverable through insurance. A claim for a Documented Loss must be supported by Reasonable
11 Documentation that a Settlement Class Member actually incurred unreimbursed losses and
12 consequential expenses that are more likely than not traceable to the FTA Data Breach and incurred
13 on or after January 20, 2021.

14 1.16. “Effective Date” means one business day following the latest of: (i) the date upon
15 which the time expires for filing or noticing any appeal of the Judgment; (ii) if there is an appeal
16 or appeals, the date of completion, in a manner that finally affirms and leaves in place the Judgment
17 without any material modification, of all proceedings arising out of the appeal(s) (including, but
18 not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review
19 and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any
20 subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any
21 appeal or the final dismissal of any proceeding on certiorari with respect to the Judgment.

22 1.17. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of
23 Litigation Costs awarded by the Court to Class Counsel.

24 1.18. “Final Approval Order” means an order that the Court enters after the Final Fairness
25 Hearing, which finally approves the Settlement Agreement without material change to the Parties’
26 agreed-upon proposed final approval order attached hereto as **Exhibit B**.

27 1.19. “Final Fairness Hearing” and “Fairness Hearing” mean the hearing to be conducted
28 by the Court to determine the fairness, reasonableness, and adequacy of the Settlement Agreement

1 pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and
2 Judgment. The Parties shall request that the Court schedule the Fairness Hearing for a date that is
3 in compliance with the provisions of 28 U.S.C. §1715(d).

4 1.20. “FTA Data Breach” refers to the data incident that is the subject of this Action,
5 publicly announced by the Health Net Defendants on March 24, 2021, whereby in or around
6 January 20-22, 2021, an unauthorized user may have accessed certain Health Net Defendants’
7 members’ information on the FTA platform, including addresses, dates of birth, insurance
8 identification numbers, and health information.

9 1.21. “Health Net Defendants” means, collectively, Health Net, LLC, Health Net of
10 California, Inc., Health Net Life Insurance Company, Health Net Community Solutions, Inc.,
11 California Health & Wellness Plan, and Centene Corporation.

12 1.22. “Judgment” means the judgment to be entered by the Court. The Judgment must be
13 substantially similar to the form attached hereto as **Exhibit C**.

14 1.23. “Litigation Costs” means costs and expenses incurred by Class Counsel in
15 connection with commencing, prosecuting, settling the Action, and obtaining an order of final
16 judgment.

17 1.24. “Long Form Notice” means the long form notice of settlement, substantially in the
18 form attached hereto as **Exhibit D**.

19 1.25. “Net Settlement Fund” means the amount of funds that remain in the Settlement
20 Fund after funds are paid from or allocated for payment from the Settlement Fund for the following:
21 (i) reasonable Administrative Expenses incurred pursuant to this Settlement Agreement, (ii) Taxes,
22 (iii) any Service Payments approved by the Court, and (iv) any Fee Award and Costs approved by
23 the Court.

24 1.26. “Non-Profit Residual Recipient” means the Electronic Frontier Foundation, a 26
25 U.S.C. § 501(c)(3) nonprofit organization.

26 1.27. “Notice Date” means the date upon which Settlement Class Notice is first
27 disseminated to the Settlement Class, which shall be within 30 days after entry of the Preliminary
28 Approval Order.

1 1.28. “Notice Expenses” means all reasonable costs and expenses expended in the
2 execution of the Notice Plan, including (i) all costs and expenses incurred in connection with
3 preparing, printing, mailing, disseminating, posting, promoting, emailing, hosting on the Internet,
4 and publishing the Settlement Class Notice, and informing them of the Settlement, and (ii) any
5 other reasonable and necessary Notice and Notice related expenses.

6 1.29. “Notice Plan” means the plan described in this Agreement for disseminating Notice
7 to the Settlement Class Members of the terms of this Agreement and the Fairness Hearing.

8 1.30. “Objection Deadline” means the date by which Settlement Class Members must file
9 and postmark all required copies of any written objections, pursuant to the terms and conditions
10 herein, to this Settlement Agreement and to any application and motion for (i) the Fee Award and
11 Costs, and (ii) the Service Payments, which shall be 75 days following the Notice Date.

12 1.31. “Opt-Out Period” means the period in which a Settlement Class Member may
13 submit a Request for Exclusion, pursuant to the terms and conditions herein, which shall expire 75
14 days following the Notice Date. The deadline for filing a Request for Exclusion will be clearly set
15 forth in the Settlement Class Notice.

16 1.32. “Participating Settlement Class Member” means a Settlement Class Member who
17 submits an Approved Claim for their given share of the Settlement Benefits pursuant to the terms
18 and conditions of this Agreement.

19 1.33. “Parties” means Plaintiffs J. Doe, John Harbour, Tami Wisnesky, and Joweli
20 Vunisa, and Defendants Health Net, LLC, Health Net of California, Inc., Health Net Life Insurance
21 Company, Health Net Community Solutions, Inc., California Health & Wellness, and Centene
22 Corporation, collectively.

23 1.34. “Person(s)” means any individual, corporation, trust, partnership, limited liability
24 company or other legal entity and their respective predecessors, successors or assigns.

25 1.35. “PHI” and “Protected Health Information” means individually identifiable health
26 information (as defined in 45 C.F.R. § 160.103) of Plaintiffs and the Settlement Class.

27 1.36. “PII” and “Personally Identifying Information” mean the names, addresses, dates of
28 birth, and other personally identifiable information of Plaintiffs and the Settlement Class.

1 1.37. “Preliminary Approval Order” means the Court’s Order preliminarily approving the
2 Settlement without material modifications to the proposed order or this Agreement that are
3 unacceptable to the Parties. A Proposed Preliminary Approval Order is attached to this Agreement
4 as **Exhibit E**.

5 1.38. “Reasonable Documentation” means documentation supporting a claim for
6 Documented Loss including, but not limited to, credit card statements, bank statements, invoices,
7 telephone records, and receipts. Documented Loss costs cannot be documented solely by a personal
8 certification, declaration or affidavit from the Claimant; a Settlement Class Member must provide
9 supporting documentation.

10 1.39. “Released Claims” means any and all claims, causes of action, suits, obligations,
11 debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses
12 and attorneys’ fees of any nature whatsoever, whether based on any law (including federal law,
13 state law, common law, contract, rule, or regulation) or equity, whether known or unknown,
14 suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent,
15 liquidated or unliquidated, punitive or compensatory, monetary or nonmonetary, that have been
16 pled in the Action, or that could have been pled in the action, that arise out of or relate to the causes
17 of action, allegations, practices, or conduct at issue in the Complaint related to the Health Net
18 Defendants with respect to the FTA Data Breach. “Released Claims” does not include claims
19 relating to the enforcement of the settlement. Released Claims do not include rights, causes of
20 action, liabilities, actions, suits, damages, or demands of any kind whatsoever, known or unknown,
21 matured or unmatured, at law or in equity, existing under federal or state law, against Accellion,
22 Inc. and its predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates,
23 departments, and any and all past, present, and future officers, directors, employees, stockholders,
24 partners, servants, agents, attorneys, representatives, insurers, reinsurers, subrogees and assigns of
25 any the foregoing entities listed in this sentence. Likewise, “Released Claims” does not include the
26 Health Net Defendants’ rights of subrogation against Accellion, Inc. and its predecessors,
27 successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all past,
28 present, and future officers, directors, employees, stockholders, partners, servants, agents,

1 attorneys, representatives, insurers, reinsurers, subrogees and assigns of any the foregoing entities
2 listed in this sentence or any other responsible party.

3 1.40. “Released Parties” means Health Net, LLC, Health Net of California, Inc., Health
4 Net Life Insurance Company, Health Net Community Solutions, Inc., California Health & Wellness
5 Plan, Centene Corporation, and CalViva Health and their respective predecessors, successors,
6 assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past,
7 present, and future officers, directors, employees, stockholders, partners, servants, agents,
8 successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the
9 foregoing. Each of the Released Parties may be referred to individually as a “Released Party.” For
10 avoidance of doubt, Accellion, Inc. is not a Released Party and nothing in this Agreement shall be
11 construed to release it of any liability, including in the case *Centene Corp., et al. v. Accellion, Inc.*,
12 No. 2021-0206 pending in the Delaware Court of Chancery.

