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9  
10 **IN THE SUPERIOR COURT OF CALIFORNIA**

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

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

15 **Plaintiffs,**

16 **v.**

17 **HEALTH NET OF CALIFORNIA, INC., and**  
18 **HEALTH NET LIFE INSURANCE**  
19 **COMPANY and DOES 1 through 100 inclusive,**

20 **Defendants.**

Case No.: BC567361

**CLASS ACTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPLICATION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

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

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

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1 Plaintiffs<sup>1</sup> respectfully submit this Memorandum of Point and Authorities in Support of  
2 their Application for Final Approval of the Settlement Agreement and Release effective March 20,  
3 2018 (the “Settlement” or “Settlement Agreement”) with Defendants Health Net of California, Inc.  
4 and Health Net Life Insurance Company (collectively, “Health Net”).<sup>2</sup>

5 **I. INTRODUCTION**

6 On April 9, 2018, the Court issued an Order, *inter alia*, preliminarily approving the  
7 Settlement Agreement, preliminarily certifying a settlement class, approving the form and content  
8 of the notice, and approving notice procedures (“Preliminary Approval Order”).<sup>3</sup> Now, Plaintiffs  
9 request that the Court enter a final judgment approving the Settlement Agreement and certifying  
10 the Settlement Class.

11 There can be no doubt that the Settlement is fair, reasonable and adequate and should be  
12 approved. The Settlement is the culmination of protracted negotiations that were non-collusive and  
13 overseen by a well-respected mediator experienced in the healthcare field. (Declaration of Jerry  
14 Flanagan in Support of Application for Final Approval of Class Action Settlement, Award of  
15 Attorneys’ Fees, Payments to Class Representatives, and Reimbursement of Expenses (“Flanagan  
16 Dec.”), ¶¶ 8, 12–21.) Plaintiffs’ Counsel worked diligently to ensure that the Class received the  
17 best relief possible, tailored to the issues raised in litigation, in an expedited manner. (*Ibid.*) *At the*  
18 *time of this filing, zero (0) Class Members have opted out of the Settlement; zero (0) Class Members*  
19 *have filed objections.* (Declaration of Jacqueline Brasefield [of settlement administrator Garden  
20 City Group (“GCG”)] Related to Class Notice (“Brasefield Dec.”), attached to the Flanagan Dec.  
21 as Exhibit D, ¶¶ 11–12.)

22 In this action, Plaintiffs alleged that Health Net misrepresented which providers were  
23 participating as “in network” in individual or family health plans. (*See* Flanagan Dec., ¶ 4.) As a  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Unless otherwise stated herein, all capitalized terms shall have the same meanings as set forth in  
27 the Settlement Agreement, effective March 20, 2018. Counsel for Plaintiffs and the Settlement  
28 Class are referred to herein as “Plaintiffs’ Counsel” or “Class Counsel”.

<sup>2</sup> The Settlement Agreement is attached as Exhibit A to the Flanagan Dec., filed concurrently with  
this memorandum.

<sup>3</sup> The Court’s April 9, 2018 Preliminary Approval Order is attached as Exhibit B to the Flanagan  
Dec., filed concurrently with this memorandum.

1 result, Plaintiffs alleged that Settlement Class Members paid more out-of-pocket than they would  
2 have had the providers been participating in Health Net’s network. (*Ibid*).

3 The principal relief under the Settlement is significant injunctive relief as well as  
4 considerable programmatic changes to the maintenance of Health Net’s provider networks designed  
5 to prevent future losses. For example, Health Net will, consistent with state law, for four years from  
6 the Settlement Effective Date, treat individual and family plan PPO providers as “in-network” for  
7 billing purposes under the applicable terms of members’ Certificates of Insurance or Evidences of  
8 Coverage, including the amounts owed by California consumers enrolled in any Health Net PPO  
9 individual health plans, if it is reasonably established that those providers were incorrectly  
10 represented as in-network in Health Net’s provider directory or by a Health Net employee.  
11 (Settlement Agreement, ¶ III.A.1(a).) Additionally, Health Net has already taken significant steps  
12 in response to the Action to ensure its provider directories are accurate. (*Id.*, ¶ III.A.2.) Together,  
13 this relief will provide significant protections against future losses to California consumers that can  
14 easily run thousands of dollars in unplanned expenses when consumers receive medical services  
15 from providers they believed were participating in their health plan’s network. (Flanagan Dec. ¶  
16 39.)

17 The financial component of the Settlement provides that Class Members have the  
18 opportunity to recover 100% of their Out-of-Pocket Expenses resulting from the inaccurate  
19 information regarding which providers were participating as “in-network” in Health Net’s  
20 individual or family health plans. Health Net has agreed to use a comprehensive claims process to  
21 reimburse all Settlement Class Members who, as a result of any alleged provider network  
22 misinformation or inaccuracy, received health care services rendered by Out-of-Network Medical  
23 PPO Professionals in 2014 that they believed were in-network. (Flanagan Dec., ¶ 5; Settlement  
24 Agreement, ¶ III.A.) A claims process is the only method to provide compensation to Class  
25 Members because Health Net does have any records reflecting which providers were incorrectly  
26 represented as in-network in Health Net’s provider directory or how much Settlement Class  
27 Members paid to out-of-network providers. All valid and timely claims will be fully reimbursed  
28 out of an uncapped fund.

1 Finally, Health Net has agreed, for four years from the Settlement Effective Date, to make  
2 certain disclosures and remedial measures with respect to its Health Maintenance Organization  
3 (“HMO”) Plans, Exclusive Provider Organization (“EPO”) Plans, and Health Care Service (“HSP”)  
4 Plans even though the Settlement Class and claims release provisions include only members of  
5 individual PPO ACA Health Plans. (Settlement Agreement, ¶ III.A.1(b)–(c).)

