

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

CHARLES M. BUTLER, III,

Plaintiff,  
on behalf of the Class,

vs.

UNIFIED LIFE INSURANCE COMPANY

Defendant.

Case No. CV 17-50-BLG-SPW

**CLASS ACTION SETTLEMENT  
AGREEMENT**

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**1. PREAMBLE**

This Class Action Settlement Agreement is entered into by Plaintiff Charles M. Butler, III, individually<sup>1</sup> and on behalf of the Class Members; and Unified Life Insurance Company (“Defendant”). Each of Plaintiff and of Defendant shall be referred to herein individually as a “Party” and collectively as the “Parties.” Capitalized terms used herein are defined in Section 3 of this Settlement Agreement or are otherwise indicated in parentheses. Subject to the Court’s approval, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Settlement Agreement and upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the Litigation shall be settled and compromised upon the terms and conditions contained herein.

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<sup>1</sup> Certain individual claims of Charles Butler that differ from the claims in the class action have been carved out and are not addressed by this Settlement Agreement.

## 2. RECITALS

WHEREAS, on April 25, 2017, Plaintiff filed a complaint against Defendant, among others, alleging various claims related to a short-term medical insurance policy. (Doc. 1).

WHEREAS, following the close of discovery, on August 16, 2018, Plaintiff filed a Motion for Leave to File Third Amended Complaint alleging class claims. (Doc. 87).

WHEREAS, on August 30, 2018, Plaintiff filed a Motion to Certify Class. (Doc. 93).

WHEREAS, on December 3, 2018, the same day the Court granted Plaintiff's Motion for Leave, (Doc. 180), Plaintiff filed a Third Amended Complaint alleging class claims, alleging that Defendant systematically breached Class Member short-term medical insurance policies by underpaying, through its utilization of Data iSight, medical claims at levels below the "Reasonable and Customary Charge," as required by the insurance policies. (Doc. 181). Plaintiff asserted that all Class Members were sold short-term medical insurance policies that were identical, or substantially identical to Plaintiff's policy and that Defendant systematically and programmatically breached the insurance policies by using Data iSight to discount medical charges to an amount below what was promised in the policies. (Doc. 181).

WHEREAS, on August 9, 2019, Magistrate Judge Timothy Cavan issued Findings and Recommendations on motions filed by Plaintiff and Defendant, (Doc. 225), including Plaintiff's motion for partial summary judgment and Defendant's cross-motion for summary judgment on Count I of Plaintiff's Third Amended Complaint. Judge Cavan recommended that summary judgment on the issue be granted in favor of Plaintiff, including that Defendant breached its contract with Plaintiff by not paying "the usual charge...in the geographic area" as promised by the policy. (Doc. 225).

WHEREAS, on August 9, 2019, Magistrate Judge Cavan issued Findings and

Recommendations on Plaintiff's Motion to Certify Class. Judge Cavan recommended that Plaintiff's motion be denied. (Doc. 226).

WHEREAS, on September 30, 2019, the Court adopted Judge Cavan's Findings and Recommendations regarding various motions for summary judgment in full, including Judge Cavan's finding that Defendant had breached the policy language. (Doc. 240).

WHEREAS, on September 30, 2019, the Court partially adopted Judge Cavan's Findings and Recommendations on Plaintiff's Motion to Certify Class, but did not adopt his recommendation that Rule 23(b)(3)'s criteria are not met. The Court therefore granted Plaintiff's Motion to Certify Class. (Doc. 241). The Court also affirmed its holding that Defendant "systematically breached its insurance policies containing the Reasonable and Customary Charge clause." (Doc. 241). The Court also noted that the individual questions remaining to be answered included "whether Unified's breach subjected each class member to balance billing, and if so, how much." (Doc. 241). The Court further confirmed that the partial summary judgment ruling applied to the Class by Order dated May 5, 2020. (Doc. 273).

WHEREAS, on March 4, 2020, the Court issued a Class Certification Order designating Mr. Butler as Class Representative and John Morrison and Scott Peterson as Class Counsel. (Doc. 274).

WHEREAS, on April 6, 2020, the Court approved the language of the individual notice and publication notices in connection with the class action. (Doc. 292). The notices provided instructions for Class Members to Opt Out of the Litigation and were required to be mailed by June 22, 2020. (Doc. 274).

WHEREAS, by June 22, 2020, individual notices were mailed to Class Members who were able to be identified through available data and publication notice was reasonably

published. A list of Opt Outs was filed with the Court by August 31, 2020. (Doc. 274).

WHEREAS, on November 6, 2020, Defendant moved the Court for an order clarifying that the Court's previous summary judgment ruling in favor of Plaintiffs for breach of contract only applied to a limited subset of claims processed using Data iSight. (Doc. 339).

WHEREAS, on February 4, 2021, Defendant sought leave to file a motion asking the Court to reconsider its adoption of Judge Cavan's Findings and Recommendations on the breach of contract issue. (Doc. 361).

WHEREAS, on March 24, 2021, the Court denied Defendant's Motion for Clarification and Motion for Leave to File a Motion for Reconsideration. (Doc. 373).

WHEREAS, on March 29, 2021, the Parties jointly requested mediation for the class claim. (Doc. 375).

WHEREAS, on April 1, 2021, the Court granted the Parties' request and referred the case to Magistrate Judge John Johnston for the purpose of conducting a settlement conference. (Doc. 378).

WHEREAS, on May 3, 2021, the Parties conducted a mediation of the class claim in Billings, Montana before Magistrate Judge Johnston. At the mediation, the Parties agreed upon a class settlement amount that was recommended by Judge Johnston along with various conditions, that have subsequently been formalized into this Settlement Agreement.