13 1.41. “Releasing Parties” means Plaintiffs and any Person in the Settlement Class,
14 including those not submitting a claim for a Settlement Benefit.

15 1.42. “Request for Exclusion” is the written communication by or on behalf of a
16 Settlement Class Member in which he or she requests to be excluded from the Settlement Class
17 pursuant to the terms of the Agreement.

18 1.43. “Service Payment(s)” means the amount of remuneration to be paid to each of the
19 Class Representatives in recognition of their efforts on behalf of the Settlement Class, in an amount
20 to be ordered by the Court, as set forth in Section 10, herein.

21 1.44. “Settlement Administrator” means the qualified third-party administrator and agent
22 agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval
23 Order to administer the Settlement, including providing the Notice. The Parties agree to recommend
24 that the Court appoint Epiq Class Action and Claims Solutions, Inc. as Settlement Administrator
25 to: design, consult on, and implement the Notice and related requirements of this Agreement;
26 implement the Notice, the Settlement Website, the submission and review of Claim Forms, and
27 related requirements of this Agreement, subject to the Court’s approval.

28 1.45. “Settlement Benefit(s)” means any Settlement Payment, the Credit Monitoring and

1 Insurance Services, the Prospective Relief set forth in Section 4 herein, and any other benefits
2 Settlement Class Members receive pursuant to this Agreement, including non-monetary benefits
3 and relief, the Fee Award and Costs, and Administrative Expenses.

4 1.46. "Settlement Class" means all residents of the United States who were notified by
5 the Health Net Defendants that their PHI and PII may have been compromised as a result of the
6 FTA Data Breach. Excluded from the Settlement Class are: (1) the Judges presiding over the
7 Action, Class Counsel, and members of their families; (2) the Health Net Defendants and Accellion,
8 their subsidiaries, parent companies, successors, predecessors, and any entity in which the Health
9 Net Defendants or Accellion or their parents, have a controlling interest, and their current or former
10 officers and directors; (3) Persons who properly execute and submit a Request for Exclusion prior
11 to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded
12 Persons.

13 1.47. "Settlement Class List" means the list generated by the Health Net Defendants
14 containing the last known name, email (if available), and physical mailing address for persons that
15 fall under the definition of the Settlement Class, which the Health Net Defendants will provide to
16 the Settlement Administrator within five days of the entry of the Preliminary Approval Order.

17 1.48. "Settlement Class Member" or "Class Member" means a Person who falls within
18 the definition of the Settlement Class and who does not submit a valid Request for Exclusion prior
19 to the expiration of the Opt-Out Period.

20 1.49. "Settlement Class Notice" or "Notice" means the form of Court-approved notice of
21 this Agreement that is disseminated to the Settlement Class. The Settlement Class Notice shall
22 consist of the Summary Notice, the Long Form Notice, and the Settlement Website.

23 1.50. "Settlement Fund" means the sum of Ten Million Dollars and No Cents
24 (\$10,000,000.00), to be paid by the Health Net Defendants as specified in Section 3.6 of this
25 Agreement, including any interest accrued thereon after payment.

26 1.51. "Settlement Payment" means any payment to be made to any Participating
27 Settlement Class Member on Approved Claims pursuant to Section 3.11 herein.

28 1.52. "Settlement Website" means the Internet website, with the following URL address,

1 to be created, launched, and maintained by the Settlement Administrator, and which allows for the
2 electronic submission of Claim Forms and Requests for Exclusion, and provides access to relevant
3 case documents including the Settlement Class Notice, information about the submission of Claim
4 Forms, and other relevant documents, including downloadable Claim Forms:
5 www.HNFTADataBreachSettlement.com.

6 1.53. “Summary Notice” means the summary notices of the proposed Settlement herein,
7 substantially in the form attached hereto as **Exhibit F**.

8 1.54. “Taxes” means (i) any and all applicable taxes, duties, and similar charges imposed
9 by a government authority (including any estimated taxes, interest or penalties) arising in any
10 jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement
11 Fund, including, without limitation, any taxes that may be imposed upon the Health Net Defendants
12 or their counsel with respect to any income or gains earned by or in respect of the Settlement Fund
13 for any period while it is held in the Settlement Fund; (ii) any other taxes, duties and similar charges
14 imposed by a government authority (including any estimated taxes, interest or penalties) relating to
15 the Settlement Fund that the Settlement Administrator determines are or will become due and
16 owing, if any; and (iii) any and all expenses, liabilities and costs incurred in connection with the
17 taxation of the Settlement Fund (including without limitation, expenses of tax attorneys and
18 accountants).

19 **2. RECITALS**

20 2.1. On or about March 24, 2021, the Health Net Defendants publicly confirmed that the
21 personal information of certain of the Health Net Defendants’ members may have been
22 compromised in the incident involving Accellion’s File Transfer Appliance, which was the Health
23 Net Defendants’ file transfer software vendor.

24 2.2. The Health Net Defendants warrant and represent that as a result of the FTA Data
25 Breach, personal information of approximately 1,506,868 members of the Health Net Defendants
26 was potentially compromised by a threat actor. The personal information may have included some,
27 or all, of the following: addresses, dates of birth, insurance identification numbers, and health
28 information (collectively, “PHI” and “PII”).

1 2.3. The Health Net Defendants warrant and represent that after learning of the FTA
2 Data Breach, the Health Net Defendants investigated the scope and impact of the incident, reported
3 the incident to and cooperated with federal law enforcement, and permanently discontinued its use
4 of the FTA.

5 2.4. The Health Net Defendants warrant and represent that beginning on March 24, 2021,
6 the Health Net Defendants provided notification of the FTA Data Breach to Settlement Class
7 Members. This notification was sent by mail and included—among other details—a description of
8 the incident, impacted information, and customer service resources. The notification also provided
9 an opportunity for Settlement Class Members to sign up for one year of credit monitoring and
10 identity theft protection services from IDX, paid for by the Health Net Defendants.

11 2.5. On April 4, 2021, Plaintiff Joweli Vunisa filed a class action complaint against the
12 Health Net, LLC, Health Net of California, Inc., Health Net Life Insurance Company, Health Net
13 Community Solutions, Inc., California Health & Wellness, Centene Corporation, and Accellion,
14 asserting claims for violation of the California Confidentiality in Medical Information Act,
15 violation of the California Consumer Privacy Act, violation of the California Unfair Competition
16 Law, invasion of privacy, breach of contract, and breach of implied contract, all seeking remedies
17 (including damages and injunctive relief) for the impact and harm caused by the FTA Data Breach
18 (*Vunisa*, ECF No. 1, Exhibit 1). Defendants removed the case to the United States District Court
19 for the Northern District of California on May 7, 2021 (*Vunisa*, ECF No. 1).

20 2.6. On April 23, 2021, Plaintiff J. Doe filed a class action complaint against Health Net
21 of California, Inc., Health Net, LLC, and Accellion, asserting claims for negligence, negligence per
22 se, invasion of privacy, breach of confidence, breach of contract, violation of the California
23 Consumer Privacy Act, violation of the California Unfair Competition Law, violation of the
24 California Confidentiality in Medical Information Act, violation of the California HIV Disclosure
25 Laws, and violation of the California constitutional right to privacy, all seeking remedies (including
26 damages and injunctive relief) for the impact and harm caused by the FTA Data Breach (*Doe*, ECF
27 No. 1).