6 The relief is not only within the range of what Plaintiffs could have obtained at trial, it likely  
7 exceeds what Plaintiffs could have obtained at trial and is of significantly more value to Settlement  
8 Class Members because it will be received by Settlement Class Members sooner than could have  
9 been accomplished without a settlement. (Flanagan Dec., ¶¶ 3, 40.)

10 Health Net has also agreed to pay, as approved by the Court, reasonable attorneys’ fees,  
11 including reimbursement of expenses, to Plaintiffs’ Counsel in an amount not to exceed \$625,000  
12 and an incentive award in the amount of \$5,000 to each of the two Class Representatives. The  
13 agreed-to proposed attorneys’ fees are *less than* Plaintiffs’ Counsel’s lodestar in this action. (*Id.* ¶  
14 47.) Moreover, *these amounts will not reduce the level of recovery for Settlement Class Members.*  
15 Therefore, the full amount of all valid claims submitted by Settlement Class Members will be  
16 provided to the Class. (*Id.* fn. 3, ¶¶ 9, 10, 31.) The fee and expense provisions were negotiated after  
17 the material substantive terms of the Settlement had been agreed to in principle. (*Id.*, ¶ 10.)

18 It is on this basis and the facts set forth in detail in the accompanying Flanagan Dec., as  
19 well as the favorable reaction of the members of the Class, that Plaintiffs request that this settlement  
20 be finally approved.

21 **A. Background Facts and Settlement Negotiations**

22 The Flanagan Dec., filed contemporaneously with this memorandum, provides a more  
23 detailed background on the litigation. (*Id.*, ¶¶ 12–21.)

24 The Plaintiffs in this action filed their class action complaint on December 19, 2014. (*Id.*, ¶¶  
25 4, 13; *see* Flanagan Declaration ISO Preliminary Approval, July 10, 2017 (“Preliminary Approval  
26 Flanagan Dec.”), Ex. B.) The Action alleged eight causes of action challenging Health Net’s  
27 conduct as unlawful, unfair, and fraudulent in violation of California Business and Professions  
28 Code section 17200, et seq.; violation of California’s False Advertising Law, Business and

1 Professions Code section 17500, et seq.; violation of the Consumers Legal Remedies Act,  
2 California Civil Code section 1750, et seq.; breach of the individual health service plan contracts  
3 entered into between Class Members and Health Net; breach of the implied covenant of good faith  
4 and fair dealing; and a cause of action for declaratory relief. (Preliminary Approval Flanagan Dec.,  
5 Ex. B.)

6 The Parties discussed possible settlement of the matter and held an initial mediation session  
7 presided over by Robert J. Kaplan of Judicate West on July 16, 2015. (*Id.*, ¶ 14.)

8 Negotiations regarding a potential settlement were thorough, protracted, and exhaustive.  
9 For more than one year after the mediation with Robert J. Kaplan, the Parties worked actively to  
10 resolve this case. (*Id.*, ¶¶ 14–15.) After the in-person mediation session, the mediator continued to  
11 be involved in telephonic mediation and “shuttle diplomacy” between the Parties over the entire  
12 course of the negotiations. (*Id.*, ¶ 15.) The Parties had ongoing discussions among counsel  
13 throughout the negotiation process. (*Ibid.*) Following numerous telephone calls among counsel,  
14 hundreds of emails, and multiple rounds of negotiations regarding possible terms of settlement, the  
15 essential substantive terms were agreed upon in July 2016. (*Ibid.*) After agreeing to the substantive  
16 terms, counsel for Health Net and Plaintiffs’ Counsel continued negotiations regarding the draft of  
17 the Settlement Agreement and supporting documents. (*Ibid.*) The negotiations were likewise  
18 protracted, raised several additional issues requiring further negotiations, and lasted an additional  
19 year, with the Parties signing a final agreement on July 10, 2017. (*Ibid.*)

20 The Settlement was entered into by Plaintiffs’ Counsel who are intimately familiar with the  
21 factual and legal issues raised by the action and who are experienced practitioners in class actions,  
22 particularly in complex health care litigation. (*Id.*, ¶ 16.) Plaintiffs’ Counsel conducted an extensive  
23 investigation before and during the litigation of the legal and factual underpinnings of the claims,  
24 including research of relevant case law and conducted interviews of numerous Class Members  
25 impacted by the challenged practices. (*Id.*, ¶¶ 16–18.) At the request of Plaintiffs’ Counsel, Health  
26 Net informally produced information regarding its provider networks, PPO, HMO, EPO and HSP  
27 health plans, enrollment figures, communications to providers and members, and the provider  
28 search tool on Health Net’s website, as well as information reflecting remedial actions undertaken



1 by Defendants following the filing of the action regarding the marketing and sale of PPO, HMO,  
2 EPO and HSP health plans. (*Id.*, ¶ 16.)

3 In addition to the informal discovery summarized above, Consumer Watchdog attorneys  
4 received and reviewed several hundred pages of documents regarding Plaintiffs' Health Net plans  
5 in response to formal discovery requests served by Plaintiffs' Counsel. (*Id.*, ¶ 17.)

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

15 On July 10, 2017, the Parties submitted the Settlement to the Court for preliminary approval.  
16 (*Id.*, ¶ 19.) On September 22, 2017, the Court provided the Parties with a Preliminary Approval  
17 Checklist advising the Parties of changes that needed to be made to the Settlement Agreement. In  
18 response, on October 24, 2017, the Parties submitted a Joint Supplemental Memorandum, reflecting  
19 that the Parties had made the requested changes to the Settlement Agreement. (*Ibid.*) On January  
20 4, 2018, a hearing was held on the preliminary approval of the revised settlement. At the hearing,  
21 the Court indicated a number of additional changes that would need to be made before the  
22 settlement could be preliminarily approved. The Parties submitted a final amended settlement  
23 agreement on March 19, 2018. (*Ibid.*; *id.*, Ex. A). On April 9, 2018, the Court entered an order  
24 granting preliminary approval of the settlement. (*Id.*, Ex. B.)