WHEREAS, Class Counsel has analyzed and evaluated the merits of all Parties' contentions and this Settlement Agreement as it affects all Parties and the Class Members. After taking into account the foregoing, along with the risks and costs of further litigation, Plaintiff and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Class Members are in the Class Members' best

interests.

WHEREAS, Defendant has denied, and continues to deny, all material allegations of Plaintiff's class action complaint, including that Defendant systematically breached short-term medical insurance policies or undertook any action that damaged Plaintiff or the class. Without admitting the truth of any allegations made in the Litigation, or any liability with respect thereto, Defendant has concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Settlement Agreement in order to resolve costly and burdensome litigation and to avoid further expense, inconvenience, and interference with ongoing business operations.

WHEREAS, this Settlement Agreement is contingent upon the issuance by the Court of both preliminary approval and final approval. Should the Court not issue preliminary approval and/or final approval, Defendant does not waive, and instead expressly reserves, all rights to defend the Litigation.

WHEREAS, this Settlement Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense asserted in any of the pleadings or filings in the Litigation, or of any fault on the part of Defendant, and all such allegations are expressly denied. Nothing in this Settlement Agreement shall constitute an admission of liability or be used as evidence of liability by or against any Party hereto.

### **3. DEFINITIONS**

Capitalized terms and phrases used throughout this Agreement, and the attached exhibits, are defined as follows:

**3.1.** "Administrative Expenses" means reasonable fees and expenses incurred by the

Settlement Administrator in the performance of its responsibilities, as described in Section 5, and other persons or entities appointed to assist in the management of this Settlement as authorized by the Court.

- 3.2.** “Advance Payment” means any payment made required by this Settlement Agreement before the date of funding of the Settlement Fund pursuant to Section 4.2.2.
- 3.3.** “Attorneys’ Fees and Litigation Expenses” means the fees and costs awarded to Class Counsel by the Court from the Settlement Fund as compensation for Class Counsels’ work in furtherance of this Litigation and reimbursement of their out-of-pocket costs.
- 3.4.** “Benefit” means the benefit to the Class Members as consideration for the Released Claims and a dismissal with prejudice of the Litigation. Benefit means the cash payment made to eligible Class Members. The specific cash Benefit paid to the Class Members is subject to review and adjustment by the Settlement Administrator based upon the terms and conditions of this Agreement and as set forth in the Distribution Protocol.
- 3.5.** “Benefit Checks” are the form of payment issued to Class Members, as determined by the Settlement Administrator and in accordance with this Settlement Agreement and Distribution Protocol.
- 3.6.** “Class Counsel” means John Morrison and Scott Peterson of Morrison Sherwood Wilson Deola, PLLP.
- 3.7.** “Class Member” means all individuals who have purchased a Unified Life Insurance Company Short-Term Medical Insurance Policy or any policy with similar, operative language as the policy covering the Class Representative; who have paid their premiums; who have made one or more claims; for whom Defendant assigned an

amount for the claim using the Data iSight formula; and for whom Defendant assigned the payable amount within the applicable statutory period of limitations for written contracts dating back from the filing of Plaintiff's Third Amended Complaint, excluding Opt Outs.

- 3.8.** "Class Notice Program" means the methods for communicating the Class Settlement Notice to Class Members by mail, publication, and a settlement website.
- 3.9.** "Class Representative" means Charles M. Butler, III.
- 3.10.** "Class Settlement Notice" means the proposed notice of the Settlement Agreement and the Fairness Hearing attached as Exhibit B-1, as amended with the Court's approval.
- 3.11.** "Court" means the United States District Court for the District of Montana.
- 3.12.** "Defendant" means Unified Life Insurance Company.
- 3.13.** "Defendant's Counsel" means Joshua B. Frank of Baker Botts L.L.P. and Robert L. Sterup of Brown Law Firm, P.C.
- 3.14.** "Distribution Protocol" means the Settlement Fund Distribution Protocol attached as Exhibit A.
- 3.15.** "Effective Date" means the day after the expiration of the deadline for appeal, writs, petitions, or motions for rehearing or certiorari regarding the Final Approval Order without the initiation of any such proceeding, or if such proceeding has been initiated, the day after the full and final disposition of any such proceeding including any proceedings in remand and/or subsequent appeal and the Court's order approving the Settlement Agreement has been affirmed, or any such appeal is dismissed or withdrawn with no further right of appeal. The Effective Date does not occur if any court rejects, reverses, incorporates into, or deletes or strikes from, or modifies,

amends, or changes, the Final Approval Order or the Settlement in a way that is material or that either Defendant or Class Counsel reasonably considers to be material.

- 3.16.** “Enhancement Payment” means a payment approved by the Court for payment to the Class Representative in recognition of such person’s special contribution to, and/or risks undertaken in support of, the Litigation, and distinct from the Payment Amount to be determined by the Distribution Protocol.
- 3.17.** “Fairness Hearing” means the hearing to be scheduled by the Court for the purpose of considering whether to approve this Settlement Agreement as fair, reasonable, and adequate.
- 3.18.** “Final Approval Order” means the Court’s order(s) approving the Settlement Agreement and resolving Class Counsel’s application for Attorneys’ Fees and Litigation Expenses, following the Fairness Hearing.
- 3.19.** “Litigation” means the class action portion of the underlying case: *Butler et. al. v. Unified Life Insurance Company, et. al.*, United States District Court for the District of Montana, Case No. CV 17-50-BLG-SPW.
- 3.20.** “Motion for Preliminary Approval of Settlement” means the motion, to be filed seeking entry by the Court of the Preliminary Approval Order, and includes all supporting papers.
- 3.21.** “Net Proceeds” means, as defined in the Distribution Protocol, the amount available for payment to Class Members following deduction of Administrative Expenses, Attorneys’ Fees and Litigation Expenses, and Enhancement Payments.
- 3.22.** “Notice Date” means the date on which the Settlement Administrator disseminates the Settlement Notice consistent with the Preliminary Approval Order. The Notice

Date shall be no later than thirty (30) calendar days after the Court's entry of the Preliminary Approval Order.