28 2.7. On May 4, 2021, Plaintiff John Harbour and Tami Wisnesky filed a class action

1 complaint against California Health & Wellness Plan, Health Net of California, Inc., Health Net
2 Life Insurance Company, Health Net Community Solutions, Inc., Health Net, LLC, and Accellion,
3 asserting claims for negligence, negligence per se, invasion of privacy, breach of confidence,
4 breach of contract, violation of the California Consumer Privacy Act, violation of California Unfair
5 Competition Law, violation of California Confidentiality in Medical Information Act, and violation
6 of the California Constitution all seeking remedies (including damages and injunctive relief) for
7 the impact and harm caused by the FTA Data Breach (*Harbour*, ECF No. 1). On November 23,
8 2021, Plaintiffs Harbour, Wisnesky, Vunisa, and Doe filed a First Amended Class Action
9 Complaint (“FAC”) in the *Harbour* action (*Harbour*, ECF No. 40). Plaintiffs’ FAC includes claims
10 for negligence, negligence per se, breach of implied contract, violations of the California Consumer
11 Privacy Act (“CCPA”), violations of the California Confidentiality of Medical Information Action
12 (“CMIA”), violations of the California Customer Records Act (“CCRA”), violations of the
13 California Unfair Competition Law (“UCL”), invasion of privacy (intrusion upon seclusion),
14 violations of the California constitution, art. 1, § 1, declaratory relief pursuant to 28 U.S.C. §§
15 2201 *et seq.*, breach of contract, breach of confidence, and violations of the California HIV
16 Disclosure Laws.

17 2.8. After informal discovery and considerable meet and confer, the Parties agreed to
18 attempt to resolve their dispute through mediation.

19 2.9. On July 19, 2021, the Parties engaged in an all-day mediation session before the
20 Honorable Jay C. Gandhi (Ret.) of JAMS that did not result in an agreement in principle but after
21 which the Parties continued to attempt to resolve their dispute and continued to exchange
22 documents and information pertinent to assessing the claims and defenses in this matter.

23 2.10. On September 27, 2021, the Parties again engaged in an all-day mediation session
24 before Judge Gandhi that, following the parties’ acceptance of a mediator’s proposal, resulted in an
25 agreement in principle to settle this action as a nationwide class action settlement.

26 2.11. Following the second mediation session with Judge Gandhi, and after arm’s length
27 negotiations, the Parties were able to finalize all of the terms of this Settlement.

28 2.12. Pursuant to the terms set forth below, this Agreement resolves all claims, actions,

1 and proceedings asserted, or that could be asserted, against the Health Net Defendants arising out
2 of or related to the FTA Data Breach, as set forth in the release contained herein, by or on behalf
3 of members of the Settlement Class herein defined but excluding the rights of Class Members who
4 opt out from the Settlement Class pursuant to the terms and conditions herein.

5 2.13. Class Counsel, on behalf of the Plaintiffs and the Settlement Class, have thoroughly
6 examined the law and facts relating to the matters at issue in the Action, Plaintiffs' claims, and the
7 Health Net Defendants' potential defenses, including conducting independent investigation and
8 discovery, conferring with defense counsel on discovery related matters, as well as an assessment
9 of the merits of expected arguments in a motion for class certification. Based on an analysis of the
10 facts and the law applicable to Plaintiffs' claims in the Action, and taking into account the burden,
11 expense, and delay of such continued litigation, including the risks and uncertainties associated
12 with class certification and other defenses the Health Net Defendants may assert, a protracted trial
13 and appeal(s), as well as the fair, cost-effective, and assured method of resolving the claims of the
14 Settlement Class, Plaintiffs and Class Counsel believe that resolution is an appropriate and
15 reasonable means of ensuring that the Class is afforded important benefits as expediently as
16 possible. Plaintiffs and Class Counsel have also taken into account the uncertain outcome and the
17 risk of further litigation, as well as the difficulties and delays inherent in such litigation.

18 2.14. Plaintiffs and Class Counsel believe that the terms set forth in this Settlement
19 Agreement confer substantial benefits upon the Settlement Class and have determined that they are
20 fair, reasonable, adequate, and in the best interests of the Settlement Class.

21 2.15. The Health Net Defendants have similarly concluded that this Settlement
22 Agreement is desirable in order to avoid the time, risk, and expense of defending protracted
23 litigation, and to resolve finally and completely the claims of Plaintiffs and the Settlement Class.

24 2.16. This Settlement Agreement, whether or not consummated, and any actions or
25 proceedings taken pursuant to this Settlement Agreement, are for settlement purposes only and the
26 Health Net Defendants specifically deny any and all wrongdoing. The existence of, terms in, and
27 any action taken under or in connection with this Settlement Agreement shall not constitute, be
28 construed as, or be admissible in evidence as, any admission by the Health Net Defendants of (i)

1 the validity of any claim, defense or fact asserted in the Action or any other pending or future
2 action, or (ii) any wrongdoing, fault, violation of law, or liability of any kind on the part of the
3 Parties.

4 **3. TERMS OF SETTLEMENT**

5 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among
6 Plaintiffs, individually and on behalf of the Settlement Class, and the Health Net Defendants that,
7 subject to Court approval, the Action and Plaintiffs' Released Claims shall be finally and fully
8 compromised, settled, and released, and that the Judgment and Final Approval Order shall be
9 entered subject to the following terms and conditions of this Settlement Agreement.

10 3.1. Preliminary Approval. Class Counsel shall submit this Agreement to the Court and
11 shall move the Court to enter the Preliminary Approval Order, in the form attached as **Exhibit E**.

12 3.2. Cooperation. The Parties shall, in good faith, cooperate, assist, and undertake all
13 reasonable actions and steps in order to accomplish all requirements of this Agreement on the
14 schedule set by the Court, subject to the terms of this Agreement.

15 3.3. Certification of the Settlement Class. For purposes of this Settlement only, Plaintiffs
16 and the Health Net Defendants stipulate to the certification of the Settlement Class, which is
17 contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and
18 the occurrence of the Effective Date. Should (1) the Settlement not receive final approval from the
19 Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void.
20 the Health Net Defendants reserve the right to contest class certification for all other purposes.
21 Plaintiffs and the Health Net Defendants further stipulate to designate the Class Representatives as
22 the representatives for the Settlement Class.

23 3.4. Final Approval. Class Counsel shall move the Court for a Final Approval Order and
24 Judgment of this Settlement, to be issued following the Fairness Hearing; within a reasonable time
25 after the Claims Deadline, Objection Deadline, and Opt-Out Period; and at least 90 days after the
26 Health Net Defendants notify the appropriate government officials of this Settlement Agreement
27 pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.
28

1 3.5. Releases.

2 3.5.1. The Release. Upon the Effective Date, and in consideration of the Settlement
3 Benefits described herein, each Releasing Party shall be deemed to have released, acquitted, and
4 forever discharged the Health Net Defendants and each of the Released Parties from any and all
5 Released Claims.

6 3.5.2. Exclusive Remedy. This Agreement shall be the sole and exclusive remedy
7 of the Releasing Parties against any of the Released Parties relating to any and all Released Claims.
8 Upon the entry of the Judgment, each and every Releasing Party shall be permanently barred and
9 enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any of the
10 Released Parties in any court, arbitration, tribunal, forum or proceeding.

11 3.5.3. Jurisdiction of the Court. The Parties agree that the Court shall retain
12 exclusive and continuing jurisdiction over the above-captioned Action, the Parties, Settlement
13 Class Members, and the Settlement Administrator in order to interpret and enforce the terms,
14 conditions, and obligations of this Agreement.

15 3.6. Settlement Fund.

16 3.6.1. Deposit. The Health Net Defendants agree to make a payment of Ten Million
17 Dollars and No Cents (\$10,000,000.00) and deposit that payment into the Settlement Fund as
18 follows: (i) the Health Net Defendants shall pay Ten Million Dollars and No Cents
19 (\$10,000,000.00) into the Settlement Fund thirty business days after the Court enters the
20 Preliminary Approval Order, which shall in part be available to cover reasonable costs associated
21 with the Notice Plan and any other Administrative Expenses incurred prior to entry of the Final
22 Approval Order and the Judgment. For the avoidance of doubt, and for purposes of this Settlement
23 Agreement only, the Health Net Defendants' liability shall not exceed Ten Million Dollars and No
24 Cents (\$10,000,000.00) absent an express written agreement between the Parties to the contrary.

25 3.6.2. Custody of Settlement Fund. The Settlement Fund shall be deposited in an
26 appropriate trust established by the Settlement Administrator pursuant to the terms and conditions
27 set forth below; but it shall remain subject to the jurisdiction of the Court until such time as the
28 entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or returned to

1 those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated,
2 or cancelled.