## 25 **II. TERMS OF SETTLEMENT AGREEMENT**

### 26 **A. Settlement Class**

27 The Settlement Agreement provides that the Settlement Class includes any and all  
28 consumers who were enrolled in a Health Net Individual and Family Preferred Provider

1 Organization (“PPO”) health plan in California between January 1, 2014 and December 31, 2014  
2 and who obtained services from an out-of-network professional, claims for which were previously  
3 submitted to Health Net by the Class Member or the out-of-network professional. The Class does  
4 not include consumers enrolled in employer-provided health plans. (Flanagan Dec., ¶ 21.)

5 **B. Consideration to Class Members**

6 In general, under the Settlement, Health Net has agreed to significant injunctive relief and  
7 to implement considerable programmatic changes to ensure the accuracy of its provider lists.  
8 Additionally, all Settlement Class Members who received health care services rendered by out-of-  
9 network medical professionals, as defined in the Settlement, that, but for the professional’s out-of-  
10 network status, would otherwise have been covered as in-network health care services, will have  
11 the opportunity to recover 100% of their Out-of-Pocket Expenses.<sup>4</sup> (*Id.*, ¶ 22.)

12 **1. Injunctive Relief**

13 For a period of four (4) years from the Settlement Effective Date, Health Net agrees to the  
14 following:

15 **a. PPO Plans**

16 For individual PPO plans, consistent with Insurance Code section 10133.15(q) and Health  
17 and Safety Code section 1367.27(q), Health Net will treat providers as “in-network” for billing  
18 purposes under the applicable terms of members’ Evidence of Coverage, including the amounts  
19 owed by California consumers enrolled in any Health Net individual PPO health plans, if it is  
20 reasonably established that those providers were incorrectly represented as in-network in Health  
21 Net’s provider directory or by a Health Net employee. In determining the proper payment for such  
22 a claim, Health Net will apply in-network co-pays, deductibles, and out-of-pocket maximums.  
23 (Settlement Agreement, ¶ III.A.1(a).) All California consumers will benefit from this relief, which  
24

25 <sup>4</sup> “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 will help protect consumers from potentially significant unexpected out-of-pocket costs in the  
2 future. (Flanagan Dec., ¶ 39.)

3 **b. HMO Plans**

4 For HMO Plans, Health Net will disclose that in order to access a specialist in Health Net’s  
5 Community Care HMO network, members must receive a referral from their primary care  
6 physicians (“PCPs”). The HMO disclosures will appear on any informational and advertising  
7 materials—including downloadable sales brochures and webpages—that specifically name the  
8 Community Care network.<sup>5</sup> (Settlement Agreement, ¶ III.A.1.(b).) This relief will help ensure that  
9 consumers understand their coverage and support access to care. (Flanagan Dec., ¶ 23.)

10 **c. EPO/HSP Plans**

11 For EPO/HSP Plans, Health Net will disclose prominently in all materials and  
12 communications to members and potential members including informational materials, advertising  
13 materials, downloadable sales brochures and webpages: Health Net does not provide any coverage  
14 for out-of-network claims under EPO and HSP plans.<sup>6</sup> (Settlement Agreement, ¶ III.A.1(c).) This  
15 relief will help ensure that consumers understand their coverage and support access to care.  
16 (Flanagan Dec., ¶ 23.)

17 **2. Programmatic Fixes to Ensure Provider List Accuracy**

18 Health Net has taken the following actions in order to ensure the accuracy of the information  
19 in its network provider directories:

- 20 (i) Established a dedicated Data Integrity Unit responsible for oversight of activities  
21 contributing to data integrity, including accuracy of provider directories;
- 22 (ii) Conducts a quarterly participating physician group (PPG) roster review to monitor  
23 and track that all rosters are reviewed and identified changes are made in Health Net  
24 systems;
- 25 (iii) Conducts quarterly Provider Demographic Data Integrity self-audits to measure the  
26

27 <sup>5</sup> The Parties agree that there will be no release of Health Net HMO members’ claims. (Settlement  
Agreement, ¶ III.A.1(b)(2).)

28 <sup>6</sup> The Parties agree that there will be no release of Health Net EPO/HSP members’ claims.  
(Settlement Agreement, ¶ III.A.1(c)(2).)

- 1 accuracy for physician demographic data; and
- 2 (iv) Expanded the data integrity process to work with an outside vendor to validate
- 3 demographic data for directly contracting physicians.

4 The remedial measures are incorporated in the Settlement Agreement at ¶ III.A.2. These measures

5 will help ensure the accuracy of Health Net’s provider directory and access to needed medical care.

6 All California consumers will benefit from these remedial measures. (Flanagan Dec., ¶ 24.)

7 **3. Claims Process for Out-of-Pocket Damages**

8 Settlement Class Members enrolled in PPO health plans have the opportunity to submit a

9 claim for 100% compensation of Out-of-Pocket Expenses resulting from any provider network

10 misinformation subject to in-network co-pays, deductibles and co-insurance. A claims process is

11 appropriate in this Action because Health Net is not aware of which Settlement Class Members

12 may have relied on inaccurate information on Health Net’s website or provided by Health Net

13 personnel when visiting an out-of-network provider. (Flanagan Decl., ¶ 25.) These payments will

14 be fully reimbursed by Health Net from an uncapped fund. (*Ibid.*) If, after 120 days of the initial

15 disbursement of settlement checks (or 60 days after mailing of a replacement check), any settlement

16 checks are not cashed, the Settlement Administrator shall distribute the remaining funds as required

17 by Code of Civil Procedure section 384, including to the *cy pres* recipient chosen by the Parties,

18 Disability Rights Legal Center. (Settlement Agreement, ¶ III.E.3.) No settlement funds will be

19 retained by, or revert to, Health Net. (*Ibid.*; Flanagan Dec., ¶ 25.)