- 3.23.** "Objection" means an objection properly filed with the Court in conformance with the terms of the Preliminary Approval Order by a Class Member, objecting to any aspect of the Agreement.
- 3.24.** "Objection Deadline" means sixty (60) calendar days after the Notice Date.
- 3.25.** "Opt Out" means a Class Member who was excluded by following the procedures set forth in the Court-approved individual and publication notices that were mailed and published in June 2020, as set forth in the Opt-Out Report (Doc. 330).
- 3.26.** "Parties" means the Defendant and the Plaintiff, by and through Class Counsel and on behalf of the Class Members.
- 3.27.** "Payment Amount" means the amount determined by the Settlement Administrator for each Class Member, based on the Settlement Fund Distribution Protocol attached hereto as Exhibit A.
- 3.28.** "Plaintiff" means Charles M. Butler, III.
- 3.29.** "Preliminary Approval Order" means the order entered by the Court preliminarily approving this Settlement Agreement, ordering the Class Notice Program, and scheduling a Fairness Hearing.
- 3.30.** "Release" means the release and waiver described in Section 13 of this Settlement Agreement and in the Final Approval Order.
- 3.31.** "Released Claims" means the claims defined in Section 13.4.1 of this Settlement Agreement.
- 3.32.** "Remainder Funds" means the amount remaining in the Settlement Fund, if any, after subtracting Payment Amounts to Class Members that have been cashed or deposited

within one-hundred eighty (180) calendar days, Administrative Expenses, Attorneys' Fees and Litigation Expenses, and Enhancement Payments approved by the Court.

**3.33.** "Settlement Administrator" means KCC, LLC, whose duties under this Settlement Agreement are set forth in Section 5.

**3.34.** "Settlement Agreement" or "Settlement" means this document and the exhibits attached hereto, including any subsequent amendments executed by the Parties and any exhibits to such amendments.

**3.35.** "Settlement Fund" is the account, which may be maintained as a Qualified Settlement Fund as set forth in Section 4.4, into which Defendant is required to deposit the Settlement Fund Payment.

**3.36.** "Settlement Fund Distribution Protocol" or "Distribution Protocol" means the statement of protocols attached hereto as Exhibit A, that sets out the process for distributing payments to Class Members and for paying Administrative Expenses, and court-approved Attorneys' Fees and Litigation Expenses, and Enhancement Payments.

**3.37.** "Settlement Fund Payment" means the \$8 million committed by Defendant to be used to pay Payment Amounts to Class Members, all Attorneys' Fees and Litigation Expenses and Enhancement Payments approved by the Court, and all Administrative Expenses incurred by the Settlement Administrator in implementing the Settlement, and whose unclaimed Remainder Funds after such payments have been made shall be distributed as required by Section 6.3.

#### **4. SETTLEMENT CONSIDERATION**

**4.1.** Consideration. As consideration for the terms, conditions, and Releases described

herein, Defendant has agreed:

- 4.1.1. to make the Settlement Fund Payment in the amount of \$8 million to cover Payment Amounts to Class Members, Administrative Expenses, court-approved Attorneys' Fees and Litigation Expenses, and court-approved Enhancement Payments, subject to the allocation and distribution of Remainder Funds;
- 4.1.2. to pay the reasonable costs of one round of Class Settlement Notice; and
- 4.1.3. to not utilize Data iSight to reprice claims under short-term medical insurance policies with a "Reasonable and Customary Charge" clause that is similar to the one at issue in the Litigation.

**4.2. The Settlement Fund Payment and its Disposition.**

- 4.2.1. As expeditiously as practicable following Preliminary Approval, the Settlement Administrator shall establish an escrow account to hold the Settlement Fund, to be managed by the Settlement Administrator in a United States of America Chartered bank which does business in New York and is authorized to exercise corporate trust powers, with a long-term debt rating of A or better.
- 4.2.2. Defendant shall pay Advance Payments as required by the Settlement Administrator, to be credited to the Settlement Fund, as necessary and sufficient to pay for: (a) the costs incurred by the Settlement Administrator to carry out the Class Notice Program beyond the costs for the first Class Settlement Notice mailing (which Defendant will pay directly); and (b) the cost of establishing a Settlement Fund escrow account.
- 4.2.3. The Settlement Administrator shall invest any such Advance Payments (and

it shall subsequently invest any funds transferred to the Settlement Fund, in (a) appropriate, secure interest-bearing accounts, (b) accounts fully insured by the Federal Deposit Insurance Corporation up to the applicable limit, or (c) short term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government.

**4.2.4.** The costs of maintaining the Settlement Fund and any taxes or other fees arising from its maintenance shall be paid from the assets of the Settlement Fund. All earnings and interest shall become part of the Settlement Fund.

**4.2.5.** The Settlement Administrator shall provide an accounting to the Parties of the use of any Advance Payment amounts within a reasonable period after they have been incurred.