3 3.6.2.1. In the event this Settlement Agreement is voided, terminated or
4 cancelled due to lack of approval from the Court or any other reason: (i) the Class Representatives
5 and Class Counsel shall have no obligation to repay any of the Administrative Expenses that have
6 been paid or incurred in accordance with the terms and conditions of this Agreement; (ii) any
7 amounts remaining in the Settlement Fund after payment of Administrative Expenses paid or
8 incurred in accordance with the terms and conditions of this Agreement, including all interest
9 earned on the Settlement Fund net of any Taxes, shall be returned to the Health Net Defendants and
10 (iii) no other person or entity shall have any further claim whatsoever to such amounts.

11 3.7. Non-Reversionary. This Settlement is not a reversionary settlement. As of the
12 Effective Date, all rights of the Health Net Defendants in or to the Settlement Fund shall be
13 extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as
14 described in Section 9 in this Agreement. In the event the Effective Date occurs, no portion of the
15 Settlement Fund shall be returned to the Health Net Defendants.

16 3.8. Use of the Settlement Fund. As further described in this Agreement, the Settlement
17 Fund shall be used by the Settlement Administrator to pay for: (i) all Administrative Expenses; (ii)
18 any Taxes; (iii) any Service Payments; (iv) any Fee Award and Costs; (v) Settlement Payments
19 and/or Settlement Benefits, pursuant to the terms and conditions of this Agreement; and (viii) any
20 other Settlement Benefits.

21 3.9. Financial Account. The Settlement Fund shall be an account established and
22 administered by the Settlement Administrator, at a financial institution (that is not any of the
23 Released Parties) recommended by the Settlement Administrator and approved by Class Counsel
24 and the Health Net Defendants, and shall be maintained as a qualified settlement fund pursuant to
25 Treasury Regulation § 1.468 B-1, *et seq.*

26 3.10. Payment/Withdrawal Authorization. No amounts from the Settlement Fund may be
27 withdrawn unless (i) expressly authorized by the Settlement Agreement or (ii) approved by the
28 Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable

1 Administrative Expenses from the Settlement Fund as such expenses are invoiced without further
2 order of the Court. The Settlement Administrator shall provide Class Counsel and the Health Net
3 Defendants with notice of any withdrawal or other payment the Settlement Administrator proposes
4 to make from the Settlement Fund before the Effective Date at least seven (7) business days prior
5 to making such withdrawal or payment.

6 3.11. Payments to Class Members. The Settlement Administrator, subject to such
7 supervision and direction of the Court and/or Class Counsel as may be necessary or as
8 circumstances may require, shall administer and/or oversee distribution of the Settlement Fund to
9 Participating Settlement Class Members pursuant to this Agreement.

10 3.12. Treasury Regulations & Fund Investment. The Parties agree that the Settlement
11 Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury
12 Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury
13 Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting
14 for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes owed with
15 respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a
16 qualified settlement fund from the earliest date possible and agree to any relation-back election
17 required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible.
18 Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured
19 by the Federal Deposit Insurance Corporation (“FDIC”) at a financial institution determined by the
20 Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest
21 bearing account as may be reasonably necessary during the check clearing process. The Settlement
22 Administrator shall provide an accounting of any and all funds in the Settlement Fund, including
23 any interest accrued thereon and payments made pursuant to this Agreement, upon request of any
24 of the Parties.

25 3.13. Taxes. All Taxes relating to the Settlement Fund shall be paid out of the Settlement
26 Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement
27 Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and
28 hold harmless the Parties and their counsel for Taxes (including, without limitation, taxes payable

1 by reason of any such indemnification payments). The Parties and their respective counsel have
2 made no representation or warranty with respect to the tax treatment by any Class Representative
3 or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or
4 derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement
5 Class Member shall be solely responsible for the federal, state, and local tax consequences to him,
6 her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

7 3.14. Limitation of Liability.

8 3.14.1. The Health Net Defendants and their counsel shall not have any
9 responsibility for or liability whatsoever with respect to (i) any act, omission or determination of
10 Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in
11 connection with the administration of the Settlement or otherwise; (ii) the management, investment
12 or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of
13 the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims
14 asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the
15 Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses and/or costs incurred
16 in connection with the taxation of the Settlement Fund or the filing of any returns.

17 3.14.2. Class Representatives and Class Counsel shall not have any liability
18 whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator,
19 or any of their respective designees or agents, in connection with the administration of the
20 Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund;
21 (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the
22 determination, administration, calculation or payment of any claims asserted against the Settlement
23 Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the
24 payment or withholding of any Taxes, expenses and/or costs incurred in connection with the
25 taxation of the Settlement Fund or the filing of any returns.

26 3.14.3. The Settlement Administrator shall indemnify and hold Class Counsel,
27 the Settlement Class, Class Representatives, and the Health Net Defendants and their counsel
28 harmless for (i) any act or omission or determination of the Settlement Administrator, or any of

1 Settlement Administrator’s designees or agents, in connection with the Notice Plan and the
2 administration of the Settlement; (ii) the management, investment or distribution of the Settlement
3 Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the
4 determination, administration, calculation or payment of any claims asserted against the Settlement
5 Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the
6 payment or withholding of any Taxes, expenses and/or costs incurred in connection with the
7 taxation of the Settlement Fund or the filing of any returns.

8 **4. SETTLEMENT BENEFITS**

9 4.1. Prospective Relief. Without admitting any liability or that it is required by law to do
10 so, and within 30 days after the entry of the Final Approval Order and the Judgment, the Health
11 Net Defendants agree to implement and maintain the following data security measures for a period
12 of five years from entry of the Final Approval Order.

13 4.1.1. The Health Net Defendants will confirm that they have fully ended their use
14 of the Accellion File Transfer Appliance and migrated to a new secure file transfer solution;

15 4.1.2. The Health Net Defendants will undertake measures to secure, or securely
16 destroy if and when it is no longer needed for legitimate business purposes, all information that was
17 subject to the FTA Data Breach;

18 4.1.3. The Health Net Defendants shall conduct annual reviews of third-party data
19 transfer vendors’ product(s) with respect to data security and privacy;

20 4.1.4. The Health Net Defendants will enhance their existing third-party vendor
21 risk management program, including by taking at least the following measures:

22 4.1.4.1. Conduct annual reviews of all file transfer programs or software
23 currently being utilized for individual-to-individual transfers by the Health Net Defendants,
24 including any third-party products, and evaluate whether any software used for such purpose is
25 known by the Health Net Defendants to be outdated, unsupported, or unsecure;

26 4.1.4.2. To the extent the Health Net Defendants changes its third-party
27 file transfer vendor in the next five years, implement an RFP or bid solicitation program for third-
28 party file transfer vendors;

1 4.1.4.3. Maintain positions within the Health Net Defendants that are
2 specifically responsible for overseeing third-party data transfer vendors and operations; and

3 4.1.4.4. Provide annual security awareness training for employees of the
4 Health Net Defendants involved with customer and employee data sharing and data transfer
5 activities, to cover industry best practices for data security and privacy.

6 4.1.5. Monitor the dark web for indications of fraudulent activity with respect to
7 the data of the Health Net Defendants customers and/or current or former employees in connection
8 with the FTA Data Breach. The Health Net Defendants shall notify Class Counsel of any detected
9 indications of fraudulent activity with respect to the data of Class Members in connection with the
10 FTA Data Breach.

11 4.1.6. The Health Net Defendants agree to annually certify compliance with the
12 relief provide for in this Section 4.1. If the Health Net Defendants fail to comply with any of the
13 measures and relief provided in Section 4.1, the Health Net Defendants will provide Class Counsel
14 with notice of non-compliance within thirty (30) days of any non-compliance.

15 4.2. Settlement Payments. In addition, each Participating Settlement Class Member may
16 qualify for one of the following:

17 4.2.1. Credit Monitoring and Insurance Services. Three years of the Credit
18 Monitoring and Insurance Services (“CMIS”). The CMIS will include Credit Monitoring, Fraud
19 Consultation, and Identity Theft Restoration services. A Participating Settlement Class Member
20 who chooses CMIS as their respective Settlement Benefit and already maintains a credit monitoring
21 service may elect to defer their enrollment in the CMIS for a period of 12 months for no additional
22 charge. The CMIS will include the following services to be provided to each Participating
23 Settlement Class Member who chooses the CMIS: (i) up to \$1 million dollars of identity theft
24 insurance coverage; and (ii) three-bureau credit monitoring providing notice of changes to the
25 Participating Settlement Class Member’s credit profile.