20 **C. Release of Claims**

21 The scope of the release provision is appropriate as it is limited to those claims arising out

22 of the Action. (Settlement Agreement, ¶ II.R.) The “Released Claims” under the Settlement

23 Agreement include “any and all known and unknown claims for relief, causes of action, suits, rights

24 of action, or demands, at law or in equity, whether sounding in contract, tort, equity, or any violation

25 of law or regulation, including, without limitation, claims for injunctive or other equitable relief,

26 damages, debts, indemnity, contribution, or for costs, expenses and attorney’s fees, that were or

27 could have been brought by Class Members against Health Net based on the facts alleged in the

28 Lawsuit for losses incurred in 2014, including but not limited to claims relating to the accuracy of

1 Health Net’s provider directories and claims related to plan benefits associated with the services  
2 provided by the Out-Of-Network Professionals.” (*Ibid.*; Flanagan Dec., ¶ 26.) Therefore, the release  
3 is appropriately tethered to the allegations in the Lawsuit.

4 Defendants believe the Section 1542 release is reasonable. In the proposed settlement,  
5 Defendants offer monetary and other consideration to the Settlement Class. It has done so, in part,  
6 to purchase complete peace regarding the issues at hand. Inclusion of the Section 1542 waiver is  
7 an important component for Defendants to secure finality on these issues. The Section 1542 waiver  
8 is limited to the Released Claims. Only the named Plaintiffs are waiving their section 1542 claims;  
9 the waiver does not apply to unnamed Settlement Class Members. (Flanagan Dec., ¶ 26; Settlement  
10 Agreement, ¶ III.M.2.)

11 **D. Class Notice**

12 The form of the notice is attached to the Settlement Agreement as Exhibits 1 (Summary  
13 Settlement Notice) and 2 (Full Settlement Notice). To ensure active participation by Settlement  
14 Class Members, a Summary Settlement Notice has been mailed directly to each Settlement Class  
15 Member, along with the Claim Form attached as Exhibit 3 of the Settlement Agreement.  
16 (Settlement Agreement, ¶ III.D; Brasefield Dec., ¶ 5.) The Summary Notice contains relevant  
17 information about the Settlement and the deadlines to opt out and object, directs Class Members to  
18 the Settlement website to review the Full Settlement Notice in English and Spanish, and provides  
19 a toll-free number that Settlement Class Members can call for general information, in English and  
20 Spanish, about the settlement and to request a mailed copy of the Full Settlement Notice.  
21 (Settlement Agreement, ¶ III.D; Brasefield Dec., ¶ 9.) The Settlement website contains the  
22 Settlement Agreement and exhibits, the operative complaint in the Action, a list of relevant  
23 deadlines and orders, and provides detailed information about the Settlement and how to participate  
24 in the benefits provided by the Settlement. (Settlement Agreement, ¶ III.D; Brasefield Dec., ¶¶ 7–  
25 8.) The Parties have worked together in good faith to agree on the content of the website as well as  
26 the interactive voice recordings (IVR) used by the Settlement Administrator for the toll-free  
27 information telephone line. (Settlement Agreement, ¶ III.D.) If there is disagreement about the  
28

1 website content or substance or format of the IVR recordings, a neutral third-party will resolve such  
2 disputes. (*Ibid.*; Flanagan Dec., ¶ 33.)

3 To ensure individual notice is provided to all reasonably identifiable Settlement Class  
4 Members, prior to mailing the Summary Settlement Notice, the Settlement Administrator updated  
5 the last known addresses reflected in Health Net’s records for Settlement Class Members by  
6 comparing them to the National Change of Address system. (Settlement Agreement, ¶ III.D;  
7 Brasefield Dec., ¶ 4.) If any Summary Settlement Notices were returned as undeliverable with  
8 forwarding addresses provided, the Settlement Administrator re-sent Summary Settlement Notices  
9 to the forwarding addresses. (*Id.*, ¶ 6.) For any Summary Settlement Notices returned undeliverable  
10 without forwarding addresses provided, the Settlement Administrator ran an address search  
11 (skiptrace) against the Lexis-Nexis address database, or comparable database, and re-sent  
12 Settlement Notices to any updated addresses obtained. (*Ibid.*) Thus, all Settlement Class Members  
13 who could be identified through reasonable effort will have received the Summary Settlement  
14 Notice and were directed to further detailed information. (*Ibid.*; Flanagan Decl. ¶ 32.)

