



A copy of the proposed Plan of Distribution—which differs from the proposed Plan of Distribution previously preliminarily approved by this Court only as stated above—is attached as Exhibit A. Settlement Class Counsel respectfully request that this Court order that it be substituted *nunc pro tunc* for the previously preliminarily approved Plan of Distribution for all purposes.

Settlement Class Counsel also propose to amend the Court’s Preliminary Approval Order, ECF No. 2641, to conform with the Court-approved long-form notice and ensure that objectors need not file their objections with the Court, but rather can mail objections to the Claims Administrator, Settlement Class Counsel, Self-Funded Settlement Sub-Class Counsel, and Settling Defendants’ Counsel at the addresses listed in the long-form notice available on the Settlement website, and postmarked by no later than the objection deadline.

Settling Defendants do not oppose the relief requested.

A proposed order is attached hereto. Should the Court grant this relief, Settlement Class Counsel will cause the substituted Plan of Distribution and the order to be posted to the Settlement website within one business day.

Date: March 12, 2021

Respectfully submitted,

/s/ David Boies

David Boies – ***Co-Lead Counsel***  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, NY 10504  
Tel: (914) 749-8200  
Fax: (914) 749-8200  
[dboies@bsflp.com](mailto:dboies@bsflp.com)

/s/ Michael D. Hausfeld

Michael D. Hausfeld – ***Co-Lead Counsel***  
Swathi Bojedla – ***Discovery Committee***  
HAUSFELD LLP  
888 16th Street NW, Suite 300  
Washington, DC 20006  
Tel: (202) 540-7200  
Fax: (202) 540-7201  
[mhausfeld@hausfeld.com](mailto:mhausfeld@hausfeld.com)  
[sbojedla@hausfeld.com](mailto:sbojedla@hausfeld.com)

Charles J. Cooper – ***Co-Chair, Written Submissions Committee***  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue NW  
Washington, DC 20036  
Tel: (202) 220-9600  
Fax: (202) 220-9601  
[ccooper@cooperkirk.com](mailto:ccooper@cooperkirk.com)

Megan Jones – ***Settlement Committee & PSC Member***  
Arthur Bailey – ***Discovery Committee***  
HAUSFELD LLP  
600 Montgomery Street, Suite 3200  
San Francisco, CA 94111  
Tel: (415) 633-1908  
Fax: (415) 358-4980  
[mjones@hausfeld.com](mailto:mjones@hausfeld.com)  
[abailey@hausfeld.com](mailto:abailey@hausfeld.com)

Chris T. Hellums – ***Local Facilitating Counsel***  
PITTMAN, DUTTON & HELLUMS, P.C.  
2001 Park Place N, 1100 Park Place Tower  
Birmingham, AL 35203  
Tel: (205) 322-8880  
Fax: (205) 328-2711  
[chrish@pittmandutton.com](mailto:chrish@pittmandutton.com)

William A. Isaacson – ***Settlement Committee & PSC Member***  
PAUL WEISS  
2001 K Street, NW  
Washington, DC 20006-1047  
Tel: (202) 223-7313  
Fax: (202) 379-4937  
[wisaacson@paulweiss.com](mailto:wisaacson@paulweiss.com)

Gregory Davis – ***Settlement Committee & PSC Member***  
DAVIS & TALIAFERRO, LLC  
7031 Halcyon Park Drive  
Montgomery, AL 36117  
Tel: (334) 832-9080  
Fax: (334) 409-7001  
[gldavis@knology.net](mailto:gldavis@knology.net)

Cyril V. Smith – ***Settlement Committee & PSC Member***  
ZUCKERMAN SPAEDER, LLP  
100 East Pratt Street, Suite 2440  
Baltimore, MD 21202-1031  
Tel: (410) 949-1145  
Fax: (410) 659-0436  
[csmith@zuckerman.com](mailto:csmith@zuckerman.com)

Kathleen Chavez – ***Settlement Committee & PSC Member***  
FOOTE, MIELKE, CHAVEZ & O'NEIL, LLC  
10 West State Street, Suite 200  
Geneva, IL 60134  
Tel: (630) 797-3339  
Fax: (630) 232-7452  
[kcc@fmcolaw.com](mailto:kcc@fmcolaw.com)

David Guin – ***Co-Chair, Written Submissions Committee***  
Tammy Stokes – ***Damages Committee***  
GUIN, STOKES & EVANS, LLC  
300 Richard Arrington Jr. Blvd. North  
Suite 600/Title Building  
Birmingham, AL 35203  
Tel: (205) 226-2282  
Fax: (205) 226-2357  
[davidg@gseattorneys.com](mailto:davidg@gseattorneys.com)  
[tammys@gseattorneys.com](mailto:tammys@gseattorneys.com)

Carl S. Kravitz – *Expert Committee*  
ZUCKERMAN SPAEDER LLP  
1800 M Street NW, Suite 1000  
Washington, DC 20036-5807  
Tel: (202) 778-1800  
Fax: (202) 822-8106  
[ckravitz@zuckerman.com](mailto:ckravitz@zuckerman.com)

Richard Feinstein – *Expert Committee*  
Hamish P.M. Hume – *Discovery Committee*  
BOIES, SCHILLER FLEXNER LLP  
1401 New York Avenue NW  
Washington, DC 20005  
Tel: (202) 237-2727  
Fax: (202) 237-6131  
[rfeinstein@bsfllp.com](mailto:rfeinstein@bsfllp.com)  
[kdyer@bsfllp.com](mailto:kdyer@bsfllp.com)  
[hhume@bsfllp.com](mailto:hhume@bsfllp.com)