26 4.2.2. Cash Fund Payment. Participating Class Members may submit a claim to
27 receive a Settlement Payment in cash (“Cash Fund Payment”). The amount of the Cash Fund
28 Payment will be calculated in accordance with Section 4.7.2 herein.

1 4.2.3. Documented Loss Payment. In the event a Participating Settlement Class
2 Member does not submit a Claim for a Cash Fund Payment or select CMIS, then that Participating
3 Settlement Class Member may submit a claim for a Settlement Payment of up to \$10,000 for
4 reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss
5 Payment, a Settlement Class Member must choose to do so on their given Claim Form and submit
6 to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the
7 Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed
8 Documented Loss; and (iii) Reasonable Documentation that demonstrates the Documented Loss to
9 be reimbursed pursuant to the terms of the Settlement. Any Participating Settlement Class Member
10 who submits a Claim for a Documented Loss Payment that is rejected by the Settlement
11 Administrator and that is not cured will be considered as a Claim for a Cash Fund Payment.

12 4.3. Settlement Payment Methods. Participating Settlement Class Members will be
13 provided the option to receive any Settlement Payment due to them pursuant to the terms of this
14 Agreement via various digital methods, i.e., PayPal, Venmo, etc. In the event Participating
15 Settlement Class Members do not exercise this option, they will receive their Settlement Payment
16 via a physical check sent by U.S. Mail.

17 4.4. Deadline to File Claims. Claim Forms must be received within 90 days after the
18 Notice Date.

19 4.5. The Settlement Administrator. The Settlement Administrator shall have the
20 authority to determine whether a Claim Form is substantially valid, timely, and complete, and to
21 what extent a Claim Form is electing to receive a Documented Loss Payment. To the extent the
22 Settlement Administrator determines a claim is deficient for a reason other than late posting, within
23 ten days of making such a determination, the Settlement Administrator shall notify the Claimant of
24 the deficiencies and that Claimant shall have 30 days to cure the deficiencies and re-submit the
25 claim. No notification is required for late-posted claims. The Settlement Administrator shall
26 exercise reasonable discretion to determine whether the Claimant has cured the deficient claim. If
27 the Claimant fails to cure the deficiency, the claim shall stand as denied and the Class Member
28 shall be so notified.

1 4.6. Timing of Settlement Benefits. Within 90 days after: (i) the Effective Date; or (ii) all
2 Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever
3 date is later, the Settlement Administrator shall cause funds to be distributed to each Participating
4 Settlement Class Member who is entitled to funds based on the selection made on their given Claim
5 Form. Within 30 days of the Effective Date, the Settlement Administrator shall make best efforts
6 to provide Participating Settlement Class Members who selected CMIS with enrollment
7 instructions for the CMIS.

8 4.7. Distribution of Settlement Payments.

9 4.7.1. The Settlement Administrator will first apply the Net Settlement Fund to pay
10 for CMIS claimed by Participating Settlement Class Members. If Net Settlement Funds remain
11 after paying for the CMIS, the Settlement Administrator will next use it to pay all Documented
12 Loss Payments. The amount of the Net Settlement Fund remaining after all Documented Loss
13 Payments are applied and the payments for the Credit Monitoring and Insurance Services are made
14 shall be referred to as the “Post DC Net Settlement Fund”.

15 4.7.2. The Settlement Administrator shall then utilize the Post DC Net Settlement
16 Fund to make all Cash Fund Payments pursuant to Section 4.2.2 herein. The amount of each Cash
17 Fund Payment shall be calculated by dividing the Post DC Net Settlement Fund by double the
18 number of valid claims submitted by California residents added to the number of valid claims
19 submitted by non-California residents to determine an “Initial Cash Amount” (i.e., Initial Cash
20 Amount = Post DC Net Settlement Fund / (((2) * the total number of Approved Claims submitted
21 by California residents) + (the total number of Approved Claims submitted by non-California
22 residents))). The Cash Fund Payment amount to non-California residents with Approved Claims
23 will be equal to the Initial Cash Amount, and the Cash Fund Payment amount to California residents
24 with Approved Claims will equal twice the amount of the Initial Cash Amount.

25 4.7.3. In the event the Net Settlement Fund is insufficient to cover the payment for
26 the CMIS claimed by Participating Settlement Class Members, the duration of the CMIS coverage
27 will be reduced to exhaust the fund. In such an event, no Net Settlement Funds will be distributed
28 to Claimants for Approved Claims for Documented Loss Payments or for Cash Fund Payments. In

1 the event that the aggregate amount of all Documented Loss Payments and payments for the CMIS
2 exceeds the total amount of the Net Settlement Fund, then the value of the Documented Loss
3 Payment to be paid to each Participating Settlement Class Member shall be reduced, on a pro rata
4 basis, such that the aggregate value of all Documented Loss Payments and payments due for CMIS
5 does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be
6 distributed to Claimants with Approved Claims for Cash Fund Payments. All such determinations
7 shall be performed by the Settlement Administrator.

8 4.8. Deadline to Deposit or Cash Physical Checks. Settlement Class Members with
9 Approved Claims who receive a Documented Loss Payment or a Cash Fund Payment, by physical
10 check, shall have 60 days following distribution to deposit or cash their cash benefit check.

11 4.9. Residual Funds. To the extent any monies remain in the Net Settlement Fund more
12 than 150 days after the distribution of Settlement Payments to the Participating Settlement Class
13 Members, a subsequent Settlement Payment will be evenly made to all Participating Settlement
14 Class Members with Approved Claims who cashed or deposited the initial payment they received,
15 provided that the average check amount is equal to or greater than Three Dollars and No Cents
16 (\$3.00). The distribution of this remaining Net Settlement Fund shall continue until the average
17 check amount in a distribution is less than Three Dollars and No Cents (\$3.00). In the event that a
18 subsequent Settlement Payment made to Participating Settlement Class Members would exceed
19 Two Hundred and Fifty Dollars and No Cents (\$250.00), then the Parties will seek guidance from
20 the Court on how to disburse the remaining Net Settlement Fund. If the average check amount in a
21 distribution would be less than Three Dollars and No Cents (\$3.00), and if possible, the remaining
22 Net Settlement Fund will be used to extend the Credit Monitoring and Insurance Services to
23 Participating Settlement Class Members receiving that benefit for as long as possible. Any amount
24 remaining in the Net Settlement Fund after said extension is accomplished, if any, shall be
25 distributed to the Non-Profit Residual Recipient.

26 4.10. Returned Checks. For any Settlement Payment returned to the Settlement
27 Administrator as undeliverable (including, but not limited to, when the intended recipient is no
28 longer located at the address), the Settlement Administrator shall make reasonable efforts to find a

1 valid address and resend the Settlement Payment within 30 days after the check is returned to the
2 Settlement Administrator as undeliverable. The Settlement Administrator shall only make one
3 attempt to resend a Settlement Payment.

4 4.11. Residue of Settlement Fund. No portion of the Settlement Fund shall revert or be
5 repaid to the Health Net Defendants after the Effective Date. Any residual funds remaining in the
6 Net Settlement Fund, after all payments and distributions are made pursuant to the terms and
7 conditions of this Agreement, shall be distributed to the Non-Profit Residual Recipient, as approved
8 by the Court.

9 **5. SETTLEMENT ADMINISTRATION**

10 5.1. Submission of Claims.

11 5.1.1. Submission of Electronic and Hard Copy Claims. Settlement Class Members
12 may submit electronically verified Claim Forms to the Settlement Administrator through the
13 Settlement Website, or may download Claim Forms to be filled out, signed, and submitted
14 physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically
15 or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement
16 Administrator shall reject any Claim Forms that are incomplete, inaccurate, or not timely received
17 and will provide Claimants notice and the ability to cure defective claims, unless otherwise noted
18 in this Agreement.