15 **E. Attorneys’ Fees and Expenses**

16 In addition to the above consideration, as a term of the Settlement and subject to Court  
17 approval, attorneys for Plaintiffs and the Settlement Class will receive attorneys’ fees and expenses  
18 not exceeding \$625,000 for their work prosecuting and successfully resolving this Action.  
19 (Settlement Agreement, ¶ III.I.1; Flanagan Dec., ¶ 9, 27.) Plaintiffs’ Counsel have agreed to share  
20 attorneys’ fees equally, and all clients have given written approval of the fee sharing agreement.  
21 (Flanagan Decl., ¶¶ 27–28; *Mark v. Spencer* (2008) 166 Cal. App. 4th 219; Cal. Rules of  
22 Professional Conduct, §2-200; Cal. Rules of Court, Rule 3.769(b).) Also, each of the two Class  
23 Representatives will receive, subject to Court approval, \$5,000 incentive awards for devoting more  
24 than 50 hours each to assist in the litigation and successful settlement of the claims. (Settlement  
25 Agreement, ¶ III.I.2; Flanagan Decl., ¶ 29, Ex. J.) The attorneys’ fees and expenses and the  
26 incentive awards were agreed upon after the other material terms of the settlement had been agreed  
27 upon in principle. (Flanagan Dec., ¶ 27; Settlement Agreement, ¶ III.I.1- III.I.2.) The proposed  
28 Class representatives’ awards are reasonable. (*Radcliffe v. Experian Information Solutions Inc.* (9th

1 Cir. 2013) 715 F.3d 1157, 1165 (holding that the fact a Class representative’s enhancement award  
2 was not conditioned on the acceptance of the terms of settlement is an indicator the enhancement  
3 is reasonable); *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal. App. 4th 785, 807 (holding  
4 that specificity of the time and efforts expended by Class representative is a critical factor in  
5 determining reasonableness of Class representative enhancements).)

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

7 Under the Settlement, Health Net shall pay all costs associated with disseminating the  
8 Settlement Notice, the Settlement Administrator, settlement website, the toll-free number, and all  
9 associated expenses, including the neutral for adjudication of disputes about the timeliness and/or  
10 validity of a claim submitted pursuant to sections III.A.3, and injunctive relief and remedial  
11 measures as outlined in Paragraph III.A.1–2. (Flanagan Dec., ¶ 30; Settlement Agreement, ¶  
12 III.A.1–2.)

13 **III. THE SETTLEMENT SHOULD BE APPROVED**

14 **A. The Settlement Is Entitled to a Presumption of Fairness**

15 Where a settlement is reached through arm’s-length bargaining, where investigation is  
16 sufficient to allow counsel and the Court to act intelligently, where counsel is experienced in similar  
17 litigation, and where the Class supports the settlement, the settlement is presumed to be fair.  
18 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) Such a presumption is  
19 properly invoked here. As set forth in detail above and in the Flanagan Dec., the Parties engaged  
20 in extensive negotiations over the Settlement lasting over two years. (Flanagan Dec., ¶¶ 9, 11, 15,  
21 35.) The process was overseen by a mediator well-versed in this area of the law. (*Id.*, ¶¶ 8, 35.)  
22 As detailed in the Flanagan Dec. and below (see § III.A.4., *infra*), the Parties have been represented  
23 by experienced class action and healthcare litigators who view this settlement favorably. (*See*  
24 Flanagan Dec., ¶¶ 16, 36, Exhs. E–G.) The best interests of the Settlement Class remained  
25 Plaintiffs’ Counsel’s paramount consideration throughout the entire course of settlement  
26 discussions. (*Id.*, ¶ 35.) *Furthermore, of the approximately 12,860 Class Members zero (0) have*  
27 *opted-out at the time of this filing. (See Brasefield Dec., ¶ 11.) No Class Members have objected*  
28

1 to the Settlement at the time of this filing. (*Id.*, ¶ 12.) The Settlement Agreement therefore meets  
2 this Court’s presumption of fairness.

3 **B. The Proposed Settlement Is Fair, Reasonable, and Adequate**

4 Rule 3.769 of the California Rules of Court provides the framework for approval of class  
5 action settlements. Rule 3.769(a) states that a class action settlement “requires the approval of the  
6 court after hearing.” Rule 3.769(g) states that “[b]efore final approval, the court must conduct an  
7 inquiry into the fairness of the proposed settlement.”

8 The settlement of disputed claims is highly favored by California courts. (*Stambaugh v.*  
9 *Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) In fact, there is a particularly strong judicial policy  
10 favoring settlement of class action litigation. (*Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d  
11 1589, 1607-08.) In granting final approval of a class action settlement, the Court’s inquiry is to  
12 determine that the settlement was not the product of fraud or collusion and is fair, adequate, and  
13 reasonable. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.)

14 In *Dunk*, the Court of Appeal, as courts have done in many other cases, endorsed the trial  
15 court’s examination of the following factors in determining whether a class action settlement is fair,  
16 reasonable, and adequate: (1) the amount offered in the settlement; (2) the risks involved in  
17 continued litigation; (3) the risk of maintaining class action status through trial; (4) the complexity,  
18 expense, and duration of litigation; (5) the experience and views of counsel; (6) the reaction of the  
19 class members to the proposed settlement; and (7) the stage of proceedings at which the settlement  
20 was achieved. (*Dunk, supra*, 48 Cal.App.4th at 1801.) These factors are discussed below.

21 **1. The Relief Offered in the Settlement**

22 In determining when a settlement is fair, adequate, and reasonable, the “most important  
23 factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in  
24 settlement.” (*See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Here, each  
25 Settlement Class Member is entitled to receive the benefits described above and in the Flanagan  
26 Dec. and detailed in ¶ III.A of the Settlement Agreement, including 100% of their Out-of-Pocket  
27 Expenses. The Settlement is a “fair, adequate, and reasonable” compromise because:  
28



- 1 • Class Members and all Californians will benefit from Health Net’s process enhancements to protect consumers in the future. Health Net has agreed to undertake measures to improve access to in-network providers and accuracy of provider lists. In particular, going forward, Health Net will treat a provider as in-network for billing purposes if a provider is listed in-network on Health Net’s Provider Directory and a member relies on that network status when seeking medical services.
- 4 • All class members can recover 100% reimbursement of Out-of-Pocket Expenses through an uncapped claims process.