Mindee Reuben  
Lite DePalma Greenberg  
1835 Market Street, Suite 2700  
Philadelphia, PA 19103  
Tel: (267) 314-7980  
Fax: (973) 623-0858  
[mreubin@litedepalma.com](mailto:mreubin@litedepalma.com)

Nate Cihlar  
Joshua Callister  
Strauss & Boies  
4041 University Drive, 5th Floor  
Fairfax, VA 22030  
Tel: (703) 764-8700  
Fax: (703) 764-8704  
[ncihlar@strauss-boies.com](mailto:ncihlar@strauss-boies.com)  
[jcallister@strauss-boies.com](mailto:jcallister@strauss-boies.com)

Patrick Cafferty – *Discovery Committee*  
CAFFERTY CLOBES MERIWETHER &  
SPRENGEL LLP  
150 S. Wacker Drive, Suite 300  
Chicago, IL 60606  
Tel: (312) 782-4880  
[pcafferty@caffertyclobes.com](mailto:pcafferty@caffertyclobes.com)

Bryan Clobes – *Litigation Committee*  
Ellen Meriwether – *Written Submissions Committee*  
CAFFERTY CLOBES MERIWETHER &  
SPRENGEL LLP  
2005 North Monroe Street  
Media, PA 19063  
Tel: (215) 864-2800  
Fax: (215) 864-2810  
[bclobes@caffertyclobes.com](mailto:bclobes@caffertyclobes.com)  
[meriwether@caffertyclobes.com](mailto:meriwether@caffertyclobes.com)

Andrew Lemmon – Chair, Discovery  
Committee  
LEMMON LAW FIRM  
15058 River Road  
PO Box 904  
Hahnville, LA 70057  
Tel: (985) 783-6789  
Fax: (985) 783-1333  
[andrew@lemmonlawfirm.com](mailto:andrew@lemmonlawfirm.com)

Virginia Buchanan – Chair, Class Certification  
Committee  
LEVIN PAPANTONIO THOMAS  
MITCHELL RAFFERTY & PROCTOR, P.A.  
316 South Baylen Street, Suite 600  
Pensacola, FL 32502  
Tel: (850) 435-7000  
Fax: (850) 435-7020  
[vbuchanan@levinlaw.com](mailto:vbuchanan@levinlaw.com)

Douglas Dellaccio – *Litigation Committee*  
CORY WATSON CROWDER & DEGARIS,  
P.C.  
2131 Magnolia Avenue, Suite 200  
Birmingham, AL 32505  
Tel: (205) 328-2200  
Fax: (205) 324-7896  
[ddellaccio@cwcd.com](mailto:ddellaccio@cwcd.com)

Edwin J. Kilpela, Jr.  
Benjamin Sweet – *Litigation Committee*  
DEL SOLE CAVANAUGH STROYD LLC  
200 First Avenue, Suite 300  
Pittsburgh, PA 15222  
Tel: (412) 261-2393  
Fax: (412) 261-2110  
[ekilpela@dsclaw.com](mailto:ekilpela@dsclaw.com)  
[bsweet@dsclaw.com](mailto:bsweet@dsclaw.com)

Charles T. Caliendo – *Class Certification Committee*  
GRANT & EISENHOFER  
485 Lexington Avenue  
New York, NY 10017  
Tel: (646) 722-8500  
Fax: (646) 722-8501  
[ccaliendo@gelaw.com](mailto:ccaliendo@gelaw.com)

Daniel Gustafson – *Litigation Committee*  
Daniel C. Hedlund – *Damages Committee*  
GUSTAFSON GLUEK PLLC  
120 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
Tel: (612) 333-8844  
Fax: (612) 339-6622  
[dgustafson@gustafsongluek.com](mailto:dgustafson@gustafsongluek.com)  
[dhedlund@gustafsongluek.com](mailto:dhedlund@gustafsongluek.com)

Larry McDevitt – *Chair, Class Certification Committee*  
David Wilkerson – *Discovery Committee*  
VAN WINKLE LAW FIRM  
11 North Market Street  
Asheville, NC 28801  
Tel: (828) 258-2991  
[lmcdevitt@vwlawfirm.com](mailto:lmcdevitt@vwlawfirm.com)  
[dwickerson@vwlawfirm.com](mailto:dwickerson@vwlawfirm.com)

Robert M. Foote – *Damages Committee*  
FOOTE, MIELKE, CHAVEZ & O'NEIL,  
LLC  
10 West State Street, Suite 200  
Geneva, IL 60134  
Tel: (630) 797-3339  
Fax: (630) 232-7452  
[rmf@fmcclaw.com](mailto:rmf@fmcclaw.com)

Robert Eisler – *Discovery Committee*  
GRANT & EISENHOFER  
123 Justison Street  
Wilmington, DE 19801  
Tel: (302) 622-7000  
Fax: (302) 622-7100  
[reisler@gelaw.com](mailto:reisler@gelaw.com)

Brent Hazzard – *Litigation Committee*  
HAZZARD LAW, LLC  
447 Northpark Drive  
Ridgeland, MS 39157  
Tel: (601) 977-5253  
Fax: (601) 977-5236  
[brenthazzard@yahoo.com](mailto:brenthazzard@yahoo.com)

John Saxon – ***Litigation Committee***  
JOHN D. SAXON, P.C.  
2119 3rd Avenue North  
Birmingham, AL 35203-3314  
Tel: (205) 324-0223  
Fax: (205) 323-1583  
[jsaxon@saxonattorneys.com](mailto:jsaxon@saxonattorneys.com)

