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8 **IN THE SUPERIOR COURT OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 **REBECCA LEHMAN & HEATHER**
11 **WOMICK, individually and on behalf of all**
12 **others similarly situated;**

13 **Plaintiffs,**

14 **v.**

15 **HEALTH NET OF CALIFORNIA, INC., and**
16 **HEALTH NET LIFE INSURANCE**
COMPANY and DOES 1 through 100 inclusive,

17 **Defendants.**

Case No.: BC567361

CLASS ACTION

**DECLARATION OF JERRY FLANAGAN
IN SUPPORT OF APPLICATION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, AWARD OF
ATTORNEYS' FEES, PAYMENTS TO
CLASS REPRESENTATIVES, AND
REIMBURSEMENT OF EXPENSES**

Final Approval Hearing Scheduled per April
9, 2018 Preliminary Approval Order:

Judge: Hon. Kenneth R. Freeman
Dept.: 14
Hearing Date: July 12, 2018
Time: 11:00 a.m.

TABLE OF CONTENTS

1 **I. INTRODUCTION..... 1**

2 **II. BACKGROUND OF LITIGATION AND HISTORY OF SETTLEMENT**

3 **NEGOTIATIONS 3**

4 **III. DISCOVERY 4**

4 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT 5**

5 **V. TERMS OF THE SETTLEMENT AGREEMENT..... 6**

6 A. Settlement Class 6

7 B. Consideration to Class 6

8 C. Release and Discharge of Claims 8

9 D. Attorneys’ Fees and Expenses 9

9 E. Incentive Awards 10

10 F. Payment of Costs of Notice and Settlement Administration 10

10 **VI. THE NOTICE PLAN..... 10**

11 **VII. VALUATION OF THE SETTLEMENT 12**

12 A. Risks of Establishing Liability and the Risk of Maintaining Class Action Status 14

13 B. Complexity, Expense and Likely Duration of the Litigation 15

14 C. Experience and Views of Counsel 15

14 **VIII. ATTORNEYS’ FEES AND EXPENSES 15**

15 **IX. INCENTIVE AWARDS FOR NAMED PLAINTIFFS 18**

16 **X. CONCLUSION 18**

17 **EXHIBITS**

18 Exhibit A: Settlement Agreement

19 Exhibit B: Order Granting Preliminary Approval of Class Settlement

20 Exhibit C: [Proposed] Final Judgment and Final Approval Order¹

21 Exhibit D: Declaration of Jacqueline Brasefield Related to Class Notice (Garden City

22 Group)

22 Exhibit E: Declaration of Robert S. Arns in Support of Attorneys’ Fees

23 Exhibit F: Declaration of Travis M. Corby in Support of Attorneys’ Fees

24 Exhibit G: Declaration of Benjamin Powell in Support of Attorneys’ Fees

25 Exhibit H: Summary of Lodestar and Expenses

26 Exhibit I: Declaration of Richard M. Pearl in Support of Attorneys’ Fees

27 Exhibit J: Declarations of Class Representatives

26 ¹ The [Proposed] Final Approval Order attached as Exhibit C refers to the fact that zero (0)

27 putative Class Members opted out of the Settlement. Because the deadline for this filing falls

28 before the June 25, 2018 opt-out deadline, opt-out requests may be submitted after this filing. If

any putative Class Members submit opt-out requests, Class Counsel will submit an amended [Proposed] Final Approval Order, with a list of opt-outs attached as an exhibit thereto.

1 I, JERRY FLANAGAN, declare as follows:

2 **I. INTRODUCTION**

3 1. I am an attorney admitted to practice in California, Litigation Director for
4 Consumer Watchdog, and one of the attorneys of record for the named Plaintiffs and the proposed
5 Class (collectively referred to as “Plaintiffs” or “Settlement Class Members”) in the above-
6 captioned action (the “Action”).² I have personal knowledge of the matters set forth in this
7 Declaration, which is filed in support of (i) Plaintiffs’ Application for Final Approval of Class
8 Action Settlement, and (ii) Class Counsel’s Application for Payment of Attorneys’ Fees,
9 Payments to Class Representatives, and Reimbursement of Expenses. A copy of the Class
10 Settlement Agreement and Release effective March 20, 2018 (the “Settlement” or “Settlement
11 Agreement”) is attached hereto as Exhibit A. Consumer Watchdog attorneys have actively
12 participated in all aspects of this litigation, and I was one of the principal negotiators of the
13 Settlement. I am familiar with the facts set forth in this Declaration. If called to testify, I could
14 and would competently testify to the following facts.

15 2. The proposed Settlement of this Action is a tremendous benefit to the Class
16 because the relief is specifically tailored to address the underlying issues in the litigation and
17 because the relief will be provided to the Settlement Class on an expedited basis.

18 3. The relief is not only within the range, but likely far exceeds what Plaintiffs could
19 have obtained at trial. It is on this basis, and for the reasons set forth below and in the
20 accompanying memoranda, that Plaintiffs and their counsel seek approval of the Settlement and
21 an award of attorneys’ fees, payments to class representatives, and reimbursement of expenses in
22 an amount agreed to by the Parties after all the significant benefits of this Settlement for Class
23 Members were agreed to in principle.