6 The relief is not only within the range, but likely far exceeds, what Plaintiffs could have  
7 obtained at trial given the nature of underlying issues. The Plaintiffs filed the action to remedy  
8 alleged misrepresentations regarding Health Net’s provider networks. This Settlement is designed  
9 to ensure the underlying issues are resolved, provides significant relief for the Settlement Class  
10 Members, and ensures they receive the benefits of that relief immediately. (Flanagan Dec., ¶¶ 3,  
11 38.)

12 The proposed injunctive relief in this Settlement is difficult to value for two reasons: (1) it  
13 is prospective over a four-year period from the Settlement Effective Date; and (2) it impacts an  
14 unknown number of persons with unknown medical expenses. Furthermore, as to the injunctive  
15 relief for HMO and EPO/HSP plans, putting a dollar figure on the value of the disclosures is equally  
16 difficult, as the relief is designed to arm consumers with information they need in order to *avoid*  
17 unexpected medical bills. Similarly, the “remedial measures” described in the Settlement  
18 Agreement are intended to reduce inaccuracies in Health Net’s provider directories, which should  
19 have the effect of reducing the need for Health Net to make billing adjustments after patients seek  
20 medical services.

21 Regarding the injunctive relief for PPO health plans, health care costs as a result of receiving  
22 medical services from an out-of-network provider instead of an in-network provider can be quite  
23 high. For example, on an in-network basis, once a consumer meets his or her deductible, the  
24 consumer will only be required to pay co-insurance or a co-payment up to the out-of-pocket  
25 maximum, after which the consumer owes nothing. However, on an out-of-network basis, a  
26 consumer would be required to bear a much larger portion of the cost of care. Therefore, under the  
27 injunctive relief provisions for PPO plans, under which Health Net will treat providers as “in-  
28 network” if it is reasonably established that those providers were incorrectly represented as in-

1 network in Health Net’s provider directory or by a Health Net employee, the savings for individual  
2 consumers could be substantial. (Flanagan Dec., ¶ 39.)

3 **2. Risks of Establishing Liability and the Risk of Maintaining Class Action**  
4 **Status through Trial**

5 Absent a settlement, Settlement Class Members faced risks of non-recovery. Even under  
6 the best-case analysis of Plaintiffs’ Counsel, there could be long delays before a single Settlement  
7 Class Member would receive recovery. As such, this recovery is even more favorable than what  
8 the Class could have hoped to recover even if successful at every stage of the litigation, which,  
9 including appeals, could extend for the next several years. (See Flanagan Dec., ¶¶ 38–41.)

10 This factor weighs in favor of the approval of the proposed Settlement. Health Net has  
11 denied any wrongdoing or liability to Plaintiffs or members of the Settlement Class. A trial on the  
12 merits would require resolution of numerous complex issues of law and fact that would be heavily  
13 contested by Health Net during trial. The contracts governing the Plaintiffs’ plans with Health Net  
14 include a mandatory arbitration agreement, which Health Net moved to enforce early on in the  
15 litigation. Had a settlement not been reached, it is possible that the arbitration agreement would  
16 have required arbitration of all of Plaintiffs’ claims. This posed a significant risk to continued  
17 litigation. Although Plaintiffs believe they would overcome the obstacles presented, there are risks  
18 in litigation and particularly in complex litigation such as this. The difficulties inherent in this  
19 complex action can cause delays that can eliminate the opportunity for timely and meaningful  
20 recovery by Settlement Class Members. These considerations posed a substantial risk in the  
21 litigation. (See Flanagan Dec., ¶¶ 38–41.)

22 Additionally, the Settlement Class has been preliminarily certified for settlement purposes  
23 only. (See Preliminary Approval Order, ¶ 4, attached as Exhibit B to the Flanagan Dec.) However,  
24 if this case were to proceed to trial, Health Net would undoubtedly contest class certification.  
25 Plaintiffs therefore face the risk that a motion for class certification would be denied. Even if  
26 Plaintiffs’ motion for class certification was granted, class certification orders are conditional in  
27 nature and may be changed, modified, or reversed at any time up until final judgment. (See  
28 Flanagan Dec., ¶ 40; Cal. Rules of Court, rule 3.764; *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th

1 429, 438; *Occidental Land, Inc. v. Super. Ct.* (1976) 18 Cal.3d 355, 360; *Weinstat v. Dentsply*  
2 *Intern. Inc.* (2010) 180 Cal.App.4th 1213, 1226.)

3 **3. Complexity, Expense and Likely Duration of the Litigation**

4 Unless the proposed Settlement is clearly inadequate on its face, its approval by the Court  
5 is preferable to the continuation of lengthy and expensive litigation. (*Wershba, supra*, 91  
6 Cal.App.4th at 247-48.) The relief available to Settlement Class Members is a significant recovery,  
7 which obviates the need for lengthy, uncertain and expensive trial and appeals. Significant  
8 additional work would be necessary if the case were to proceed to trial. A trial on the merits would  
9 entail considerable expense, including numerous experts, pre-trial motions, thousands more hours  
10 of attorney time, and given the right to appeal, trial would not necessarily end the litigation.  
11 Therefore, even if the Class succeeded at every stage of the litigation, including trial and appeals,  
12 recovery would be substantially delayed by years by the time the entire process was completed. By  
13 contrast, the proposed Settlement ensures a timely relief, thereby maximizing the value of the Class'  
14 claims against Defendant. (*See Flanagan Dec.*, ¶ 41.)