Lawrence Jones – ***Damages Committee***  
JONES WARD PLC  
The Pointe  
1205 East Washington Street, Suite 111  
Louisville, Kentucky 40206  
Tel: (502) 882-6000  
Fax: (502) 587-2007  
[larry@jonesward.com](mailto:larry@jonesward.com)

Robert Methvin – ***Chair, Settlement Committee***  
James M. Terrell – ***Class Certification Committee***  
MCCALLUM, METHVIN & TERRELL, P.C.  
The Highland Building  
2201 Arlington Avenue South  
Birmingham, AL 35205  
Tel: (205) 939-0199  
Fax: (205) 939-0399  
[rgm@mmlaw.net](mailto:rgm@mmlaw.net)  
[jterrell@mmlaw.net](mailto:jterrell@mmlaw.net)

Michael McGartland – ***Class Certification Committee***  
MCGARTLAND & BORCHARDT LLP  
1300 South University Drive, Suite 500  
Fort Worth, TX 76107  
Tel: (817) 332-9300  
Fax: (817) 332-9301  
[mike@attorneysmb.com](mailto:mike@attorneysmb.com)

H. Lewis Gillis – ***Co-Head Chair, Litigation Committee***  
MEANS GILLIS LAW, LLC  
3121 Zeldia Court  
Montgomery, AL 36106  
Tel: 1-800-626-9684  
[hlgillis@tmgslaw.com](mailto:hlgillis@tmgslaw.com)

David J. Hodge – ***Chair, Settlement Committee***  
MORRIS, KING & HODGE  
200 Pratt Avenue NE  
Huntsville, AL 35801  
Tel: (256) 536-0588  
Fax: (256) 533-1504  
[lstewart@alinjurylaw.com](mailto:lstewart@alinjurylaw.com)

*Counsel for Subscriber Plaintiffs*

*/s/ Warren T. Burns*

---

Warren T. Burns  
BURNS CHAREST LLP  
900 Jackson Street, Suite 500  
Dallas, Texas 75202  
Tel: (469) 904-4550  
Fax: (469) 444-5002  
[wburns@burnscharest.com](mailto:wburns@burnscharest.com)

*Counsel for the Self-Funded Sub-Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2021, the foregoing was filed with the Clerk of the Court and served on counsel of record via ECF.

/s/ Michael D. Hausfeld  
Michael D. Hausfeld

# **EXHIBIT**

# **A**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>IN RE BLUE CROSS BLUE SHIELD</b>	<b>:</b>
<b>ANTITRUST LITIGATION</b>	<b>: Master File 2:13-cv-20000-RDP</b>
<b>MDL 2406</b>	<b>:</b>
	<b>:</b>
	<b>:</b>
	<b>:</b>
	<b>: This document relates to</b>
	<b>: Subscriber Track cases</b>

**[PROPOSED] PLAN OF DISTRIBUTION**

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## I. INTRODUCTION

1. This [Proposed] Plan of Distribution (“Plan”) shall govern the distribution of the settlement funds provided for by the settlement reached between Settling Defendants and Subscriber Plaintiffs in the above-captioned case (“Settlement Agreement” or “Settlement”, attached as Exhibit A to Subscriber Plaintiffs’ Motion for Preliminary Approval of Subscriber Class Settlement).<sup>1</sup> This Plan is referenced in ¶ 1.mmm of the Settlement Agreement, and is subject to Court approval.

2. All capitalized terms used in this Plan shall have the same meaning as provided for in the Settlement Agreement, unless expressly stated otherwise.

3. In addition to structural relief and other non-monetary provisions (none of which are addressed in this Plan), the Settlement provides for Settling Defendants to pay an amount of \$2.67 billion into the Escrow Account.

4. As set forth in ¶ 1.ddd of the Settlement Agreement, portions of the Settlement Fund shall be used to pay certain costs and fees prior to determining a net amount that is available for distribution to class members (the “Net Settlement Fund”). The fees and other costs to be deducted from the Settlement Fund include:

- a. \$100 million of costs to cover Notice and Administration of the Settlement (with any excess costs above that amount subject to replenishment upon a showing of necessity if approved by the Court, and with any residual amount from the \$100 million that is not needed for Notice and Administration to be returned to the

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<sup>1</sup> All descriptions of the Settlement Agreement’s terms in this brief are for summary descriptive and illustrative purposes only, and are not intended to, and shall not be deemed to, modify the Settlement Agreement in any way, or have any bearing on the meaning or interpretation of the Settlement Agreement. The Settlement Agreement should be consulted for its actual terms and conditions.

Settling Defendants). Included within the Notice and Administration Fund will be the fees and expenses of the Monitoring Committee. Ex. A ¶ 21.

- b. Fee and Expense Awards, not to exceed 25% of the Gross Settlement Fund, to the counsel representing the class. *Id.* ¶ 28.
  - c. Service Awards to class representatives (to the extent allowed by 11<sup>th</sup> Circuit precedent and awarded by the Court). *Id.*
  - d. Escrow Account costs (including taxes and tax expenses). *Id.* ¶ 26.
5. Assuming a Fee and Expense Award of 25% of the Gross Settlement Amount, no Service Awards and minimal Escrow Account costs, the Net Settlement Fund proceeds available for distribution to class members would be approximately \$1.90 billion (equal to \$2.670 billion, less \$100 million Notice and Administration Fund, less \$667.5 million Fee and Expense Award).

6. Regardless of whether the Net Settlement Fund available for distribution to Settlement Class Members is precisely \$1.90 billion or some different amount, the mechanics of this Plan shall operate in the same manner.