24 4. Plaintiffs filed the Action to remedy alleged misrepresentations regarding Health
25 Net’s provider networks in 2014. Specifically, Plaintiffs alleged that Health Net misrepresented
26 which providers were participating as “in network” in individual or family health plans. Plaintiffs

27 _____
28 ² Unless otherwise specified, all defined terms in this Declaration have the same meaning as the
meaning described in the Settlement Agreement, and those terms are incorporated here by this
reference.

1 alleged that as a result, Settlement Class Members paid more out-of-pocket than they would have
2 had the providers been participating in Health Net’s network. The terms of the Settlement are
3 tailored to address these concerns. As detailed in Section III.A of the Settlement Agreement and
4 below, Health Net has agreed to treat potentially misrepresented providers as “in-network” for
5 billing purposes on a forward-going basis, as well as to compensate impacted Settlement Class
6 Members in a claims process allowing Settlement Class Members to recover 100% of eligible
7 Out-of-Pocket Expenses. Under the Settlement, there will be no cap on the fund to pay valid
8 claims submitted, so that all Settlement Class Members can recover 100% reimbursement of their
9 Out-of-Pocket Expenses subject to the limitations set forth in their certificates of insurance,
10 including but not limited to in-network co-pays, deductibles, and co-insurance.

11 5. As detailed below, the Settlement Agreement provides that Health Net will agree,
12 for four (4) years from the Settlement Effective Date, to make certain disclosures and remedial
13 measures with respect to its Health Maintenance Organization (“HMO”) Plans, Exclusive
14 Provider Organization (“EPO”) Plans, and Health Care Service (“HSP”) Plans, even though the
15 Settlement Class includes only members of individual PPO ACA Health Plans.

16 6. In addition, under the Settlement, all Settlement Class Members who received
17 health care services rendered by out-of-network medical professionals that, but for the
18 professional’s out-of-network status, would otherwise have been covered as in-network, have the
19 opportunity to recover 100% of their Out-of-Pocket Expenses.

20 7. Moreover, there will be no reversion of Settlement Funds to Health Net; any
21 Settlements Funds not distributed will be paid to the *cy pres* recipient chosen by the Parties:
22 Disability Rights Legal Center.

23 8. This Settlement is the culmination of protracted negotiations that were non-
24 collusive and overseen by a well-respected mediator, Robert J. Kaplan of Judicate West. The
25 Settlement was entered into by Class Counsel who are intimately familiar with the factual and
26 legal issues raised by the Lawsuit and who are experienced practitioners in class actions,
27 particularly in complex healthcare litigation. (Exhs. E–G.)

28 9. Health Net has also agreed to pay, as approved by the Court, reasonable attorneys’

1 fees and expenses to Plaintiffs' Counsel in an amount not to exceed \$625,000 and has agreed that
2 each of the two named Plaintiffs will receive an incentive award of \$5,000, pending approval by
3 the Court. *These amounts will not reduce the level of recovery for Settlement Class Members, as*
4 *they are in addition to the settlement funds that will be provided to Settlement Class Members.*

5 10. The attorneys' fee and expense provisions and incentive awards were negotiated
6 after the material substantive terms of the Settlement had been agreed to in principle. These
7 amounts were ultimately agreed upon based on the recommendation of the mediator, Robert J.
8 Kaplan. The amount of attorneys' fees requested reflects the work of Plaintiffs' Counsel to
9 prosecute and successfully resolve this litigation. Plaintiffs' Counsel have agreed to share
10 attorneys fees equally. *All clients have given written approval of the fee sharing agreement. (See*
11 *Mark v. Spencer (2008) 166 Cal.App.4th 219; Cal. Rules of Professional Conduct, § 2-200; Cal.*
12 *Rules of Court, rule 3.769(b).)*

13 11. As set forth herein, Class Counsel have, among other things, (i) performed an
14 extensive investigation of the underlying facts alleged in the Action; (ii) served discovery
15 requests on Health Net; (iii) received and reviewed large volumes of information from Health Net
16 in response to informal document requests; and (iv) engaged in intense settlement negotiations
17 and mediation with counsel for Health Net for two years in an effort to resolve the litigation.

18 **II. BACKGROUND OF LITIGATION AND HISTORY OF SETTLEMENT**
19 **NEGOTIATIONS**

20 12. Before and after the Action was filed, Plaintiffs' Counsel conducted an extensive
21 investigation into the underlying factual and legal subject matter of this Action. This
22 investigation included research of relevant case law and interviews with numerous Class
23 Members impacted by the challenged practices. This investigation also included formal discovery
24 propounded on Health Net and informal discovery provided during the mediation process as
25 described below.

26 13. On December 19, 2014, Plaintiffs Rebecca Lehman and Heather Womick,
27 individually and on behalf of a putative class, filed a Complaint captioned *Rebecca Lehman &*
28 *Heather Womick v. Health Net of California, Inc., and Health Net Life Insurance Company, Case*

1 No. BC567361, alleging, *inter alia*, that Health Net misrepresented which physicians were
2 participating in its networks and mishandled administration of its individual health plans. The
3 Complaint alleged eight causes of action for (1) violations of California Business & Professions
4 Code § 17200 (unlawful); (2) violations of California Business & Professions Code § 17200
5 (unfair); (3) violations of California Business & Professions Code § 17200 (fraudulent); (4)
6 violations of False Advertising Law, California Business & Professions Code § 17500; (5)
7 violations of the Consumers Legal Remedies Act, California Civil Code § 1750; (6) breach of
8 contract; (7) breach of the implied covenant of good faith and fair dealing; and (8) declaratory
9 relief.