**4.3.** Reversion of Payments if Settlement is Not Approved. If there is no Final Approval Order (or, if following a Final Approval Order there is no Effective Date), this Settlement Agreement shall be null and void and any amounts remaining in the Settlement Fund, including all interest and earnings thereon, shall be promptly returned to Defendant, except for any amounts required to pay accrued authorized expenses, bank fees, or taxes. If this Settlement Agreement becomes void, no person or entity other than Defendant shall have any rights to monies from the remaining Settlement Fund except as expressly provided herein. Nor shall Plaintiff or any person other than Defendant have liability for any bank fees, taxes, or other monies owed in connection with the Settlement Fund.

**4.4.** Qualified Settlement Fund. If requested by Defendant, and approved by the Court, the Settlement Administrator shall maintain the Settlement Fund, from the date funds are first deposited, as a “Qualified Settlement Fund” within the meaning of and as

defined in Section 468B of the U.S. Internal Revenue Code and in the IRS regulations promulgated thereunder, and shall be deposited in an interest-bearing account or accounts consistent with Section 4.2.3 of this Settlement Agreement.

- 4.5.** Settlement Fund Payment and Transfer of Funds for Attorneys' Fees, Litigation Expenses, and Enhancement Payments. Within ten (10) business days following the Court's entry of the Final Approval Order, Defendant shall deposit into the Settlement Fund the rest of the Settlement Fund Payment, i.e., the \$8 million less the total of any Advance Payments previously paid to the Settlement Administrator pursuant to Section 4.2.2 and the Settlement Administrator shall invest the funds as provided in Section 4.2.3. Within five (5) business days following the Effective Date, or as soon as practicable, the Settlement Administrator shall transfer the sum of the Attorneys' Fees, Litigation Expenses, and Enhancement Payments approved by the Court to the trust account of Class Counsel.
- 4.6.** Total Payment. Notwithstanding any other provision of the Settlement Agreement, Defendant's total monetary contribution shall not under any circumstances exceed the \$8 million Settlement Fund Payment (which includes any payments for Administrative Expenses, Attorneys' Fees and Litigation Expenses, Enhancement Payments), plus the reasonable cost of the first mailing of the Class Settlement Notice and the CAFA notices, as provided in Section 5.3.

## **5. SETTLEMENT ADMINISTRATOR AND RESPONSIBILITIES**

- 5.1.** Settlement Administrator. KCC, LLC shall serve as the Settlement Administrator.
- 5.2.** Responsibilities of Settlement Administrator. The responsibilities of the Settlement Administrator shall include:
- 5.2.1.** Administering Class Settlement Notice, including updating of the Class

Member mailing address list (including the removal of Opt Outs), the printing and mailing of Class Settlement Notices, skip tracing undelivered Class Settlement Notices, and placing publication of class notice;

**5.2.2.** Instituting procedures to detect fraud and maintain appropriate quality control over the management and payment of Settlement Funds;

**5.2.3.** Evaluating all Class Members in accordance with the Settlement Fund Distribution Protocol, including:

5.2.3.1. Ensuring that Opt Outs do not receive proceeds from the Settlement Fund;

5.2.3.2. Calculating Payment Amounts for each Class Member and Remainder Funds, as necessary;

5.2.3.3. Determining and verifying Class Member identities, mailing addresses, and identifying associations between Class Members for purposes of making payments, as described in the Distribution Protocol;

5.2.3.4. Distributing Benefit Checks to Class Members, and transferring Remainder Funds pursuant to Section 6.3;

5.2.3.5. Coordinating with Class Counsel and Defendant's Counsel to undertake stimulation efforts to ensure, to the highest degree reasonable, that Class Members cash or deposit Benefit Checks within the one-hundred eighty (180) calendar day period;

5.2.3.6. Documenting Administrative Expenses for the Parties' authorization;

5.2.3.7. Providing reports to Class Counsel, Defendant's Counsel, and the

Court;

5.2.3.8. Establishing, managing, and closing all bank and trust accounts, as necessary;

5.2.3.9. Accounting for the use of funds;

5.2.3.10. Terminating the Settlement process after any Remainder Funds have been distributed ; and

5.2.3.11. Such other tasks assigned by the Parties.

**5.3.** Defendant's Responsibility Regarding Class Action Fairness Act ("CAFA") Notice Requirements. It shall be the responsibility of the Defendant to make all required Class Action Fairness Act notices, pursuant to 28 U.S.C. § 1715(b), within ten (10) days after the proposed Settlement Agreement is filed in Court. Defendant may utilize the Settlement Administrator, at Defendant's expense, to provide the necessary CAFA notices.

**5.4.** Cooperation with Settlement Administrator. The Parties shall provide the Settlement Administrator with information required by the Settlement Administrator for the performance of its required tasks and responsibilities.

**5.5.** Settlement Administrator's Costs. Costs incurred by the Settlement Administrator shall be considered Administrative Expenses and shall be paid from the Settlement Fund as specified by this Settlement Agreement and the Court.

## **6. SETTLEMENT FUND DISTRIBUTION**

The protocols for the determination and payment of Class Members are set forth in the Settlement Fund Distribution Protocol, attached as Exhibit A. The Settlement Administrator shall be authorized to take actions in accordance and compliance with this Settlement Agreement and the Settlement Fund Distribution Protocol.