## **II. ALLOCATION BETWEEN FULLY INSURED (“FI”) CLAIMANTS AND SELF-FUNDED CLAIMANTS**

7. As reflected in the Settlement Agreement, the Damages Class is made up of:

[A]ll Individual Members (excluding dependents and beneficiaries), Insured Groups (including employees, but excluding non-employee Members), and Self-Funded Accounts (including employees, but excluding non-employee Members) that purchased, were covered by, or were enrolled in a Blue-Branded Commercial Health Benefit Products<sup>2</sup> sold, underwritten, insured, administered, or issued by any Settling Individual Blue Plan during the Settlement Class Period.

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<sup>2</sup> Commercial Health Benefit Products means “any product or plan providing for the payment or administration of health care services,” including but not limited to medical, pharmacy, dental, and vision services. Ex. A ¶¶ 1.o, 1.v. However, if a person or entity’s only Blue-Branded Commercial Health Benefit Product during the Settlement Class Period was a stand-alone vision or dental product, that person or entity is not included in the Damages Class. Ex. A ¶¶ 1.o, 1.v.

Ex. A ¶ 1.v.<sup>3</sup> Individual Members and Insured Groups (and their employees) with a valid claim are referred to as “FI Authorized Claimants” for the purposes of this Plan. Self-Funded Accounts (and their employees) with a valid claim are referred to as “Self-Funded Authorized Claimants” for the purposes of this Plan. Dependents and beneficiaries, whether of Individual Members or of Insured Group or Self-Funded employees, are not Authorized Claimants. Since any given person might have a different status at different times during the Settlement Class Period, it is possible to be both an FI Authorized Claimant and a Self-Funded Authorized Claimant for purposes of this Plan.

8. For purposes of this Plan, the term “employee” includes those individuals enumerated in ¶ 1.v of the Settlement Agreement as well as natural persons who are members of unions or other associational entities included in the definition of Insured Groups in ¶ 1.qq and in the definition of ¶ 1.cccc of the Settlement Agreement.

9. Based on mediation presentations to, and arms’-length negotiations between Settlement Class Counsel and Self-Funded Sub-Class Settlement Counsel (together, “Class Counsel”) before the neutral mediator for all allocation issues, Mr. Kenneth Feinberg (“Allocation Mediator”), Settlement Class Counsel and Self-Funded Sub-Class Settlement Counsel agreed to an allocation of the Net Settlement Fund as follows: (a) 93.5% to FI Authorized Claimants (“FI Net Settlement Fund”), and (b) 6.5% to Self-Funded Authorized Claimants (“Self-Funded Net Settlement Fund”). This was determined to be reasonable by the Allocation Mediator.

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<sup>3</sup> The following are excluding from the Damages Class: “Government Accounts, Medicare Accounts of any kind, Settling Defendants themselves, and any parent or subsidiary of any Settling Defendant (and their covered or enrolled employees.) Also excluded from the Damages Class are Opt Outs, the judge presiding over this matter, and any members of his judicial staff, to the extent such staff were covered by a Commercial Health Benefit Product not purchased by a Government Account during the Settlement Class Period.” *Id.*

10. The FI Net Settlement Fund and the Self-Funded Net Settlement Fund shall be considered to be and treated as separate funds for FI Authorized Claimants and Self-Funded Claimants, respectively. To the extent that Authorized Claimants to a fund choose not to submit claims, that will result in increased compensation to Authorized Claimants who submit claims in that fund only, and not to all Authorized Claimants overall.

11. As reflected in the Settlement Agreement and explained in the Class Notice, the Settlement Class Period is different for Self-Funded Authorized Claimants than it is for FI Authorized Claimants: (a) for Self-Funded Authorized Claimants, the Settlement Class Period is from September 1, 2015 through the Execution Date (“Self-Funded Class Period”), and (b) for FI Authorized Claimants, the Settlement Class Period is from February 7, 2008 through the Execution Date (the “FI Class Period”).

### **III. DISTRIBUTION OF THE FI NET SETTLEMENT FUND**

12. FI Authorized Claimants to be paid from the FI Net Settlement Fund shall consist of the following:

- a. Individuals who purchased one or more individual policies directly from one or more Defendant(s) during the FI Class Period (whether a policy for single coverage or family coverage) (“Individual Policyholders”);<sup>4</sup>
- b. Employers or other groups (e.g., Taft-Hartley plans, multi-employer welfare arrangements, association health plans, retiree groups, and other non-employer groups that fall within the Settlement Agreement’s definition of Insured Group)

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<sup>4</sup> The term “family coverage” means any coverage tier other than single-person coverage, including coverage for the employee and his or her spouse or domestic partner. The same term with the same meaning is used below in distinguishing employee coverage for the single employee only as opposed to the employee plus family members.

who purchased one or more fully-insured group policies directly from one or more Defendant during the FI Class Period (“FI Groups”); and/or

- c. Natural persons, including those employees defined in ¶ 8 *supra*, who were the primary policyholders receiving health insurance coverage through the FI Groups referenced above in (b) during the FI Class Period (“FI Employees”).

13. The payment for each claim on the FI Net Settlement Fund submitted by any given FI Authorized Claimant (e.g., “FI Claimant A”) shall be determined by the following equation:

“Total Premiums Paid” (as defined below by this Plan)  
during FI Class Period by FI Claimant A

*Divided by*

Total Premiums Paid during FI Class Period by all FI Authorized Claimants who  
submit claims

*Multiplied by*

Total dollars in FI Net Settlement Fund

**= FI Claimant A’s claim payment**

14. The foregoing calculation shall be called the “FI Claim Payment Calculation” and the result of this calculation shall be the “FI Claim Payment” for each FI Authorized Claimant.