10 14. The Parties held an initial in-person mediation session presided over by Robert A.
11 Kaplan of Judicate West on July 16, 2015. At the mediation, the Parties outlined the specifics of
12 the case for the Mediator, advocated their positions, discussed the terms of a fair and appropriate
13 settlement, and exchanged numerous proposals and counter-proposals.

14 15. In addition to the in-person mediation session, Robert A. Kaplan continued to be
15 involved in telephonic mediation and “shuttle diplomacy” between the Parties. The Parties had
16 on-going discussions among counsel throughout the negotiation process. Following numerous
17 telephone calls among counsel, hundreds of emails, and multiple rounds of negotiations regarding
18 possible terms of settlement, the essential substantive terms were agreed to in July 2016. After
19 agreeing to the substantive terms, counsel for Health Net and Plaintiffs’ Counsel continued
20 negotiations regarding the draft of the Settlement Agreement. The negotiations were likewise
21 protracted, raised several additional issues requiring further negotiations, and lasted an additional
22 year, with the Parties signing a final agreement on July 10, 2017.

23 **III. DISCOVERY**

24 16. The Settlement was entered into by Plaintiffs’ Counsel who are intimately familiar
25 with the factual and legal issues raised by the Action and who are experienced practitioners in
26 class actions, particularly in complex healthcare litigation. Plaintiffs participated in and reviewed
27 formal and informal discovery produced by Health Net during the settlement process as well as
28 obtained and reviewed publicly available information regarding Health Net’s provider networks.

1 Plaintiffs' Counsel conducted an extensive investigation before and during the litigation of the
2 legal and factual underpinnings of the claims, including research of relevant case law and
3 conducted interviews of numerous Class Members impacted by the challenged practices. At the
4 request of Plaintiffs' Counsel, Health Net informally produced information regarding its provider
5 networks, PPO, HMO, EPO and HSP health plans, enrollment figures, communications to
6 providers and members, and the provider search tool on Health Net's website, as well as
7 information reflecting remedial actions undertaken by Defendants following the filing of the
8 Action regarding the marketing and sale of PPO, HMO, EPO and HSP health plans.

9 17. In addition to this informal discovery, Consumer Watchdog attorneys received and
10 reviewed several hundred pages of documents regarding Plaintiffs' Health Net plans in response
11 to formal discovery requests served by Plaintiffs' Counsel.

12 18. The formal and informal discovery allowed Plaintiffs' Counsel to complete a
13 thorough analysis of the underlying issues in the litigation and to determine the best manner in
14 which to resolve the Action, including (i) appropriate programmatic changes necessary to protect
15 consumers in the future, and (ii) appropriate reimbursements to Settlement Class Members, in the
16 form of a claims process that will ensure Class Members may recover 100% of their Out-of-
17 Pocket Expenses. These provisions are presented in detail in Section III.A of the Settlement
18 Agreement. Thus, when the Parties agreed to the terms of this Settlement, which is now
19 presented for final approval, Plaintiffs' Counsel had conducted their own independent
20 investigation and requested, received, and analyzed information produced by Health Net.

21 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT**

22 19. On July 10, 2017, the Parties submitted the Settlement to the Court for preliminary
23 approval. On September 22, 2017, the Court provided the Parties with a Preliminary Approval
24 Checklist ("Checklist Order") advising the Parties of changes that needed to be made to the
25 Settlement Agreement. In response, on October 24, 2017, the Parties submitted a Joint
26 Supplemental Memorandum, reflecting that the Parties had made the requested changes to the
27 Settlement Agreement.

28 20. On January 4, 2018, a hearing was held on the preliminary approval of the revised

1 settlement. At the hearing, the Court indicated a number of additional changes that would need to
2 be made before the settlement could be preliminarily approved. The Parties submitted a final
3 amended settlement agreement on March 20, 2018. On April 9, 2018, the Court entered an order
4 granting preliminary approval of the settlement. (Ex. B hereto).

5 **V. TERMS OF THE SETTLEMENT AGREEMENT**

6 **A. Settlement Class**

7 21. The Settlement Agreement provides that the Settlement Class includes any and all
8 consumers who were enrolled in a Health Net Individual and Family Preferred Provider
9 Organization (“PPO”) health plan in California between January 1, 2014 and December 31, 2014
10 and who obtained services from an out-of-network professional, claims for which were previously
11 submitted to Health Net by the Class Member or the out-of-network professional. The Class
12 includes only individual and family plans, not employer-provided plans.