19 5.1.2. Review of Claim Forms. The Settlement Administrator will review Claim
20 Forms submitted by Settlement Class Members to determine whether they are eligible for a
21 Settlement Payment.

22 5.1.3. Settlement Administrator's Duties.

23 5.1.3.1. Cost Effective Claims Processing. The Settlement Administrator
24 shall, under the supervision of the Court, administer the relief provided by this Agreement by
25 processing Claim Forms in a rational, responsive, cost effective and timely manner, and calculate
26 Settlement Payments in accordance with this Agreement.

27 5.1.3.2. Dissemination of Notices. The Settlement Administrator shall
28 disseminate the Settlement Class Notice as provided for in this Agreement.

1 5.1.3.3. Maintenance of Records. The Settlement Administrator shall
2 maintain reasonably detailed records of its activities under this Agreement. The Settlement
3 Administrator shall maintain all such records as required by applicable law in accordance with its
4 business practices and such records will be made available to Class Counsel and Defendants'
5 Counsel upon request. The Settlement Administrator shall also provide reports and other
6 information to the Court as the Court may require. Upon request, the Settlement Administrator shall
7 provide Class Counsel and Defendants' Counsel with information concerning Notice,
8 administration, and implementation of the Settlement. Without limiting the foregoing, the
9 Settlement Administrator also shall:

10 5.1.3.3.1. Receive Requests for Exclusion from Settlement Class
11 Members and provide Class Counsel and Defendants' Counsel a copy thereof no later than five
12 days following the deadline for submission of the same. If the Settlement Administrator receives
13 any Requests for Exclusion or other requests from Settlement Class Members after expiration of
14 the Opt-Out Period, the Settlement Administrator shall promptly provide copies thereof to Class
15 Counsel and Defendants' Counsel;

16 5.1.3.3.2. Provide weekly reports to Class Counsel and
17 Defendants' Counsel that include, without limitation, reports regarding the number of Claim Forms
18 received, the number of Claim Forms approved by the Settlement Administrator, and the
19 categorization and description of Claim Forms rejected by the Settlement Administrator. The
20 Settlement Administrator shall also, as requested by Class Counsel or Defendants' Counsel and
21 from time to time, provide the amounts remaining in the Net Settlement Fund;

22 5.1.3.3.3. Make available for inspection by Class Counsel and
23 Defendants' Counsel the Claim Forms and any supporting documentation received by the
24 Settlement Administrator at any time upon reasonable notice;

25 5.1.3.3.4. Cooperate with any audit by Class Counsel or
26 Defendants' Counsel, who shall have the right but not the obligation to review, audit, and evaluate
27 all Claim Forms for accuracy, veracity, completeness, and compliance with the terms and
28 conditions of this Agreement.

1 5.2. Requests for Additional Information. In the exercise of its duties outlined in this
2 Agreement, the Settlement Administrator shall have the right to reasonably request additional
3 information from the Parties or any Participating Settlement Class Member.

4 5.3. Timing of Settlement Benefits. The Settlement Administrator shall comply with the
5 terms and conditions of this Agreement herein and shall timely make all Settlement Payments
6 contemplated in this Agreement within 90 days after: (i) the Effective Date; or (ii) all Claim Forms
7 have been processed subject to the terms and conditions of this Agreement, whichever date is later.

8 **6. SETTLEMENT CLASS NOTICE**

9 6.1. Within five days after the date of the Preliminary Approval Order, the Health Net
10 Defendants shall provide the Settlement Class List to the Settlement Administrator.

11 6.2. Because the Settlement Class List will be provided to the Settlement Administrator
12 solely for purposes of providing the Class Notice and Settlement Benefits and processing opt-out
13 requests, the Settlement Administrator will execute a confidentiality and non-disclosure agreement
14 with the Health Net Defendants, Defendants' Counsel, and Class Counsel and will ensure that any
15 information provided to it by Settlement Class Members, Class Counsel, Defendants' Counsel, or
16 the Health Net Defendants, including the Settlement Class List, will be secure and used solely for
17 the purpose of effecting this Settlement.

18 6.3. Direct Notice. No later than the Notice Date, and to be substantially completed
19 within 21 days thereafter, or such other time as may be ordered by the Court, the Settlement
20 Administrator shall disseminate the Summary Notice to the members of the Settlement Class as
21 follows:

22 6.3.1. For any Settlement Class Member for whom an email address is available,
23 the Settlement Administrator shall email the Summary Notice to such Person;

24 6.3.2. For any Settlement Class Member for whom an email is not available, and
25 to the extent a physical address is available, the Settlement Administrator will send the Summary
26 Notice (in Post Card form) by U.S. mail, postage prepaid;

27 6.3.3. If any notice that has been emailed is returned as undeliverable, the
28 Settlement Administrator shall attempt two other email executions and if not successful, the

1 Settlement Administrator will send the Summary Notice (in Post Card form) by U.S. mail, postage
2 prepaid, to the extent a current mailing address is available;

3 6.3.4. For any Summary Notice that has been mailed via U.S. mail and returned by
4 the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the
5 forwarding address, if any, provided by the Postal Service on the face of the returned mail; and

6 6.3.5. Neither the Parties nor the Settlement Administrator shall have any other
7 obligation to re-mail individual notices that have been mailed as provided in this Paragraph.

8 6.3.6. In the event the Settlement Administrator transmits a Summary Notice via
9 U.S. Mail, then the Settlement Administrator shall perform any further investigations deemed
10 appropriate by the Settlement Administrator, including using the National Change of Address
11 (“NCOA”) database maintained by the United States Postal Service, in an attempt to identify
12 current mailing addresses for individuals or entities whose names are provided by the Health Net
13 Defendants.

14 6.4. Notice via Internet Campaign. The Settlement Administrator shall design and
15 conduct an internet advertisement publication notice program targeted to Class Members, which
16 must be approved by the Parties and the Court. This internet advertisement publication notice shall
17 commence no later than the Notice Date and shall continue through the Claims Deadline.

18 6.5. Fraud Prevention. The Settlement Administrator shall use reasonable and customary
19 fraud-prevention mechanisms to prevent (i) submission of Claim Forms by persons other than
20 potential Settlement Class Members, (ii) submission of more than one Claim Form per person, and
21 (iii) submission of Claim Forms seeking amounts to which the claimant is not entitled. In the event
22 a Claim Form is submitted without a unique class member identifier, the Settlement Administrator
23 shall employ reasonable efforts to ensure that the Claim is valid.

24 6.6. Email Reminder. For any Settlement Class Member for whom the Settlement
25 Administrator has an email address, and who has not submitted a valid Claim Form, the Settlement
26 Administrator shall transmit periodic email reminders of the opportunity to file a Claim Form prior
27 to the Claims Deadline.

28 6.7. Settlement Website. Prior to any dissemination of the Summary Notice and prior to

1 the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched
2 on the Internet in accordance with this Agreement. The Settlement Administrator shall create the
3 Settlement Website. The Settlement Website shall contain information regarding how to submit
4 Claim Forms (including submitting Claims Forms electronically through the Settlement Website)
5 and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this
6 Agreement, the Preliminary Approval Order entered by the Court, and the operative complaint in
7 the Action. The Settlement Website shall also include a toll-free telephone number and mailing
8 address through which Settlement Class Members may contact the Settlement Administrator
9 directly. The Settlement Website shall also allow for submission of Requests of Exclusion
10 electronically through the Settlement Website.

11 6.8. Contents of the Long Form Notice. The Long Form Notice shall, *inter alia*, (i)
12 specify the deadline for Settlement Class Members to opt-out, object to, or otherwise comment
13 upon the Settlement by day, month, and year, and state that any objection to this Agreement, and
14 any papers submitted in support of said objection, will only be considered by the Court at the
15 Fairness Hearing if, on or before the deadline to opt-out of, object to, or otherwise comment upon
16 the Settlement, the Person making the objection files copies of such papers he or she proposes to
17 submit for consideration at the Fairness Hearing with the Clerk of the Court; (ii) contain instructions
18 on how to submit a Claim Form; (iii) note the deadline for Settlement Class Members to submit
19 Claim Forms; and (iv) note the date, time and location of the Fairness Hearing. A copy of the Long
20 Form Notice is attached hereto as **Exhibit D**.