15. The Total Premiums Paid<sup>5</sup> for each FI Authorized Claimant will be the sum of premiums paid for Commercial Health Benefit Products, including medical, pharmaceutical, vision and dental plans, to any and all Settling Defendants for that FI Authorized Claimant’s coverage during the FI Class Period.<sup>6</sup> For FI Authorized Claimants that are natural persons, the

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<sup>5</sup> Settling Defendants will generally produce as premium data the premium billed as maintained in the normal course of business.

<sup>6</sup> Premiums paid for February 2008 are pro-rated by a factor of 23/29 to reflect the fact that the first 6 days of the 29-day leap-month are excluded from the FI Class Period. Premiums paid for October 2020 are pro-rated by a factor of 16/31 to reflect that the last 15 days of month are excluded from the FI Class Period.

Total Premiums Paid will include any premiums paid as an Individual Policyholder and as an FI Employee. The Class Notice shall make clear that Settling Defendants are expected to be able to provide data, to the extent available in the ordinary course of business, that can be used to create unique identifiers for most FI Authorized Claimants that should allow for the estimation of the Total Premiums Paid without requiring the FI Authorized Claimant to submit any premium data. To the extent no data is available, the Claims Administrator will seek additional information from the claimant as necessary.

16. For FI Authorized Claimants who submit claims and who were Individual Policyholders during the FI Class Period, Individual Policyholder premiums paid to any and all Settling Defendants during the FI Class Period shall be derived from the data provided by Settling Defendants.<sup>7</sup>

17. For the FI Groups and FI Employees who submit claims, the determination of the premiums to be included in an FI Authorized Claimant's Total Premiums Paid to any and all Settling Defendants during the Class Period shall be derived from (a) the data provided by the Settling Defendants, which is expected to show the total amount of premiums paid by any FI Group, and (b) an allocation of the Total Premiums Paid between each specific FI Group and any FI Employees of that FI Group who submits claims ("FI Group/Employee Allocation Process").

**A. FI Group/Employee Allocation Process**

18. If an FI Group submits a claim, but none of the FI Employees for that FI Group during the FI Class Period submits any claims, then the full premium paid by that FI Group shall be allocated entirely to that FI Group and shall constitute the "Total Premiums Paid" for that FI Group for purposes of the FI Claim Payment Calculation set forth above.

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<sup>7</sup> The premium paid by an individual policyholder will be calculated net of any on-exchange subsidy identified in data provided by the Settling Defendants.



19. If an FI Group submits a claim and one or more of its FI Employees also submits a claim, then there shall be an allocation of the FI Group premium between the FI Group and each FI Employee who submits a claim.

- a. To perform that allocation, the first step will be to determine how much of the total premiums paid by a particular FI Group during the FI Class Period were paid to provide coverage for each specific FI Employee who submits a claim. This will require using the data provided by Settling Defendants to determine the dates when that claiming FI Employee received coverage by any FI Group, and the number of covered lives under that FI Employee's policy (the employee plus any covered dependents) during each month of those coverage dates. Using data from the Settling Defendants showing this information, the Claims Administrator shall then calculate the total premiums paid by an FI Group during the FI Class Period to provide coverage for that claiming FI Employee ("Unallocated Employee Premium").
- b. The Unallocated Employee Premium will be calculated on a monthly basis.<sup>8</sup> The Settling Defendants do not systematically collect data on employee-level premiums for FI Group plans, and therefore the Unallocated Employee Premium for each employee X in month Y to be allocated between the FI Group and the FI Employee will be estimated as follows:

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<sup>8</sup> Where premiums are paid less frequently than monthly, the premium (including any further credits or debits during the billing period) will be translated into an FI Group monthly premium using a similar calculation that reflects the number of member-months for each month in the billing period.

Total FI Group Premium for month Y (from Settling Defendants, or calculated as described below)

*Divided by*

Total number of members (employees and covered dependents) under the FI Group Plan during month Y

*Multiplied by*

Number of members on employee X's policy during month Y

*= Unallocated Employee Premium for employee X during month Y*

- c. If an FI Employee does not submit a claim, the entire Unallocated Employee Premium for that non-claiming FI Employee shall be allocated to the FI Group that was the employer of that non-claiming FI Employee.
- d. For each FI Group, where an FI Employee submits a claim, the Claims Administrator shall allocate this Unallocated Employee Premium between (1) the FI Group from which the specific claiming FI Employee obtained coverage, and (2) the specific claiming FI Employee.
- e. The Claims Administrator's allocation of the Unallocated Employee Premium may be done pursuant to either a "Default" option or an "Alternative" option, depending upon the elections made by the relevant FI Employee and/or the FI Group from which that FI employee obtained coverage. The Class Notice shall make clear how both the Default and Alternative options shall work, consistent with what is set forth in this Plan. The claim form shall also provide a clear mechanism for each FI Authorized Claimant to elect the Alternative option.

**Default option:**

- f. The Default option shall allocate the Unallocated Employee Premium according to one of two fixed percentages: (1) 15% to the claiming FI Employee during periods

in which the person had single coverage, and (2) 34% to the claiming FI Employee during periods in which the person had family coverage. The residual amounts in both cases (85% and 66%, respectively) are allocated to the FI Group. The two Default fixed percentages will be identified in the Class Notice and in the claim form. Those Default fixed percentages were determined by Class Counsel and approved by the Allocation Mediator after the consideration of numerous factors, including:

- i. The fact that Settling Defendants do not have data showing how much, if anything, each of the FI Employees contributed, directly or indirectly, through payroll deductions or otherwise, toward the premiums paid by each FI Group.
- ii. The fact that there is some publicly available data regarding employee health care contribution percentages from an annual report published by The Kaiser Family Foundation (“Kaiser Report”) based on its annual survey of employer health benefits.<sup>9</sup> The Kaiser Report is available annually throughout the FI Class Period. The Kaiser Reports show that the average employee contribution percentage for FI Groups is consistently higher for those with family coverage over the FI Class Period. The average percentage contribution for employees varies across years within the FI Class Period from 33% to 39% for family coverage and from 14% to 19% for single coverage.