13 **B. Consideration to Class**

14 22. In general, under the Settlement, Health Net has agreed to significant injunctive
15 relief and to implement programmatic changes to ensure the accuracy of its provider networks.
16 Additionally, all Settlement Class Members who received health care services rendered by out-of-
17 network medical professionals, as defined in the Settlement, that, but for the professional’s out-
18 of-network status, would otherwise have been covered as in-network health care services, will
19 have the opportunity to recover 100% of their Out-of-Pocket Expenses.³

20 23. Specifically, for a period of four years from the Settlement Effective Date, Health
21 Net has agreed to the following injunctive relief:

- 22 a. **For individual PPO plans**, consistent with Insurance Code section 10133.15(q)
23 and Health and Safety Code section 1367.27(q), Health Net will treat providers as

24
25 ³ “Out-of-Pocket Expense” is defined as the amounts that a Settlement Class Member paid, or
26 amounts that have been the subject of active collection efforts within 90 days prior to the date the
27 Parties filed a Motion for Preliminary Approval of this class action settlement, for health care
28 services rendered to the Settlement Class Member by Out-of-Network Medical PPO Professionals
that, but for the professional’s out-of-network status, would otherwise have been covered as in-
network health care services under the terms of the Settlement Class Member’s applicable
Certificate of Insurance or Evidence of Coverage and which are not subject to any other limitation
or exclusion. (Settlement Agreement, II.M.)

1 “in-network” for billing purposes under the applicable terms of members’
2 Evidence of Coverage, including the amounts owed by California consumers
3 enrolled in any Health Net individual PPO health plans, if it is reasonably
4 established that those providers were incorrectly represented as in-network in
5 Health Net’s provider directory or by a Health Net employee. All California
6 consumers will benefit from this relief, as it will help protect consumers from
7 potentially significant unexpected out-of-pocket costs in the future.

8 b. **For HMO Plans**, Health Net will disclose that in order to access a specialist in
9 Health Net’s Community Care HMO network, members must receive a referral
10 from their primary care physicians (“PCPs”). The HMO disclosures will appear on
11 any informational and advertising materials—including downloadable sales
12 brochures and webpages—that specifically name the Community Care network.⁴
13 Settlement Agreement, ¶ III.A.1.(b). This relief will help ensure that consumers
14 understand their coverage and support access to care.

15 c. **For EPO/HSP Plans**, Health Net will disclose prominently in all materials and
16 communications to members and potential members including informational
17 materials, advertising materials, downloadable sales brochures and webpages:
18 Health Net does not provide any coverage for out-of-network claims under EPO
19 and HSP plans.⁵ Settlement Agreement, ¶ III.A.1(c). This relief will help ensure
20 that consumers understand their coverage and support access to care.

21 24. Additionally, following the filing of the Action, Health Net has performed the
22 following actions and programmatic fixes to ensure the accuracy of the information in its network
23 provider directories:

24 a. Established a dedicated Data Integrity Unit responsible for oversight of activities
25 contributing to data integrity, including accuracy of provider directories;

26
27 ⁴ The Parties agree that there will be no release of Health Net HMO members’ claims. Settlement
28 Agreement, ¶ III.A.1(b)(2).

⁵ The Parties agree that there will be no release of Health Net EPO/HSP members’ claims.
Settlement Agreement, ¶ III.A.1(c)(2).

- b. Conducts a quarterly participating physician group (PPG) roster review to monitor and track that all rosters are reviewed and identified changes are made in Health Net systems;
- c. Conducts quarterly Provider Demographic Data Integrity self-audits to measure the accuracy for physician demographic data; and
- d. Expanded the data integrity process to work with an outside vendor to validate demographic data for directly contracting physicians.

25. Finally, Settlement Class Members enrolled in PPO health plans also have the opportunity to submit a claim for 100% compensation of Out-of-Pocket Expenses resulting from any provider network misinformation subject to in-network co-pays, deductibles and co-insurance. A claims process is appropriate in this Action because Health Net is not aware of which Settlement Class Members may have relied on inaccurate information on Health Net's website or provided by Health Net personnel when visiting an out-of-network provider. These payments will be fully reimbursed by Health Net from an uncapped fund. If, after 120 days of the initial disbursement of settlement checks (or 60 days after mailing of a replacement check), any settlement checks are not cashed, the Settlement Administrator shall distribute the remaining funds as required by Code of Civil Procedure section 384: (1) Twenty-five percent to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund; (2) Twenty-five percent to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch; and (3) Fifty percent to the *cy pres* recipient selected by the Parties, the Disability Rights Legal Center (<http://drlcenter.org/>). (Settlement Agreement, ¶ III.E.3.) No settlement funds will be retained by, or revert to, Health Net. Any disputes as to the adequacy of the claims or related documentary support for these claims will be resolved by a neutral third party, agreed upon by the Parties.

C. Release and Discharge of Claims

26. The Settlement Agreement provides that, as of the Settlement Effective Date, Plaintiffs and the Settlement Class Members will fully release "any and all known and unknown claims for relief . . . that were or could have been brought by Class Members against Health Net based on the facts alleged in the Lawsuit for losses incurred in 2014, including but not limited to

1 claims relating to the accuracy of Health Net’s provider directories and claims related to plan
2 benefits associated with the services provided by the Out-Of-Network Professionals (Settlement
3 Agreement, ¶ II.R.) The Defendants believe the Section 1542 release under the California Civil
4 Code is reasonable. In the proposed settlement, Defendants offer monetary and other
5 consideration to the Settlement Class. It has done so, in part, to purchase complete peace
6 regarding the issues at hand. Inclusion of the Section 1542 waiver is an important component for
7 Defendants to secure finality on these issues. The Section 1542 waiver is limited to the Released
8 Claims. Only the named Plaintiffs are waiving their Section 1542 claims; the waiver does not
9 apply to unnamed Settlement Class Members.