21 **7. OPT-OUT PROCEDURES**

22 7.1. Any Settlement Class Member may submit a Request for Exclusion from the
23 Settlement at any time during the Opt-Out Period. To be valid, the Request for Exclusion must be
24 (i) submitted electronically on the Settlement Website, or (ii) postmarked or received by the
25 Settlement Administrator on or before the end of the Opt-Out Period. In the event the Settlement
26 Class Members submit a Request for Exclusion to the Settlement Administrator via US Mail, such
27 Request for Exclusion must be in writing and must identify the case name *Harbour v. California*
28 *Health and Wellness Plan*, Case No. 5:21-cv-03322-EJD (N.D. Cal.); state the name, address and

1 telephone number of the Settlement Class Members seeking exclusion; be physically signed by the
2 Person(s) seeking exclusion; and must also contain a statement to the effect that “I/We hereby
3 request to be excluded from the proposed Settlement Class in *Harbour v. California Health and*
4 *Wellness Plan, et al.*, U.S.D.C. Case No. 5:21-cv-03322-EJD (N.D. Cal.)” Any Person who elects
5 to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment
6 entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue
7 of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. No Person may
8 request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

9 **8. OBJECTION AND COMMENT PROCEDURES**

10 8.1. Any Settlement Class Member may comment in support of or in opposition to the
11 Settlement and may do so in writing, in person, or through counsel, at his or her own expense, at
12 the Fairness Hearing. Except as the Court may order otherwise, no objection to the Settlement shall
13 be heard, and no papers, briefs, pleadings, or other documents submitted by any objector shall be
14 received and considered by the Court unless such objector mails to the Court (c/o the Class Action
15 Clerk, U.S. District Court for the Northern District of California) or files in person at any location
16 of the United States District Court for the Northern District of California a written objection with
17 the caption *Harbour v. California Health and Wellness Plan, et al.*, U.S.D.C. Case No. 5:21-cv-
18 03322-EJD (N.D. Cal.), that includes: (i) the Settlement Class Member’s full name, current mailing
19 address, and telephone number; (ii) a signed statement that he or she believes himself or herself to
20 be a member of the Settlement Class; (iii) whether the objection applies only to the objector, a
21 subset of the Settlement Class, or the entire Settlement Class, (iv) the specific grounds for the
22 objection; (v) all documents or writings that the Settlement Class Member desires the Court to
23 consider; and (vi) a statement regarding whether they (or counsel of their choosing) intend to appear
24 at the Fairness Hearing. All written objections must be postmarked no later than the Objection
25 Deadline. Any objector who fails to object in the manner prescribed herein shall be deemed to have
26 waived his or her objections and forever be barred from making any such objections in the Action
27 or in any other action or proceeding absent a showing of good cause.
28

1 **9. MODIFICATION OR TERMINATION OF THE AGREEMENT**

2 9.1. The Parties shall have the right to terminate this Agreement by filing with the Court
3 and serving on counsel for the other party a notice of termination within 14 days after the end of
4 the Opt-Out Period if more than 2% of Settlement Class Members (approximately 28,000) submit
5 valid Requests for Exclusion.

6 9.2. In addition, the terms and provisions of this Agreement may be amended, modified,
7 or expanded by written agreement of the Parties and approval of the Court; provided, however, that,
8 after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such
9 amendments, modifications, or expansions of this Agreement and its implementing documents
10 (including all exhibits hereto) without further notice to the Settlement Class or approval by the
11 Court if such changes are consistent with the Court's Preliminary Approval Order and do not
12 materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

13 9.3. In the event this Agreement is terminated pursuant to any provision herein, then the
14 Settlement proposed herein shall become null and void (with the exception of Sections 3.6.2, 3.7,
15 9.3, and 9.4 herein) and shall have no legal effect and may never be mentioned at trial or in
16 dispositive or class motions or motion papers (except as necessary to explain the timing of the
17 procedural history of the Action), and the Parties will return to their respective positions existing
18 immediately before the execution of this Agreement.

19 9.4. Notwithstanding any provision of this Agreement, in the event this Agreement is
20 not approved by any court, or terminated for any reason, or the Settlement set forth in this
21 Agreement is declared null and void, or in the event that the Effective Date does not occur,
22 Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or
23 liable for any of the Administrative Expenses, or any expenses, including costs of notice and
24 administration associated with this Settlement or this Agreement, except that each Party shall bear
25 its own attorneys' fees and costs.

26 **10. SERVICE PAYMENTS**

27 10.1. Class Representatives may each seek a Service Payment, not to exceed One
28 Thousand Five Hundred Dollars and No Cents (\$1,500.00) to be awarded and approved by the

1 Court, and be paid from the Settlement Fund. Any request for such award of Service Payments
2 must be filed at least 35 days prior to the Objection Deadline.

3 10.2. The Settlement Administrator shall pay the Service Payments approved by the Court
4 to the Class Representatives from the Settlement Fund. Such Service Payments shall be paid by the
5 Settlement Administrator, in the amount approved by the Court, within five business days after the
6 Effective Date.

7 10.3. In the event the Court declines to approve, in whole or in part, the payment of
8 Service Payments in the amounts requested, the remaining provisions of this Agreement shall
9 remain in full force and effect. No decision by the Court, or modification or reversal or appeal of
10 any decision by the Court, concerning the amount of a Service Payment shall constitute grounds
11 for cancellation or termination of this Agreement.

12 **11. FEE AWARD AND COSTS**

13 11.1. Class Counsel may file a motion for an award of the Fee Award and Costs to be paid
14 from the Settlement Fund. The motion must be filed at least 35 days prior to the Objection Deadline.
15 Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class
16 Counsel shall provide to the Settlement Administrator a properly completed and duly executed IRS
17 Form W-9. Fee Award and Costs shall be paid by the Settlement Administrator, in the amount
18 approved by the Court, within five business days after the Effective Date.

19 11.2. Unless otherwise ordered by the Court, Class Counsel shall have the sole and
20 absolute discretion to allocate any approved Fee Award and Costs amongst themselves. The Health
21 Net Defendants shall have no liability or other responsibility for allocation of any such attorneys'
22 fees and costs.

23 11.3. The Settlement is not conditioned upon the Court's approval of the Fee Award and
24 Costs or the Service Payments.

25 **12. JUDGMENT**

26 12.1. This Agreement is subject to and conditioned upon the issuance by the Court of the
27 Judgment, which will grant final approval of this Agreement and among other things shall:

28 12.1.1. Dismiss the Action with prejudice (as to only the Released Parties) and

1 without costs, except as contemplated by this Agreement;

2 12.1.2. Decree that neither the Judgment nor this Agreement constitutes an
3 admission by the Health Net Defendants of any liability or wrongdoing whatsoever;

4 12.1.3. Bar and enjoin all Releasing Parties from asserting against any of the
5 Released Parties any and all Released Claims;

6 12.1.4. Release each Released Party from any and all Released Claims;

7 12.1.5. Determine that this Agreement is entered into in good faith and
8 represents a fair, reasonable, and adequate settlement that is in the best interests of the members of
9 the Settlement Class; and

10 12.1.6. Preserve the Court's continuing and exclusive jurisdiction over the
11 Parties to this Agreement, including the Health Net Defendants and all Participating Settlement
12 Class Members, to administer, supervise, construe, and enforce this Agreement in accordance with
13 its terms for the mutual benefit of the Parties, but without affecting the finality of the Judgment.

14 **13. REPRESENTATIONS AND WARRANTIES**

15 13.1. In addition to the representations and warranties set forth in Section 2 (The Recitals)
16 of this Agreement, each signatory to this Agreement represents and warrants (i) that he, she, or it
17 has all requisite power and authority to execute, deliver and perform this Agreement and to
18 consummate the transactions contemplated herein, (ii) that the execution, delivery and performance
19 of this Agreement and the consummation by it of the actions contemplated herein have been duly
20 authorized by all necessary corporate action on the part of each signatory, and (iii) that this
21 Agreement has been duly and validly executed and delivered by each signatory, and constitutes its
22 legal, valid and binding obligation.