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<sup>9</sup> 2019 Employer Health Benefits Survey, September 25, 2019, <https://www.kff.org/health-costs/report/2019-employer-health-benefits-survey/>.

- iii. The fact that some employees do not contribute any out-of-pocket amount at all to their health insurance costs.
  - iv. The fact that there is some economic literature supporting the proposition that employees may bear part of the cost of employer-sponsored health insurance through a reduction in their total compensation, rather than only in the form of their out-of-pocket contribution toward premiums.
  - v. The potential standing challenges that could be faced by FI Employees in bringing an antitrust claim against Settling Defendants, as compared to the standing of FI Groups to do so.
  - vi. The fact that the FI Group retains 100% of the value of any unclaimed FI Employee premiums along with the value of any FI Employee claims for that FI Group falling below the \$5 minimum payment threshold (discussed in ¶ 28 below).
- g. If both the FI Group and the FI Employees of that FI Group who submit claims accept the Default option, then the Default option shall be applied to determine the allocation of the premiums paid for group coverage between the FI Group and the FI Employees who submit claims.

**Alternative option:**

- h. If either the FI Group or its FI Employees believes that their contribution percentage was greater than the Default option, then they may (but do not have to) elect the Alternative option on their claim form. Any claimant whose counterpart (for a claiming FI Employer, the FI Employees; and for a claiming FI Employee, its FI Employer) elects the Alternative option will be contacted by the Claims Administrator and provided with the opportunity to submit additional evidence to

assist in the ultimate determination of how to allocate their Unallocated Employee Premiums.

- i. If a claimant elects the Alternative option, the claimant making the election must submit sufficient data, records, or other materials supporting a greater contribution percentage together with the claim form that is sent to the Claims Administrator. If the Claims Administrator in its discretion determines that a claimant seeking to elect the Alternative option has not provided sufficient data, records, or other materials to establish a specific Alternative allocation, the claimant will be treated as having accepted the Default option. If the Claims Administrator determines there is sufficient data to establish an Alternative allocation based upon sufficient data, records, or other materials provided by the claimant, the claim will be submitted to the Settlement Administrator for a revised allocation according to the principles set forth below. For instances where a claimant provides insufficient data, records, or other materials to support a higher contribution percentage for portions of the relevant coverage period(s), the claimant will be treated as having accepted the Default option for those portions of the claim, and the only portions that will be sent to the Settlement Administrator for a determination of the appropriate allocation are those portions for which sufficient materials were provided to support a higher allocation. A claimant reverting to the Default option under this subparagraph maintains the same ability to respond to its counterpart's valid election of the Alternative option described in ¶ 19(h).
- j. If the FI Group and/or the FI Employee selects the Alternative option and provides the sufficient supporting data, records, or other materials supporting a higher

contribution percentage, then the Alternative option shall be used to allocate the Unallocated Employee Premium. If the FI Group does not elect the Alternative option, and the claiming FI Employees for that FI Group consist of one or more who elect the Alternative option and provide sufficient supporting data, records or other materials for the Alternative option and one or more who elect the Default option, then the Alternative option shall be applied to determine the allocation of the Unallocated Employee Premium only for those employees who elect the Alternative option, and the Default shall be used for those who elect the Default option. If an FI Group elects and provides sufficient supporting data, records or other materials for the Alternative option, the claiming FI Employees of that FI Group will be treated as having also elected the Alternative option.

- k. If the claimant has submitted sufficient data, records or other materials and elected the Alternative option, the Claims Administrator shall provide its findings to the Settlement Administrator, along with any relevant materials provided by those potentially impacted by each such election. The Settlement Administrator shall determine the appropriate allocation of the Unallocated Employee Premiums. This allocation may either continue to rely on the Default percentages or to use the Alternative option which would increase or decrease the amount allocated to the FI Group relative to the FI Employee, by taking into account:

- i. Any supporting data, records or other materials presented by the entities or persons submitting those materials in support of their election of the Alternative Option, considering both the reliability and the comprehensiveness of the materials;

- ii. Any additional data, records, or other materials that either the Claims Administrator or the Settlement Administrator may request from parties impacted by the election of the Alternative option; and
- iii. The same factors that are listed above that were taken into account by Class Counsel and the Allocation Mediator in approving the Default percentages, and any associated data, records, or other materials submitted by the parties regarding those factors.

- 1. The Settlement Administrator shall report its conclusions to the Claims Administrator on each of the determinations made regarding the allocation of the Unallocated Employee Premiums. The Claims Administrator will notify all claimants within the FI Group whose FI Claim Payments may be impacted by the Settlement Administrator's determination. The Settlement Administrator's determination shall be final.

20. If an FI Employee submits a claim for a particular FI Group, and that FI Group does not submit a claim, then the amounts that would have been allocated to that FI Group shall remain in the balance of the FI Net Settlement Fund for distribution to all other FI Authorized Claimants in accordance with this Plan.