10 **D. Attorneys’ Fees and Expenses**

11 27. As noted above and described in more detail in Plaintiffs’ Memorandum of Points
12 and Authorities in Support of Application for an Order Approving Attorneys’ Fees, Payments to
13 Class Representatives, and Reimbursement of Expenses, filed contemporaneously herewith, the
14 Settlement Agreement provides that, as an integrated term of this settlement, Health Net agrees to
15 pay, as approved by the Court, reasonable attorneys’ fees, including reimbursement of expenses,
16 to Plaintiffs’ Counsel in an amount not to exceed \$625,000. Plaintiffs’ Counsel agreed that they
17 will not seek attorneys’ fees, expenses, or any other form of compensation from the Released
18 Parties that exceed this amount. Such amounts shall be paid to Plaintiffs’ Counsel within 30
19 business days after the Settlement Effective Date. (Settlement Agreement, ¶ III.I.1.) The
20 negotiation of an agreement to the foregoing attorneys’ fees and costs did not occur until after the
21 substantive terms of the Settlement had been negotiated and agreed to in principle. Moreover, as
22 noted above, the agreement on the amount of fees and expenses was based upon the Mediator’s
23 recommendation. The proposed attorneys’ fees and incentive awards are *in addition to* the
24 amounts to be provided to Class Members through the claims process, which will reimburse
25 Settlement Class Members for 100% of all Out-of-Pocket Expenses reflected in valid and timely
26 claims from an uncapped fund.

27 28. Plaintiffs’ Counsel have agreed to share attorneys’ fees equally. All clients have
28 given written approval of the fee sharing agreement. (*Mark v. Spencer* (2008) 166 Cal.App.4th

1 219; Cal. Rules of Professional Conduct, § 2-200; Cal. Rules of Court, rule 3.769(b).)

2 **E. Incentive Awards**

3 29. The Settlement Agreement provides that Health Net will not oppose Plaintiffs’
4 Counsel’s request that the Court approve an additional payment to each of the two Plaintiffs as
5 incentive awards in the amount of \$5,000 each. All incentive award payments shall be paid to
6 Plaintiffs no later than 30 business days after the Settlement Effective Date. The proposed
7 incentive awards for Plaintiffs are reasonable. Each Plaintiff has submitted a declaration, attached
8 hereto as Exhibit J, stating that he or she has devoted more than 50 hours assisting Class Counsel
9 to resolve the Action. Moreover, the proposed incentive awards to Plaintiffs will not be deducted
10 from the amounts to be provided to Class Members through the claims process.

11 **F. Payment of Costs of Notice and Settlement Administration**

12 30. Under the Settlement, Health Net shall pay all costs associated with disseminating
13 the Settlement Notice, the Settlement Administrator, settlement website, the toll-free number, and
14 all associated expenses, including the neutral for adjudication of disputes about the timeliness
15 and/or validity of a claim submitted pursuant to Settlement Agreement ¶ III.A.3, and injunctive
16 relief and remedial measures as outlined in ¶ III.A.1 of the Settlement Agreement.

17 **VI. THE NOTICE PLAN**

18 31. As provided for in the Preliminary Approval Order, Notice was designed to and
19 did inform Settlement Class Members of the existence of the Action, the Settlement, and the
20 information needed to make informed decisions about their participation in the Settlement.

21 32. Pursuant to the Preliminary Approval Order, the Settlement Administrator mailed
22 the Summary Notice, substantially in the form of Exhibit 1 to the Settlement Agreement along
23 with the Claim Form, attached as Exhibit 3 to the Settlement Agreement, by first class mail on
24 May 8, 2018, to each of the 12,860 Settlement Class Members’ last known address, as reflected in
25 the records of Health Net and as updated by the Settlement Administrator. (Declaration of
26 Jacqueline Brasefield of settlement administrator Garden City Group (“GCG”) (“Brasefield
27 Dec.”), ¶ 5–6, attached as Exhibit D hereto. If any Summary Settlement Notices were returned as
28 undeliverable with forwarding addresses provided, the Settlement Administrator re-sent Summary

1 Settlement Notices to the forwarding addresses. (*Ibid.*) For any Summary Settlement Notices
2 returned undeliverable without forwarding addresses provided, the Settlement Administrator ran
3 an address search (skiptrace) against the Lexis-Nexis address database, or comparable database,
4 and re-sent Settlement Notices to any updated addresses obtained. (*Ibid.*) Thus, all Settlement
5 Class Members who could be identified through reasonable effort will have received the
6 Summary Settlement Notice and were directed to further detailed information. The deadline to
7 submit claim forms, opt-out requests, or object to the settlement is June 25, 2018. Pursuant to the
8 Court’s Preliminary Approval Order, GCG will provide an updated report on Class Notice,
9 claims, opt-out requests, and any objections by July 6, 2018. (*Ibid.*)

10 33. The Summary Notice contains relevant information about the Settlement and the
11 deadlines to opt out and object, directs Class Members to the Settlement website to review the
12 Full Settlement Notice in English and Spanish, and provides a toll-free number that Settlement
13 Class Members can call for general information, in English and Spanish, about the settlement and
14 to request a mailed copy of the Full Settlement Notice. (Settlement Agreement, ¶ III.D.) The
15 Settlement website contains the Settlement Agreement and exhibits, the operative complaint in
16 the Action, a list of relevant deadlines and orders, and provides detailed information about the
17 Settlement and how to participate in the benefits provided by the Settlement. (*Ibid.*) The Parties
18 worked together in good faith to agree on the content of the website as well as the interactive
19 voice recordings (IVR) used by the Settlement Administrator for the toll-free information
20 telephone line. (*Ibid.*)