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

16 When the counsel recommending approval of the Settlement are competent and  
17 experienced, significant weight may be given to their opinion. (*In re Bluetooth Headset Products*  
18 *Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 946; *see also Weinberger v. Kendrick* (2d Cir.  
19 1982) 698 F.2d 61, 75-76, cert. denied, 464 U.S. 818 (1983) [according great weight to opinion of  
20 experienced and competent counsel in favor of approval of settlement].) The Class has been  
21 represented by counsel with years of experience in litigating class and healthcare actions and who  
22 have entered into numerous class settlements that have been approved by courts throughout  
23 California. (*See Flanagan Dec.*, ¶ 42, Exhs. E–G.)

24 **5. Reaction from the Class**

25 That zero (0) requests for exclusions and zero (0) objections have been filed at the time of  
26 this filing compares favorably to other cases where settlements have been approved and should be  
27 taken as an indication of significant support for the Settlement Agreement among Settlement Class  
28 Members. (*See Natural Gas Anti-Trust Cases, I, II, III & IV*, Nos. 4221, 4228, 4224, 4226 (Cal.

1 Super. Ct. Dec. 11, 2006) WL 5377849 at \*2, citing *Stoetznier v. U.S. Steel Corp.* (3d. Cir. 1990)  
2 897 F.2d 115, 118-19 [“When relatively few class members object to or exclude themselves from  
3 a class action settlement, courts interpret that response as evidence that the settlement warrants final  
4 approval”]; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,  
5 1152-53 [court found the response of class members “overwhelmingly positive” where a “mere 80  
6 [out] of the 5,454 national class members elected to opt out”].)

#### 7 **6. The Stage of the Proceedings at Which Settlement Was Achieved**

8 The action was settled after more than two years of extensive negotiations regarding a  
9 potential settlement. Negotiations were thorough, protracted, and exhaustive. (*See Flanagan Dec.*,  
10 ¶¶ 12-20.)

#### 11 **IV. THE NOTICE PLAN COMPLIED WITH THIS COURT’S PRELIMINARY** 12 **APPROVAL ORDER AND APPLICABLE LEGAL STANDARDS**

13 The purpose of class notice is to provide class members with sufficient information to  
14 decide whether to accept the benefits of the proposed settlement, object, or opt out. (*See In re*  
15 *Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.) The Notice here fully comports with the case  
16 law and California Rules of Court, rule 3.766, which includes, *inter alia*, requirements for content  
17 of class notice (rule 3.766(d)) and manner of giving notice (rule 3.766(e)). Notice of the Court’s  
18 final judgment will be given to the Class by posting the final judgment on the settlement website  
19 consistent with California Rules of Court, rule 3.771(b).

#### 20 **A. Notices**

21 Pursuant to the Preliminary Approval Order, the mailed notice, substantially in the form of  
22 Exhibit 1 to the Settlement Agreement (the “Summary Settlement Notice”) along with the Claims  
23 Form were mailed by GCG, the Court-appointed Settlement Administrator, by first class mail on  
24 May 8, 2018, to each of the 12,860 Settlement Class Member’s last known address as reflected in  
25 the records of Health Net and as updated by the Settlement Administrator. (*Brasefield Dec.*, ¶ 5.)  
26 As part of the preparation for mailing, GCG ran 12,860 records with a mailing address through the  
27 National Change of Address database (NCOA) and received updated addresses for 2,468 records.  
28 (*Id.*, ¶ 4.) The addresses for the 2,468 records were updated prior to mailing on May 8, 2018. As

1 of June 5, 2018, 33 Summary Notices had been returned as undeliverable. (*Id.*, ¶ 6.) GCG ran an  
2 address search (skiptrace), updated any addresses accordingly, and re-mailed Summary Settlement  
3 Notices to those updated addresses. (*Ibid.*) Pursuant to the Court’s Preliminary Approval Order,  
4 GCG will provide an updated report on Class Notice by July 6, 2018. (Flanagan Dec., ¶ 32.)

5 The Summary Settlement Notice referred Settlement Class Members to the settlement  
6 website (www.NetworkSettlement.com) created by the Settlement Administrator for purposes of  
7 obtaining detailed information relating to the terms of the Settlement and including relevant  
8 deadlines and the date of this hearing. (Brasefield Dec., ¶ 7.) Also pursuant to the Preliminary  
9 Approval Order, the Full Settlement Notice, substantially in the form of Exhibit 2 to the Settlement  
10 Agreement (the “Full Settlement Notice” and with the Summary Settlement Notice, sometimes  
11 jointly referred to as the “Notices”), was made available to the public in English and Spanish on  
12 the settlement website. (*Ibid.*) The Summary Settlement Notice provided a toll-free-number to  
13 allow Settlement Class Members to call to request a mailed copy of the Full Settlement Notice and  
14 directed Settlement Class Members to the settlement website. (*Ibid.*) The settlement website also  
15 provides the toll-free telephone support line number in English and Spanish, the mailing address  
16 for the Settlement Administrator, contact information for Class Counsel, answers to “Commonly  
17 Asked Questions,” and court-imposed deadlines. (*Ibid.*)

18 **B. The Notice Plan Meets the Requirements of Applicable Law and Applicable**  
19 **California Rules of Court**

20 The standard in this Court for a notice program is to ensure the “notice has a reasonable  
21 chance of reaching a substantial percentage of the class members.” (*Wershba, supra*, 91  
22 Cal.App.4th at 230.) In this case, as stated above, notice was mailed directly to 12,860 Settlement  
23 Class Members. (*See* Brasefield Dec., ¶ 5.)