**B. Allocations Where FI Group Purchases Health Plans on Behalf of Employer Groups**

21. The Class Notice and claim form shall indicate that if an FI Group has purchased one or more health plans from a Defendant during the Settlement Class Period on behalf of one or more other employer or member groups, as is the case, for example, with Professional Employer Organizations ("PEOs"), unions, and similar member associations, then both that purchasing entity and the corresponding employer and member groups (on behalf of whom that purchasing entity

acquired health insurance) shall be eligible to file a claim. The claim form shall provide an opportunity to indicate if the claiming FI Group is either (a) an employer or member group who acquired its insurance through another purchasing entity (a “Covered Entity”), or (b) a purchasing entity (such as a PEO) that purchased insurance on behalf of the employer and/or member groups (a “Purchasing Entity”). The Claims Administrator shall consult the claim form submissions along with the data made available by the Settling Defendants to determine if any FI Group falls into either of the foregoing two categories. Where the Claims Administrator determines that both a Purchasing Entity and one or more Covered Entities for a single FI Group have submitted claims, the Claims Administrator will first contact those claiming parties to see if an allocation can be agreed upon in the first instance. If no such allocation agreement can be reached, the claims of those FI Groups shall be referred to the Settlement Administrator to determine an appropriate allocation between the Covered Entity (or Entities), and the Purchasing Entity. The Settlement Administrator shall make an allocation determination in light of all the facts and circumstances and available data that can be collected by the Claims Administrator and provided to the Settlement Administrator with respect to each such purchasing association and the respective employers on behalf of whom it made purchases. The Settlement Administrator’s determination is final. Once that allocation determination is made, either through agreement or by the Settlement Administrator, the allocation between any specific FI Group employer subject to this paragraph and any claiming employees of that FI Group employer shall be determined in the same way as it is for all other FI Groups (i.e., in accordance with the Default and Alternative options and procedures set forth above).

#### **IV. DISTRIBUTION OF THE SELF-FUNDED NET SETTLEMENT FUND**

22. The Authorized Claimants, for purposes of making claims against the Self-Funded Net Settlement Fund (“Self-Funded Authorized Claimants”) shall consist of the following:



- a. Employers or other groups (e.g., Taft-Hartley plans, multi-employer welfare arrangements, association health plans, retiree groups, and other non-employer groups that fall within the Settlement Agreement’s definition of Self-Funded Account) who purchased a Self-Funded Health Benefit Plan from one or more Defendant(s) during the Self-Funded Class Period (“Self-Funded Groups”); and/or
- b. Natural persons, including those employees defined in ¶ 8 *supra*, who were the primary policyholders receiving coverage through a Self-Funded Health Benefit Plan from the Self-Funded Groups referenced above in (a) during the Self-Funded Class Period (“Self-Funded Employees”).<sup>10</sup>

23. Payment for each claim submitted by any given Self-Funded Authorized Claimant (e.g., “Self-Funded Claimant B”) from the Self-Funded Net Settlement Fund shall be determined by the following equation:

“Total Administrative Fees Paid” (as defined below by this Plan)  
during Self-Funded Class Period by Self-Funded Claimant B

*Divided by*

Total Administrative Fees Paid during Self-Funded Class Period by all Self-Funded  
Authorized Claimants who submit claims

*Multiplied by*

Total dollars in Self-Funded Net Settlement Fund

**= Self-Funded Claimant B’s claim payment**

24. The foregoing calculation shall be called the “Self-Funded Claim Payment Calculation” and the result of this calculation shall be the “Self-Funded Claim Payment” for each

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<sup>10</sup> Self-Funded Employees include employees as defined in ¶ 1.v of the Settlement Agreement as well as natural persons who are members of unions or other associational entities included in the definition of Self-Funded Accounts in ¶ 1.cccc of the Settlement Agreement.

Self-Funded Authorized Claimant. The “Administrative Fees” to be used in the calculation above will include fees paid for any Commercial Health Benefit Product, including the administration of medical, pharmaceutical, vision and dental plans as well as any amounts paid to the Settling Defendants for stop-loss insurance.

25. For the Self-Funded Groups and Self-Funded Employees who submit claims, the determination of the Total Administrative Fees Paid<sup>11</sup> to any and all Settling Defendants during the Self-Funded Class Period shall be based upon (a) the data provided by the Settling Defendants, which is expected to show the total amount of administrative fees paid to one or more Settling Defendants by any Self-Funded Group, and (b) an allocation process to allocate the Total Self-Funded Fees Paid between each specific Self-Funded Group and any Self-Funded Employees of that Self-Funded Group who submit claims (“Self-Funded Group/Employee Allocation Process”).

26. The Self-Funded Group/Employee Allocation Process shall be conducted in the same manner and according to the same mechanics and principles as set forth above in the description of the FI Group/Employee Allocation Process. For purposes of clarity, Self-Funded Groups and Self-Funded Employees will be subject to a similar Default option. The Default option shall allocate the Unallocated Employee Fee for a particular employee’s coverage according to one of two fixed percentages: (1) 18% to the Self-Funded Employee during periods in which the person had single coverage, and (2) 25% to the Self-Funded Employee during periods in which the person had family coverage.<sup>12</sup> Self-Funded Groups and Self-Funded Employees will have the same opportunity to choose an Alternative option to apply to their claims as set forth in ¶ 19, *supra*.

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<sup>11</sup> Settling Defendants will generally produce as administrative fee data the administrative fees billed as maintained in the normal course of business.

<sup>12</sup> The Default fixed percentages were determined by Class Counsel and approved by the Allocation Mediator after the consideration of the same factors described in ¶ 19, with the exception of the Kaiser Study finding that the employee contributions in self-funded plans are higher for single coverage (18% to 19% compared to 14% to 19% for fully insured) and lower for family coverage (24% to 26% compared to 33% to 39% for fully insured).