21 34. Regarding the content of the Notices, the “notice given to the class must fairly
22 apprise the class members of the terms of the proposed compromise and of the options open to
23 dissenting class members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Ass’n*, (1975) 48
24 Cal.App.3d 134, 151-52.) Pursuant to California Rules of Court, rule 3.766(d), the notice must
25 include a brief explanation of the case, a statement that the court will exclude members from the
26 class if the member so requests, a procedure for the member to follow in requesting exclusion
27 from the class, a statement that the judgment will bind all members who do not request exclusion,
28 and a statement that any member who does not request exclusion may enter an appearance

1 through counsel. (*See* Cal. Rules of Court, rule 3.766(d).) Similarly, pursuant to California Rules
2 of Court, rule 3.679(f), the notice must provide an explanation of the proposed settlement and
3 procedures for class members to follow in order to file written objections and procedures, if any,
4 to follow in order to appear at the settlement hearing. The Notices provided all the required
5 information as well as additional information requested by the Court in its September 22, 2017
6 Checklist Order.

7 **VII. VALUATION OF THE SETTLEMENT**

8 35. As set forth above, resolution of this Action entailed intense and detailed
9 settlement negotiations lasting for 2 years. The process was overseen by a well-respected
10 mediator. The best interests of the Settlement Class remained Plaintiffs' Counsel's paramount
11 consideration throughout the entire course of settlement discussions. Plaintiffs' Counsel worked
12 tirelessly to obtain the best relief possible, tailored to the issues raised in litigation, in an
13 expedited manner.

14 36. The Parties have been represented by experienced class action and healthcare
15 litigators who view this Settlement favorably. (*See* Exhs. E–G attached hereto.) The arm's-
16 length nature of the negotiations and the participation of experienced counsel strongly support the
17 conclusion that a presumption of fairness should attach here.

18 37. The deadline for opting out and objecting to the Settlement is on June 25, 2018,
19 which is after the date of this filing. As of June 5, 2018, *zero (0) Class Members out of a*
20 *Settlement Class that includes approximately 12,860 members have elected to opt-out of the*
21 *Settlement and none have filed any objections.* (Brasefield Dec., ¶ 11.)

22 38. Under the Settlement, each Settlement Class Member shall be entitled to receive
23 the benefits set forth above and described in detail in ¶ III.A of the Settlement Agreement. The
24 Plaintiffs filed the Action to remedy alleged misrepresentations regarding Health Net's provider
25 networks. The terms of the Settlement are tailored to address these concerns. The relief is not
26 only within the range of what Plaintiffs could have obtained at trial, but likely exceeds what
27 Plaintiffs could have obtained at trial and is of significantly more value to the Class because it
28 will be received by Settlement Class Members sooner than could have been accomplished without

1 a settlement. Furthermore, a settlement now avoids the risk of recovering nothing in the future if
2 the matter were fully litigated. Indeed, absent a settlement, Settlement Class Members faced risks
3 of non-recovery or recovery that comes too late. Even under the best-case analysis of Plaintiffs’
4 Counsel, there could be long delays before a single Settlement Class Member would receive
5 recovery. Under the Settlement in this case, Settlement Class Members will receive relief on an
6 expedited basis and without the risks and delays of ongoing litigation. As such, this recovery is
7 even more favorable than what the Class could have hoped to recover even if successful at every
8 stage of the litigation, which, including appeals, could extend for the next several years.

9 39. Regarding the injunctive relief for PPO health plans, health care costs as a result of
10 receiving medical services from an out-of-network provider instead of an in-network provider can
11 be quite high. For example, on an in-network basis, once a consumer meets his or her deductible,
12 the consumer will only be required to pay co-insurance or a co-payment up to the out-of-pocket
13 maximum, after which the consumer owes nothing. On an in-network basis, providers are barred
14 from “balance billing” for Health Net of California plans-charging consumers for amounts that
15 exceed the reimbursements received from Health Net. However, on an out-of-network basis, a
16 consumer would be required to bear a much larger portion of the cost of care, and providers may
17 balance bill consumers for non-emergency medical services. Furthermore, on an out-of-network
18 basis, Health Net’s reimbursements to providers are only a fraction of a provider’s “billed
19 charges” for medical services; as a result, consumers are on the hook for significant out-of-pocket
20 costs. Therefore, under the injunctive relief provisions for PPO plans, under which Health Net
21 will treat PPO providers as “in-network” if it is reasonably established that those providers were
22 incorrectly represented as in-network in Health Net’s provider directory or by a Health Net
23 employee consistent with Insurance Code section 10133.15(q) and Health and Safety Code
24 section 1367.27(q), the savings for individual consumers could be substantial. Plaintiffs note
25 several limitations of the statute that they seek to remedy with the proposed injunctive relief.
26 First, the statute is only operable if a regulator finds that a particular consumer reasonably relied
27 on inaccurate information contained in Health Net’s provider directory. Unfortunately, only a
28 small fraction of consumer complaints is ever reported to the Department, thus greatly

1 handicapping the effectiveness of the statute. Second, in the event the regulator makes such a
2 finding, a reimbursement is not guaranteed, as the statute only provides that the Department “may
3 require” such reimbursements. Under the settlement provision at issue, Health Net is required to
4 make these reimbursements in response to consumer inquiries, thus removing the need for the
5 consumer to report the event to the Department and without the uncertainty of whether the
6 Department will take any action at all. Finally, to increase the clarity of this provision, the
7 Settlement Agreement provides: “If, by any means of communication, including, but not limited
8 to, a phone call, written correspondence, or an appeal/grievance, a member informs Health Net
9 that an out-of-network provider was represented to that member as in-network, Health Net shall
10 investigate the claim and pay providers and/or reimburse members at the in-network level subject
11 to the member responsibility portions.” (Settlement Agreement, ¶ III.A.1(a).)