24 The summary mailed notice, the settlement website, and toll-free telephone support line  
25 provided the most reasonable chance of reaching all of the members of the Settlement Class and  
26 satisfies applicable legal requirements, as well as applicable California Rules of Court. (*See Chavez*  
27 *v. Netflix* (2008) 162 Cal.App.4th 43, 58; Cal. Rules of Court, rule 3.769(f) [“the court may order  
28 a means of notice reasonably calculated to apprise the class members of the pendency of the action

1 ...”].) Regarding the content of the notice, the “notice given to the class must fairly apprise the  
2 class members of the terms of the proposed compromise and of the options open to dissenting class  
3 members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151-52;  
4 Cal. Rules of Court, rule 3.766(d); *see* Cal. Rules of Court, rule 3.679(f).) The Notices provided  
5 all the required information. (Flanagan Dec., ¶ 31–34; *see* Brasefield Dec., ¶¶ 5–10.)

6 **V. THE COURT SHOULD ALSO FINALLY APPROVE CERTIFICATION OF THE**  
7 **SETTLEMENT CLASS**

8 Two requirements must be met in order to certify a settlement class: “(1) there must be an  
9 ascertainable class; and (2) there must be a well-defined community of interest[s] in the questions  
10 of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.* (1967)  
11 67 Cal.2d 695, 704, internal citations omitted.) Community of interest includes three factors: “(1)  
12 predominant common questions of law or fact; (2) class representatives with claims or defenses  
13 typical of the class; and (3) class representatives who can adequately represent the class.”  
14 (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

15 **A. The Class Is Ascertainable and Numerous**

16 “Ascertainability goes to the heart of the question of class certification, which requires a  
17 class definition that is ‘precise, objective and presently ascertainable.’” (*Global Minerals & Metals*  
18 *Corp. v. Super. Ct.* (2003) 113 Cal.App.4th 836, 858, citing *In re Copper Antitrust Litig.* (2000)  
19 196 F.R.D. 348, 353.) The definition of the Settlement Class, as detailed in the Settlement  
20 Agreement, is precise, objective and clearly defined. (Settlement Agreement II.E.) Furthermore,  
21 Health Net has the names and addresses of all Settlement Class Members, and each of them has  
22 received notice by first class mail. (Brasefield Dec., ¶ 5.) This mailing, based on Health Net’s  
23 records, demonstrates that the members of the Settlement Class have been identified and located.  
24 (*See Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1334 [“[c]lass members are  
25 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by  
26 reference to official records.”].) Additionally, the Settlement Class is comprised of approximately  
27 12,860 people. (Brasefield Dec., ¶ 5.) Classes of 40 or more are sufficiently numerous. (See  
28

1 *Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262.) The numerosity  
2 requirement is therefore also satisfied. (Flanagan Preliminary Approval Dec., ¶ 22.)

3 **B. Common Questions of Law or Fact Predominate**

4 A class may be certified when common questions of law and fact predominate over  
5 individualized questions. (*San Jose v. Super. Ct.* (1974) 12 Cal.3d 447, 460.) Although common  
6 questions of law or fact must predominate, the law does not require plaintiffs to prove the complete  
7 absence of individual issues. (*Daar, supra*, 67 Cal.2d at 709.) Here, common questions of fact and  
8 law predominate over individual issues in terms of the propriety of the alleged inaccuracies in  
9 Health Net’s provider networks and other alleged misrepresentations. The primary factual issues  
10 underlying these questions are also common to all of the Settlement Class Members. (Flanagan  
11 Preliminary Approval Dec., ¶ 22.)

12 **C. Plaintiffs’ Claims are Typical**

13 The typicality requirement is met when the claims of the representative plaintiffs arise from  
14 the same course of conduct that gives rise to the claims of the other class members, and where the  
15 claims are based upon a similarity of legal theories. (*Thompson v. Automobile Club of Southern*  
16 *California* (2013) 217 Cal.App.4th 719, 732–733.) Here, the named Plaintiffs were affected by  
17 Health Net’s conduct in the same way that other Settlement Class Members were affected.  
18 Plaintiffs were all enrolled in Health Net health plans affected by the alleged inaccuracies in Health  
19 Net’s provider network directory and other alleged misrepresentations. (*See* Flanagan Dec., ¶ 4,  
20 12–15.) Plaintiffs’ claims are typical of all Settlement Class Members’ claims. (Flanagan  
21 Preliminary Approval Dec., ¶ 22.)

22 **D. Plaintiffs Adequately Represented the Class**

23 The adequacy of representation is met when plaintiffs are represented by counsel qualified  
24 to conduct the pending litigation and when plaintiffs’ interests are not antagonistic to the class.  
25 (*See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The Arns Law Firm, attorneys  
26 for Consumer Watchdog, and Shernoff Bidart Echeverria LLP, serving as Class Counsel in this  
27 litigation, have effectively and vigorously prosecuted this action. (*See Kagan v. Gibraltar Sav. &*  
28 *Loan Assn.* (1984) 35 Cal.3d 582, 596.) As evidenced in the Declarations of Plaintiffs and Class

1 Counsel (Flanagan Dec., Exhs. E–G, J), the Plaintiffs actively and effectively fulfilled their  
2 obligations as representatives of the Settlement Class. They were diligent in prosecuting the case  
3 and have spent time helping to investigate the facts of the case and consulted with Class Counsel  
4 regarding the terms of the Settlement. Furthermore, Plaintiffs have no interests antagonistic to  
5 those of absent class members. Plaintiffs have suffered the same common alleged wrong as the  
6 Settlement Class Members and their interests are strongly aligned, if not identical, to those of the  
7 Settlement Class. (Flanagan Preliminary Approval Dec., ¶ 21(d).)

8 **VI. CONCLUSION**

9 Based on the foregoing, Plaintiffs respectfully request the Court finally approve this  
10 Settlement and certify the Settlement Class.

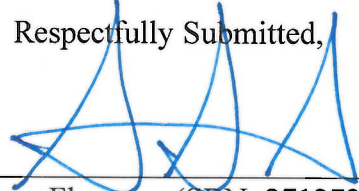
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1 DATED: June 8, 2018

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