27. The Class Notice and claim form shall indicate that Self-Funded FI Groups that are either a Covered Entity or Purchasing Entity as described in ¶ 21 will be eligible to file a claim. Those claims will be processed in the same manner as described in ¶ 21, with the same mechanism for allocation between any claiming Covered Entity and Purchasing Entity. Once that allocation is made, either through agreement or by the Settlement Administrator, the allocation between any specific Self-Funded Group employer subject to this paragraph and any claiming employees of that Self-Funded Group employer shall be determined in the same way as it is for all other Self-Funded Groups (i.e., in accordance with the Default and Alternative options and procedures set forth above).

**V. MINIMUM VALUE OF DISTRIBUTIONS FROM NET SETTLEMENT FUND**

28. If the total, combined total of the FI Claim Payment and the Self-Funded Claim Payment for any Authorized Claimant across the entire Settlement Class Period is equal to or less than **\$5.00**, then no distribution shall be made to that claimant and the claimant will be notified that there will be no distribution given the *de minimis* value. To the extent the Authorized Claimant is an Individual Policyholder or an FI Group, the amount of the FI Claim Payment for that Authorized Claimant shall remain in the FI Net Settlement Fund for distribution to Authorized Claimants who have Claim Payments in excess of \$5.00.<sup>13</sup> To the extent that the Authorized Claimant is a Self-Funded Group, the Claim Payment will revert to the Self-Funded Net Settlement

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<sup>13</sup> To implement this calculation, the Settlement Administrator will perform the calculation in ¶ 13 excluding from “Total Premiums Paid” any FI Authorized Claimant with a combined Claim Payment less than the minimum threshold.

Fund. To the extent the Authorized Claimant is an FI Employee or Self-Funded Employee, the Claim Payment will revert to the respective FI Group<sup>14</sup> or Self-Funded Group.<sup>15</sup>

**VI. AUTHORIZED CLAIMANT REVIEW OF TOTAL PREMIUMS PAID/TOTAL ADMINISTRATIVE FEES PAID**

29. Authorized Claimants will be provided the opportunity to review the Total Premiums Paid and/or Total Administrative Fees Paid upon which their Claim Payment is based prior to distribution of the Net Settlement Fund. To the extent an Authorized Claimant has a correction to their Total Premiums Paid and/or Total Administrative Fees and the necessary materials to support that correction, the Claims Administrator will review any data in support of that proposed correction and determine whether to alter the Total Premiums Paid and/or Total Administrative Fees for that Authorized Claimant.

**VII. RESIDUAL FUNDS**

30. Pursuant to ¶ 30 of the Settlement Agreement, to the extent that any part of the Settlement Fund remains in the Escrow Account after the Claims Administrator has made the reallocation to Authorized Claimants required under the Settlement Agreement, Settlement Class Counsel and Self-Funded Sub-Class Settlement Counsel will jointly seek Court approval to disburse the remainder of the Settlement Fund to an entity or entities closely associated with the

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<sup>14</sup> To implement this calculation, the Settlement Administrator will perform the FI Group/Employee Allocation Process treating any Authorized Claimant with a combined Claim Payment less than the minimum threshold as not having submitted a claim. However, if the FI Group does not submit a claim, that FI Group's allocation of premiums paid will be excluded from the Total Premiums Paid in the formula in ¶ 13 and therefore returned to the FI Net Settlement Fund.

<sup>15</sup> To implement this calculation, the Settlement Administrator will perform the Self-Funded Group/Employee Allocation Process treating any Authorized Claimant with a combined Claim Payment less than the minimum threshold as not having submitted a claim. However, if the Self-Funded Group does not submit a claim, that Self-Funded Group's allocation of the administrative fee will be returned to the Self-Funded Net Settlement Fund by excluding administrative fees paid by that Self-Funded Group from the "Total Administrative Fees Paid" in the formula in ¶ 23.

harm alleged in the Complaint. The Claims Administrator will follow the directions approved by the Court.



**IT IS HEREBY ORDERED AND ADJUDGED:**

The Court approves the proposed amendment for clarity to the Plan of Distribution as described below. Specifically, the language indicated below by bold italics shall be inserted so that paragraphs 12(b) and 22(a) read as follows:

- Paragraph 12(b): Employers or other groups (*e.g., Taft-Hartley plans, multi-employer welfare arrangements, association health plans, retiree groups, and other non-employer groups that fall within the Settlement Agreement's definition of Insured Group*) who purchased one or more fully-insured group policies directly from one or more Defendant during the FI Class Period (“FI Groups”)
- Paragraph 22(a): Employers *or other groups (e.g., Taft-Hartley plans, multi-employer welfare arrangements, association health plans, retiree groups, and or other non-employer groups that fall within the Settlement Agreement's definition of Self-Funded Account)* who purchased a Self-Funded Health Benefit Plan from one or more Defendant(s) during the Self-Funded Class Period (“Self-Funded Groups”)

The Court also hereby amends its Preliminary Approval Order, ECF No. 2641 ¶ 22, to conform with the Court-approved long-form notice, ECF No. 2611-2 at Ex. C, such that objectors need not file objections, but must still cause objections to be mailed to the Claims Administrator, Settlement Class Counsel, Self-Funded Settlement Sub-Class Counsel, and Settling Defendants’ Counsel at the addresses listed in the long-form notice available on the Settlement website, and postmarked by no later than the objection deadline.

The Court directs Settlement Class Counsel and the Claims Administrator to substitute this clarified amended version of the Plan of Distribution *nunc pro tunc* for the previously preliminarily approved Plan of Distribution for all purposes and to post a copy of the amended Plan of Distribution along with this order on the Settlement website within one business day.

**DONE and ORDERED** on \_\_\_\_\_, 2021

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**R. DAVID PROCTOR**  
United States District Judge