- 6.1.** Providing Benefit to Class Members. Benefit Checks shall be mailed directly to Class Members as set forth in the Settlement Fund Distribution Protocol, within thirty (30) calendar days after the Effective Date, to the addresses provided to the Settlement Administrator by the Parties, as updated by the Settlement Administrator. All Benefit Checks issued pursuant to the Settlement Agreement shall bear in the legend that they expire if not negotiated within one-hundred eighty (180) calendar days of their date of issue. To the extent that a Benefit Check issued to a Class Member is not cashed or deposited within one-hundred eighty (180) calendar days after the date of issue, the check will be void and transferred pursuant to Section 6.3.
- 6.2.** Payment Amounts. The Settlement Administrator shall determine the Payment Amount for each Class Member, as required by the Settlement Fund Distribution Protocol. The total of the Payment Amounts shall not exceed the Net Proceeds available for payment.
- 6.3.** Uncashed Benefit Checks. Benefit Checks mailed to Class Members but not deposited within one-hundred eighty (180) calendar days shall be void and the amounts shall remain in the Settlement Fund for use as Remainder Funds.
- 6.3.1.** Charitable Organization. No later than one-hundred twenty (120) days after the first Benefit Check has been mailed to a Class Member, the Parties shall file a motion with the Court requesting that the Court approve specified charitable organizations for the distribution of Remainder Funds.
- 6.3.2.** Remainder Funds. Remainder Funds shall be distributed by the Settlement Administrator to such charitable organizations approved by the Court. Remainder Funds shall not be distributed by the Settlement Administrator prior to one-hundred eighty (180) calendar days after the latest dated Benefit Check, plus an appropriate

buffer, to ensure that all Benefit Checks that are not void may be deposited and that such deposits are reflected in the Settlement Fund.

**7. TERMINATION OF SETTLEMENT FUND**

Once all Settlement Funds have been distributed to Class Members, and any Remainder Funds have been identified and distributed pursuant to Section 6.3, within thirty (30) calendar days the Settlement Administrator shall provide a complete accounting to counsel for both Parties. The Parties shall file a report with the Court seeking an order confirming that the purpose of the Settlement Fund has been fulfilled and submit a proposed order authorizing the Settlement Administrator to terminate the Settlement Fund. The proposed order shall provide for the proper and timely filing of any final tax reports or returns.

**8. TAXES**

Plaintiff understands, and the Class Settlement Notice shall advise each Class Member, that Class Members are responsible for any tax consequences resulting from monetary awards received based on the terms of this Settlement and that neither the Parties nor Settlement Administrator are providing, or have obligation or expertise to provide, advice as to the tax consequences of any payments made under this Settlement Agreement.

**9. AFFIRMATIVE RELIEF**

As additional consideration for the terms, conditions, and Releases under this Settlement Agreement, and separate from its obligations to the Settlement Fund, Defendant shall not utilize Data iSight to reprice claims under short-term medical insurance policies with a “Reasonable and Customary Charge” clause that is similar to the one at issue in the Litigation.

**10. FORCE MAJEURE**

Defendant shall not suffer any penalty under this Settlement Agreement, or be deemed to be in violation hereof or be subject to any proceeding or action, if Defendant’s compliance with any

requirements hereof is delayed, or Defendant is unable to comply, because of an action or inaction of a national, state, or local government, body or court or an act of God, war, strike, work stoppage, riot, catastrophe, or any other event or circumstance beyond Defendant's control; provided, however, that Defendant shall make diligent efforts to comply despite such circumstances, and to minimize any delay, and shall notify Class Counsel and the Court by telephone and in writing, pursuant to the Notice Provision of this Settlement Agreement, within seven (7) calendar days after it obtains knowledge of any such condition or event, and/or the likelihood of such condition or event.

## **11. PRELIMINARY APPROVAL BY THE COURT**

- 11.1. Filing.** Promptly after this Settlement Agreement is signed, the Parties shall file it with the Court, together with (or shortly thereafter followed by) a Motion for Preliminary Approval of Settlement and Class Settlement Notice.
- 11.2. Cooperation/Facilitating Preliminary Approval.** The Parties agree to take all actions and steps reasonably necessary to obtain a Preliminary Approval Order from the Court.
- 11.3. Stay Orders.** In their request for preliminary approval of the Settlement, the Parties will ask the Court to grant preliminary approval, schedule a Fairness Hearing on the Settlement's fairness and adequacy, authorize the issuance of Class Settlement Notice, and enjoin and stay the underlying Litigation pending the Court's final ruling approving or denying approval of this Settlement Agreement.
- 11.4. Non-Approval.** In the event the Court denies the Motion for Preliminary Approval of Settlement, then the Parties will meet and confer in an effort to agree to an amended settlement agreement that addresses the Court's concerns. Within sixty (60) calendar days of the denial, the Parties shall either submit a revised agreement to the Court or request a new case management schedule. If sixty (60) calendar days is insufficient

time for the Parties to submit a revised agreement to the Court, the Parties may request additional time from the Court.

## **12. NOTICE AND OBJECTIONS**

### **12.1. Form**

**12.1.1.** Concurrently with the filing of the Motion for Preliminary Approval of Settlement or as soon thereafter as the Court allows, the Parties shall submit for the Court's approval, a Class Settlement Notice substantially in the form of Exhibit B-1, which shall be direct mailed to Class Members as described in the Distribution Protocol as well as a form of publication notice substantially in the form of Exhibit B-2. All such Notices shall explain the terms and conditions of the Settlement Agreement and the Class Members' rights with respect to the Settlement Agreement in plain language that is readily understandable.

**12.1.2.** No later than fourteen (14) calendar days after the Court issues a Preliminary Approval Order, the Settlement Administrator shall begin implementation of the Class Notice Program, including the mailing of the Class Settlement Notice, publication of notice in print media, and implementation of a settlement website.