12 **A. Risks of Establishing Liability and the Risk of Maintaining Class Action Status**
13 **Through Trial**

14 40. Health Net has denied any wrongdoing or liability to Plaintiffs or members of the
15 Settlement Class. A trial on the merits would require resolution of numerous highly complex
16 issues of law and fact, which would be heavily contested by Health Net during trial. For
17 Plaintiffs, there are substantial obstacles to overcome in order to establish Defendant’s liability
18 and the extent of damages at trial. The contracts governing the Plaintiffs’ plans with Health Net
19 include a mandatory arbitration agreement. Should litigation have proceeded, Health Net might
20 have moved to compel arbitration of all claims. This posed a significant risk to continued
21 litigation. Although Plaintiffs believe that they could have overcome the obstacles presented,
22 there are risks in litigation and particularly in complex litigation such as this. The difficulties
23 inherent in this complex Action can cause delays that can eliminate the opportunity for timely and
24 meaningful recovery by Settlement Class Members. These, and the other considerations noted
25 above, posed a substantial risk in the litigation.

26 41. Additionally, the Settlement Class has been preliminarily certified for settlement
27 purposes only. (See Preliminary Approval Order, ¶ 4.) However, if this case were to proceed to
28 trial, Health Net would undoubtedly contest class certification. Plaintiffs therefore face the risk

1 that a motion for class certification would be denied. Even if Plaintiffs' motion for class
2 certification was granted, class certification orders are conditional in nature and may be changed,
3 modified, or reversed at any time up until final judgment.

4 **B. Complexity, Expense and Likely Duration of the Litigation**

5 42. The Settlement provides a very significant recovery for the Settlement Class,
6 obviating the need for a lengthy, uncertain and expensive trial and possible appeals. Significant
7 additional work would be necessary if the case were to proceed to trial. A trial on the merits
8 would entail considerable expense, including numerous experts, pre-trial motions, and thousands
9 more hours of attorney time; and given the right to appeal, a trial would not necessarily end the
10 litigation. Therefore, even if the Class succeeded at every stage of the litigation, including trial
11 and appeals, recovery would be substantially delayed by years. Thus, even if Plaintiffs had
12 ultimately prevailed, they would not have been able to provide the timely benefits obtained
13 through the negotiation of this Settlement. By contrast, the proposed Settlement ensures timely
14 relief, thereby maximizing the value of the Class' claims against Defendant.

15 **C. Experience and Views of Counsel**

16 43. The Class has been represented by counsel with years of experience in litigating
17 class and healthcare actions and who have entered into numerous class settlements that have been
18 approved by courts throughout California. (*See* Exhs. E–G.)

19 **VIII. ATTORNEYS' FEES AND EXPENSES**

20 44. Each Class Counsel and paralegal who worked on this matter has provided their
21 lodestar and expenses from inception of the case to the present indicating how much time was
22 spent on the Action.⁶ Through June 5, 2018, Class Counsel's total lodestar is \$845,842.00 and
23 expenses are \$17,503.06. Class Counsel used June 5, 2018 as the cut-off date for their hours
24 expended in order to build in enough time to prepare this filing, due June 12, 2018, with the
25 requisite lodestar and expense figures. Class Counsel anticipates expending significant additional
26 hours on the case between the date of this filing and the July 12, 2018 Fairness hearing, in order
27

28 ⁶ Declarations containing each law firm's lodestar and expenses are attached hereto as Exhibits E–G. A summary of lodestar and expenses is attached as Exhibit H.

1 to review and respond to any objections that may be filed (objections are due June 25, 2018;
2 responses are due July 6, 2018), review materials provided by GCG (the settlement
3 administrator's final report is due July 6, 2018), respond to Class Member inquiries, prepare any
4 additional briefing requested by the Court, and prepare for the Fairness hearing. The overall hours
5 expended were reasonable based on the exigencies of the case, the amount of information
6 produced and obtained by Class Counsel that needed to be reviewed, the legal and factual issues
7 that needed to be addressed, and the protracted nature of the parties' negotiations over a
8 comprehensive settlement. In addition, the rates used by counsel have been approved by courts
9 both in this state and nationwide and/or are comparable to the prevailing rate in their respective
10 legal communities for providing comparable professional legal services, rendered by counsel in
11 similar cases. (*See* Declaration of Richard Pearl, attached as Ex. I hereto, ¶¶ 11–14.) Class
12 Counsel have spent substantial time litigating the case (1,785.6 hours) and advanced all costs,
13 without payment or reimbursement to date.