23 13.2. The Health Net Defendants have provided to Plaintiffs the Settlement Class List
24 containing the list of Persons to whom the Health Net Defendants provided notice of the FTA Data
25 Breach, and represents and warrants such information is true and correct to the best of the Health
26 Net Defendants' knowledge.

27 **14. NO ADMISSION OF LIABILITY OR WRONGDOING**

28 14.1. This Agreement, whether or not consummated, and any negotiations, proceedings

1 or agreements relating to this Agreement, and any matters arising in connection with settlement
2 negotiations, proceedings, or agreements:

3 14.1.1. Shall not be admissible in any action or proceeding for any reason, other
4 than an action to enforce the terms hereof;

5 14.1.2. Shall not be described as, construed as, offered or received against the
6 Released Parties as evidence of and/or deemed to be evidence of any presumption, concession, or
7 admission by any Released Party of the truth of any fact alleged by Plaintiffs; the validity of any
8 claim that has been or could have been asserted in the Action or in any litigation; the deficiency of
9 any defense that has been or could have been asserted in the Action or in any litigation; or any
10 liability, negligence, fault, or wrongdoing of any of the Released Parties; and

11 14.1.3. Shall not be described as or construed against the Released Parties,
12 Plaintiffs, or any Settlement Class Members as an admission or concession that the consideration
13 to be given hereunder represents the amount which could be or would have been awarded to said
14 Plaintiffs or the members of the Settlement Class after trial.

15 **15. MISCELLANEOUS PROVISIONS**

16 15.1. Entire Agreement. This Agreement, including all exhibits hereto, shall constitute the
17 entire Agreement among the Parties with regard to the subject matter hereof and shall supersede
18 any previous agreements, representations, communications and understandings among the Parties.
19 Each of the Parties to this Agreement acknowledges that no other Party to this Agreement, nor any
20 agent or attorney of any such party, has made any promise, representation, or warranty, express or
21 implied, not contained in this Agreement to induce either party to execute this Agreement. Neither
22 Party is relying on the other Party or their agents or attorneys and rather each Party decided to
23 resolve the dispute in their own independent determination and judgment. This Agreement may not
24 be changed, modified, or amended except in writing signed by all Parties, subject to Court approval.
25 The Parties contemplate that, subject to Court approval or without such approval where legally
26 permissible, the exhibits to this Agreement may be modified by subsequent agreement of counsel
27 for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

1 15.2. Best Efforts. The Parties agree that they will make all reasonable efforts needed to
 2 reach the Effective Date and fulfill their obligations under this Agreement.

3 15.3. Governing Law. This Agreement shall be construed under and governed by the laws
 4 of the State of California, applied without regard to laws applicable to choice of law.

5 15.4. Execution by Counterparts. This Agreement may be executed by the Parties in one
 6 or more counterparts, each of which shall be deemed an original but all of which together shall
 7 constitute one and the same instrument. Facsimile signatures or signatures sent via email shall be
 8 treated as original signatures and shall be binding.

9 15.5. Notices. Any notice, instruction, application for Court approval or application for
 10 Court orders sought in connection with this Agreement or other document to be given by any Party
 11 to any other Party shall be in writing and delivered personally or sent by registered or certified mail,
 12 postage prepaid, if to Health Net Defendants’ or Defendants’ Counsel, or if to Plaintiffs or the
 13 Settlement Class to Class Counsel, or to other recipients as the Court may specify. All notices to
 14 the Parties or counsel required by this Agreement shall be made in writing and communicated by
 15 mail and email to the following addresses:

| If to Plaintiffs or Class Counsel: | If to Health Net Defendants’ or Defendants’ Counsel: |
|---|---|
| <p>18 Tina Wolfson <i>twolfson@ahdootwolfson.com</i> 19 Robert Ahdoot <i>rahdoot@ahdootwolfson.com</i> 20 Andrew Ferich <i>aferich@ahdootwolfson.com</i> AHDOOT & WOLFSON, PC 2600 West Olive Avenue Suite 500 Burbank, California 91505</p> <p>23 Laurence D. King <i>lking@kaplanfox.com</i> 24 Matthew George <i>mgeorge@kaplanfox.com</i> KAPLAN FOX & KILSHEIMER LLP 1999 Harrison Street, Suite 1560 Oakland, CA 94612</p> <p>27 Timothy G. Blood <i>tblood@bholaw.com</i> 28 Paula R. Brown</p> | <p>Peter B. Morrison <i>peter.morrison@skadden.com</i> SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP 300 South Grand Avenue, Suite 3400 Los Angeles, California 90071-3144</p> <p>William E. Ridgway <i>william.ridgway@skadden.com</i> SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP 155 N. Wacker Drive Suite 2700 Chicago, Illinois 60606</p> |

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| <p><i>pbrown@bholaw.com</i> BLOOD HURST & O'REARDON, LLP 501 West Broadway, Suite 1490 San Diego, CA 92101</p> | |
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15.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of each of the Parties hereto.

15.7. Construction. For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

15.8. Severability. The waiver or breach by one Party of any provision of this Agreement shall not be deemed a waiver or breach of any other provision of this Agreement.

15.9. Integration of Exhibits. The exhibits to this Agreement and any exhibits thereto are an integral and material part of the Settlement and are hereby incorporated and made a part of the Agreement.

15.10. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

15.11. Taxability. The Health Net Defendants do not make and have not made any representations regarding the taxability of any Settlement Benefit, Fee Award, and/or any other payments made pursuant to this Agreement. Class Representatives and Class Counsel (on behalf of themselves and the Settlement Class Members) represent that that they have not relied upon any representation of any of the Health Net Defendants or their attorneys or the Settlement Administrator on the subject of taxability of any consideration provided under this Agreement. Class Representatives and Class Counsel (on behalf of themselves and the Settlement Class Members) understand and expressly agree that any income or other tax, including any interest, penalties or other payment obligations ultimately determined to be payable from or with respect to any Settlement Benefit, Fee Award, and/or any other payments made pursuant to this Agreement,

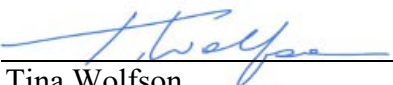
1 as well as any state or federal reporting obligations imposed on them arising therefrom or
2 attributable thereto, shall not be the Health Net Defendants’ responsibility.

3 15.12. Counterparts. The Settlement Agreement may be executed in one or more
4 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
5 instrument. A complete set of original executed counterparts shall be filed with the Court.

6 15.13. Deadlines. If any of the dates or deadlines specified herein falls on a weekend or
7 legal holiday, the applicable date or deadline shall fall on the next business day. All reference to
8 “days” in this Agreement shall refer to calendar days, unless otherwise specified. The Parties
9 reserve the right, subject to the Court’s approval, to agree to any reasonable extensions of time that
10 might be necessary to carry out any of the provisions of this Agreement.

11 15.14. Dollar Amounts. All dollar amounts are in United States dollars, unless otherwise
12 expressly stated.

13 **IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be
14 executed on its behalf by its duly authorized counsel of record, all as of the day set forth below:

15
16 Dated: December 3, 2021
17
18 AHDOOT & WOLFSON, PC
19 By: 
20 Tina Wolfson
21 Robert Ahdoot
22 Andrew W. Ferich

23 Dated: December 3, 2021
24
25 BLOOD HURST & O’REARDON, LLP
26 By: _____
27 Timothy G. Blood
28 Paula R. Brown
Jennifer L. MacPherson

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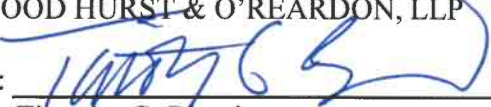
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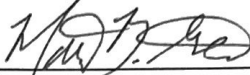
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25 BLOOD HURST & O'REARDON, LLP
26 By:  _____
27 Timothy G. Blood
28 Paula R. Brown
Jennifer L. MacPherson

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Dated: December 3, 2021

KAPLAN FOX & KILSHEIMER LLP

By: 

Laurence D. King
Matthew B. George
Joel B. Strauss

Dated: December 3, 2021

SKADDEN, ARPS, SLATE, MEAGHER, &
FLOM LLP

By: _____
Peter B. Morrison
William E. Ridgway
Zachary M. Faigen

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