**12.1.3.** The Parties agree that the Class Notice Program as detailed in this Section constitutes the best practicable notice to Class Members.

### **12.2. Objection to Settlement**

**12.2.1.** As the Class Settlement Notice will instruct, any Class Member may present written objections, if any, explaining why he or she believes the Settlement Agreement should not be approved by the Court as fair, reasonable, and

adequate. No later than the Objection Deadline, or such date as ordered by the Court, a Class Member who wishes to object to any aspect of the Settlement Agreement must file with the Court a written statement of the objection(s). The statement must include a detailed statement of the objection(s) and the specific reasons for each such objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention. That written statement also must contain the Class Member's printed name, address, telephone number and information or documentation establishing the objector's status as a Class Member. If the Class Member retains an attorney to submit the Objection (which the Class Member may do at his or her own expense), such attorney must: (a) file a notice of appearance with the Court by the date set forth in the Preliminary Approval and Class Certification Order; (b) file a sworn declaration attesting to his or her representation of the Class Member on whose behalf the Objection is being filed; and (c) satisfy (on behalf of the Class Member) all substantive requirements for Objection described in this Section.

**12.2.2.** Any Class Member (or attorney representing him or her) who wishes to appear in person at the Fairness Hearing must file a written notice of intent to do so with the Court, by the date set forth in the Preliminary Approval Order.

**12.2.3.** Unless the Court directs otherwise, any Class Member who fails to comply with the provisions of this Section will waive and forfeit the right to object to the Settlement, to appear and be heard on any such Objection at the Fairness

Hearing, and/or to appeal from the Court's disposition of the Settlement.

**12.3. No Additional Opportunity to Opt Out**

**12.3.1.** In the Motion for Preliminary Approval of Settlement, the Parties shall request that no additional opportunity to opt out be given to Class Members, beyond the opt out opportunity previously provided through individual mail and publication notice.

**12.3.2.** To the extent that the Court, in its discretion, directs an additional opt out opportunity, the Parties shall incorporate such opt out opportunity into the Class Settlement Notice, subject to the Court's approval.

**12.3.3.** In the event that additional opportunity to opt out is provided, then Defendant shall have the right to void this Settlement Agreement if there are more than fifty (50) additional opt outs or if Class Members with Discount Amounts (as defined in the Distribution Protocol) totaling more than \$250,000 opt out.

**12.3.4.** If Defendant voids the Settlement Agreement under Section 12.3.3, the Parties must immediately notify the Court and then make diligent efforts to renegotiate the Settlement Agreement for a period of sixty (60) calendar days. If the Parties are successful at renegotiating the Settlement Agreement within sixty (60) calendar days, the Parties shall start the process of requesting preliminary approval from the Court anew. If the Parties are unable to renegotiate the Settlement Agreement within sixty (60) calendar days, then the Parties must either move the Court for additional time or request that the Court reinstate the case into the active docket and set a new case management order. In that event, any amounts remaining in the Settlement Fund shall be

returned to Defendant pursuant to Section 4.3.

### **13. RELEASE AND ASSIGNMENT**

**13.1. Release is a Material Term of Settlement.** The Parties agree to the following release and waiver set forth in Sections 13.2 through 13.4 (the “Release”), which shall take effect on the Effective Date. The terms of the Release are a material term of the Settlement Agreement and will be reflected in the Final Approval Order.

**13.2. Released Entities.** Defendant and any and all of its shareholders, directors, officers, agents, servants, employees, managers, members, representatives, predecessors, successors, assigns, affiliates, affiliated corporate entities (including parent, subsidiary, and sister corporations), insurers, reinsurers, and each of their administrators, heirs, and assigns.

**13.3. Releasing Entities.** All Class Members and, with respect to any Class Member’s claims, that Class Member’s heirs and assigns.

**13.4. Release.** In consideration of the Settlement Agreement, all Releasing Entities agree to release the following claims.

**13.4.1.** The Releasing Entities release and waive, and covenant not to sue regarding all claims, demands, actions, or causes of actions against the Released Entities arising from or related to short-term medical policies at issue in the Litigation. This applies without limitation to any and all claims, demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in equity, known or unknown, direct, indirect or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, contingent or non-contingent, suspected or unsuspected, whether or not concealed or hidden, arising from or in any way related to the short-term medical policy,

including without limitation (a) any claims that were or could have been asserted in the Litigation including; and (b) any claims for fines, penalties, economic damages, punitive damages, exemplary damages, liens, injunctive relief, attorneys' fees, expert, consultant, or other litigation fees or costs other than fees and costs awarded by the Court in connection with this Settlement Agreement, or any other liabilities, that were or could have been asserted in any civil, criminal, administrative, or other proceeding, including arbitration. This Release applies without limitation to any and all such claims, demands, actions, or causes of action regardless of the legal or equitable theory or nature under which they are based or advanced including without limitation legal and/or equitable theories under any federal, state, provincial, local, tribal, administrative, or international law, or statute, ordinance, code, regulation, contract, common law, equity, or any other source, and whether based in strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud, or any other legal or equitable theory, that arise from or in any way relate to or arise out of the short-term medical insurance policy.

**13.4.2. Release Not Conditioned on Payment.** The Release shall be effective with respect to all Class Members regardless of Payment Amount.

#### **14. NO ADMISSION OF LIABILITY / INADMISSIBILITY**

**14.1. No Admission of Liability.** Defendant denies all of the claims as to liability for damages, injunctive relief, fees, and all other forms of relief as well as the class action allegations asserted in the Litigation.