14 45. Health Net has agreed to pay attorneys' fees and expenses of no more than
15 \$625,000. *The attorneys' fees and expenses will not reduce the level of recovery for Settlement*
16 *Class Members.* The \$625,000 for fees and expenses was ultimately agreed to at the
17 recommendation of the mediator, Robert A. Kaplan.

18 46. Class Counsel's request for \$625,000 is reasonable under the lodestar method of
19 evaluating the fairness and reasonableness of attorneys' fees in class action settlements.

20 47. Under the lodestar method, a lodestar figure is calculated by multiplying the
21 reasonable hours expended by a reasonable hourly rate. The lodestar is the basic fee for
22 comparable legal services in the community and may be adjusted, using a multiplier, including by
23 the following factors: (1) the novelty and difficulty of the questions involved; (2) the skill
24 displayed in presenting them; (3) the contingent nature of the fee award; and (4) the public policy
25 effectuated by the settlement. The "multiplier" being requested here is actually a negative
26 multiplier of 0.74, as Plaintiffs' Counsel has agreed to receive an amount of attorneys' fees and
27 expenses considerably less than Plaintiffs' Counsels' total lodestar figures.

28 48. The issues asserted in the Action were novel and complex, requiring the expertise

1 of counsel experienced in handling class action and particularly healthcare litigation, including
2 issues regarding “narrow” provider networks under the Affordable Care Act. The Settlement
3 required extensive knowledge of the underlying issues and analysis of the most effective way to
4 reach a resolution that benefited the Class. However, the significant relief achieved by the
5 Settlement is the clearest reflection of Class Counsel’s skill and expertise.

6 49. The quality of opposing counsel is also relevant to the evaluation of class
7 representation. Here, Health Net is represented vigorously by experienced and able counsel from
8 prominent firms with ample resources.

9 50. Class Counsel undertook this Action on an entirely contingent fee basis, assuming
10 a substantial risk when they devoted a significant amount of time and incurred substantial
11 expenses in prosecuting this Action without any assurance of being compensated for their efforts.
12 The risk of no recovery in complex class action cases of this type is real. There are many class
13 actions in which counsel expend hundreds of hours, incur substantial expenses and yet receive no
14 remuneration despite their diligence and expertise.

15 51. In spite of these risks, Class Counsel take on cases such as this on a contingency
16 basis so that clients can obtain qualified representation and obtain results such as those achieved
17 here. Indeed, here, the contingent nature of this representation was extremely important to obtain
18 qualified representation, since Plaintiffs did not have the funds to litigate this type of case in
19 terms of up-front expenses, let alone pay for the fees incurred. Thus, if the Action would have
20 been lost, Class Counsel would have gone unpaid.

21 52. As further evidence of this risk, counsel collectively incurred \$17,503.06 in
22 litigation-related expenses. (*See* Exhs. E–G.) These expenses reflect the costs of prosecuting this
23 litigation, including, among other things, Court filing fees and E-service fees, Court reporter and
24 transcription fees, expert fees, postage and courier fees, telephonic conferences, and research
25 materials. These expenses were critical to Class Counsel’s success in achieving the Settlement
26 and were reasonable and appropriately incurred.

27 53. Accordingly, the risks of non-payment in this case weigh heavily in favor of
28 approving the award of \$625,000 in attorneys’ fees and \$17,503.06 in expenses.

1 **IX. INCENTIVE AWARDS FOR NAMED PLAINTIFFS**

2 54. Class Counsel respectfully requests that the Court approve the payment of an
3 incentive award of \$5,000 to each of the two Plaintiffs for their services as the representatives of
4 the Settlement Class in this Action. (See Declarations of Class Representatives, Ex. J hereto.)
5 Health Net has agreed that each of the two named Plaintiffs will receive an incentive award of
6 \$5,000. (Settlement Agreement, ¶ III.I.2.) *The incentive awards will not reduce the level of*
7 *recovery for Settlement Class Members.*

8 55. The Plaintiffs were enrolled in Health Net health plans affected by the alleged
9 inaccuracies in Health Net’s provider network directory and other alleged misrepresentations.
10 The Plaintiffs actively and effectively fulfilled their obligations as representatives of the
11 Settlement Class, each expending significant time in responding to requests for information,
12 helping to investigate the facts of the case, bringing issues to Plaintiffs’ Counsel’s attention, and
13 consulting with Plaintiffs’ Counsel regarding the terms of the Settlement. The requested awards
14 for Class Representatives were not conditioned on whether Plaintiffs supported the Settlement as
15 they were negotiated after all material Settlement terms benefitting the Settlement Class Members
16 had been agreed to in principle. The Plaintiffs have complied with all reasonable demands and
17 provided assistance to counsel in the prosecution of this Action.

18 **X. CONCLUSION**

19 56. In view of the significant relief offered in the Settlement Agreement, the risks of
20 establishing liability and maintaining class action status, the complexity, expense and likely
21 duration of the Action, the experience and expertise of counsel, and the reaction of the Settlement
22 Class, it is respectfully requested that the Court grant final approval of the Settlement, certify the
23 requested class for settlement purposes, award Class Counsel a total of \$625,000 in attorneys’
24 fees and expenses, and grant incentive awards to Plaintiffs in the amount of \$5,000 each.


25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

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Executed this 8th day of June 2018 in Los Angeles, California.



Jerry Flanagan
Consumer Watchdog