**14.2. Settlement Agreement is Not Evidence.** Neither this Settlement Agreement, whether

approved or not approved, nor any exhibit, document, or instrument that is developed as part of this Settlement Agreement or in order to implement this Settlement Agreement, nor any statement, transaction, or proceeding in connection with its negotiation, execution, or implementation, is intended to nor may it be construed as or deemed to be evidence of an admission or concession by the Parties of any liability, defense, affirmative defense, fault, or wrongdoing, or of the truth of any allegations or defenses in the Litigation, or the valuation or validity of claims or defenses or affirmative defenses to any claims in any context or proceeding other than this Settlement.

**14.3. Inadmissibility of Fact of Settlement.** Pursuant to this Settlement Agreement, Federal Rule of Evidence 408, Montana Rule of Evidence 408, and any other applicable law, rule, or regulation, the fact of entering into or carrying out this Settlement Agreement, and any negotiations and proceedings related hereto, and the Settlement Agreement itself (including all exhibits and documents referenced in the Settlement Agreement) and any and all documents used to implement the Settlement Agreement (including the Distribution Protocol and Class Settlement Notices) whether or not finally approved, shall not be construed as, offered into evidence as, or deemed to be evidence of, an admission or concession of liability, fault or wrongdoing by or an estoppel against any of the Parties, nor a waiver of any applicable statute of limitation or repose, and shall not be offered or received into evidence, or considered, in any action or proceeding against any Party in any judicial, quasi-judicial, administrative agency, regulatory or self-regulatory organization, or other tribunal, or proceeding for any purpose whatsoever, other than to enforce the provisions of this Settlement

Agreement or the provisions of any related agreement, release, or exhibit hereto.

**14.4.** Publicity of Settlement. Plaintiff and Class Counsel agree not to represent publicly that this Settlement Agreement (or any individual provision of it) reflects, implies, can or should be used to infer any culpable or harmful act by the Defendant or any of its current, past, or future directors, officers, employees, attorneys, insurers, reinsurers, accountants, direct and indirect shareholders, partners, members and/or agents. Nothing in this provision, however, shall prevent any Party from describing the terms of the Settlement Agreement, the claims or defenses it proposes to resolve, or the underlying facts in the public record, except for documents or information designated by either Party as confidential, which shall continue subject to the Protective Order entered by the Court.

**15. REPRESENTATION AND WARRANTIES**

**15.1.** Class Counsel is Authorized to Protect the Interests of the Class. Class Counsel represent that: (a) they are authorized by the Class Representative to enter into this Settlement Agreement with respect to the claims asserted in this Litigation and any other claims covered by the Release; and (b) in proposing this Settlement, they are acting to protect the interests of the Class.

**15.2.** Authorized Defendant Representative. Defendant represents and warrants that the individual(s) executing this Settlement Agreement on its behalf are authorized to do so.

**15.3.** Necessary Steps. Class Counsel, on behalf of the Class, and Defendant and its counsel represent that they will undertake the necessary steps to support and effectuate the

terms of this Settlement Agreement in the event it is approved by the Court.

**16. FINAL ORDER AND JUDGMENT, DISMISSAL WITH PREJUDICE**

**16.1. Final Approval Order.** By a date set by the Court, the Parties shall jointly move for a final approval order that:

**16.1.1.** Approves the Settlement as fair, reasonable, and adequate;

**16.1.2.** Approves the Settlement Fund Distribution Protocol for calculating Payment Amounts, and distributing Payment Amounts to all Class Members;

**16.1.3.** Finds that the Class Notice Program satisfies the requirements of Federal Rule of Civil Procedure 23(e)(1);

**16.1.4.** Permanently bars and enjoins Class Members from commencing, asserting, or continuing any of the Released Claims;

**16.1.5.** Provides for the continuing jurisdiction of the Court to enforce the terms of this Settlement Agreement; and

**16.1.6.** Incorporates the terms of this Settlement Agreement into the judgment.

**16.2. Final Order – Form.** If the Court approves this Settlement Agreement following the Fairness Hearing scheduled by the Court pursuant to the Preliminary Approval Order, Counsel for the Parties shall request that the Court enter a Final Approval Order, including the Court’s express determination that there is no just reason for delay and directing that the judgment with respect to all claims by Class Members be deemed as final judgments and permanently enjoining the commencement or continuation of any litigation of the Released Claims.

**16.3. Dismissal of Litigation.** Plaintiff agrees to seek Court dismissal of the Litigation with prejudice after the Effective Date, with each Party to bear its own costs, except as otherwise provided herein. Upon the Effective Date, every Class Member shall be

barred from initiating, asserting, maintaining, or prosecuting any of the Released Claims.

**16.4. Exclusive Remedy.** This Settlement Agreement shall be the Releasing Entities' exclusive remedy against the Released Entities for any and all of the Released Claims. Released Entities shall not be subject to liability or expense of any kind to any Releasing Entity for any Released Claims beyond that which is provided for in this Settlement Agreement. On the Effective Date, Releasing Entities shall be permanently barred and enjoined from commencing, filing, initiating, instituting, prosecuting, maintaining, or consenting to any action or other proceeding, whether by intervention, joinder or as a Class Member, for any Released Claims in any court of law or equity, arbitration, administrative or other forum. In the event that a Releasing Entity institutes any such action in any court, arbitration tribunal or administrative or other forum against Released Entity subsequent to the Effective Date, such action shall be dismissed with prejudice.

**17. ATTORNEYS' FEES, LITIGATION EXPENSES, AND ENHANCEMENT PAYMENTS**

**17.1. Attorneys' Fees and Litigation Expenses, and Enhancement Payments.** The Parties understand that Class Counsel will submit to the Court an application for attorneys' fees in the amount of not more than 25% of \$8 million (the sum of the Settlement Fund); an application for out-of-pocket class litigation expenses; and an application for Enhancement Payments to the Class Representative in the amount of \$25,000, subject to Court approval. The amount of these Attorneys' Fees and Litigation Expenses, and Enhancement Payments, shall be determined by the Court upon review of the application and shall be distributed out of the Settlement Fund. Defendant will not object to the request if it meets the requirements of this paragraph. In the event

that the Court does not order an award of attorneys' fees of 25% of \$8 million, the Settlement Agreement is voidable at the option of Class Counsel.

**17.1.1.** If Class Counsel chooses to void the Settlement Agreement, the Parties must immediately notify the Court and then make diligent efforts to renegotiate the Settlement Agreement for a period of sixty (60) calendar days. If the Parties are successful at renegotiating the Settlement Agreement within sixty (60) calendar days, the Parties shall start the process of requesting preliminary approval from the Court anew. If the Parties are unable to renegotiate the Settlement Agreement within sixty (60) calendar days, then the Parties must either move the Court for additional time or request that the Court reinstate the case into the active docket and set a new case management order. In that event, any amounts remaining in the Settlement Fund shall be returned to Defendant pursuant to Section 4.3.

## **18. GENERAL MATTERS**

**18.1.** Binding Effect. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors, transferees, and assigns of Defendant, the Class Representative, and Class Members.

**18.2.** Implementation Efforts. The Parties and their respective counsel will cooperate with each other, act in good faith, and use reasonable efforts to effectuate the implementation of the Settlement Agreement. The Parties further agree to make reasonable efforts to ensure the timely and expeditious implementation of the Settlement Agreement and to minimize the costs and expenses incurred therein.

**18.3.** Entire Agreement. The terms and conditions set forth in this Settlement Agreement and exhibits attached constitute the complete and exclusive statement of the

agreement between the Parties hereto relating to the subject matter of this Settlement Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement constitutes the complete and exclusive statement of these terms as between the Parties hereto and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving this Settlement Agreement.

**18.4. Amendment.** This Settlement Agreement may not be modified or amended except in writing signed by counsel for all of the Parties and after approval by the Court.

**18.5. Notices.** Whenever this Settlement Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays, and Federal or Montana court holidays) express delivery service as follows:

If to Defendant, then to:

Joshua B. Frank  
Baker Botts L.L.P.  
700 K St. NW  
Washington, DC 20001

If to Class Counsel, then to:

John M. Morrison  
Morrison Sherwood Wilson Deola PLLP  
401 North Last Chance Gulch,  
P.O. Box 557  
Helena, Montana 59624

Scott Peterson  
Morrison Sherwood Wilson Deola PLLP  
401 North Last Chance Gulch,  
P.O. Box 557  
Helena, Montana 59624

- 18.6.** Construction. The Settlement Agreement is the result of a mutual negotiation among the Parties and their counsel and shall not be construed in favor of or against any Party by reason of authorship.
- 18.7.** Offer of Compromise. The Parties expressly acknowledge and agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, related notes, and correspondence, constitute an offer of compromise and a compromise within the meaning of both the Montana and Federal Rules of Evidence.
- 18.8.** Severability. The provisions of this Settlement Agreement are not severable. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if the Defendant, and Class Counsel, on behalf of Class Representative and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.
- 18.9.** Governing Law. This Settlement Agreement and any amendments thereto, and any dispute arising out of or related to this Settlement Agreement, shall be governed by and interpreted according to the Federal Rules of Civil Procedure and applicable jurisprudence related thereto, and the laws of the State of Montana, without regard to conflict of law rules.
- 18.10.** Retention of Jurisdiction. This Court shall have exclusive jurisdiction over the interpretation, effectuation, and implementation of this Settlement Agreement and

any dispute arising out of or related to this Settlement Agreement.

**18.11. Waiver.** The waiver by one Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

**18.12. Notice of Breach.** If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

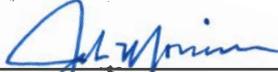
**18.13. Counterparts.** This Settlement Agreement may be signed with an electronic or facsimile signature and in counterparts, each of which shall constitute a duplicate original, provided that this Settlement Agreement shall not be complete until it has been signed by everyone for whom a signature line has been provided.

**18.14. Deadlines.** The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of the Settlement Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Settlement Agreement to be executed by duly authorized representatives on the dates indicated below.

Dated this day 26th of July 2021.

**CLASS COUNSEL**



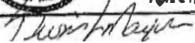
John M. Morrison  
Scott Peterson  
MORRISON SHERWOOD WILSON DEOLA, PLLP  
401 North Last Chance Gulch  
P.O. Box 557  
Helena, Montana 59624-0557  
(406) 442-3261  
(406) 443-7294 facsimile  
john@mswdlaw.com  
speterson@mswdlaw.com

Dated this 26<sup>th</sup> day of July 2021.

**CLASS REPRESENTATIVE**



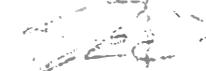
KEVIN L. MAYER  
NOTARY PUBLIC for the  
State of Montana  
Residing at Sidney, Montana  
My Commission Expires  
April 21, 2023



  
Charles M. Butler, III

Dated this 26<sup>th</sup> day of July 2021.

**UNIFIED LIFE INSURANCE COMPANY**

  
Kevin Dill  
President and Chief Operating Officer,  
Unified Life Insurance Company  
(913)-871-7348  
kdill@unifiedlife.com