

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**Joshua Smith, individually and on behalf of  
other similarly situated individuals,**

**Plaintiff,**

**vs.**

**No. 1:22-cv-00447-WJ-JMR**

**Interinsurance Exchange of the  
Automobile Club, aka AAA,**

**Defendant.**

**SETTLEMENT AGREEMENT**

This Settlement Agreement, dated November 18, 2025, is made and entered into by and among Plaintiff Joshua Smith (“Plaintiff” or “Class Representative”) and Defendant Interinsurance Exchange of the Automobile Club (also known as AAA) (together with the Released Parties, “AAA”) (collectively, with Plaintiff, the “Parties”). The Settlement is intended to fully resolve the above-captioned class action lawsuit, subject to the approval of the Court and the terms and conditions set forth in this Settlement.

**I. RECITALS/BACKGROUND**

1. This litigation arises from Plaintiff’s allegations that the Underinsured Motorist (“UIM”) component of the Uninsured/Underinsured Motorist (“UM/UIM”) coverage he purchased from AAA was “illusory,” valueless, or misleading by virtue of AAA’s application of, or failure to adequately inform him about, the implications of New Mexico’s statutory offset law, which requires an insurer to reduce the amount of any UIM payment by the insured’s recovery from an at-fault driver’s liability insurance coverage. This is commonly referred to as the “*Schmick* offset,” stemming from the New Mexico Supreme Court’s reading

of New Mexico’s UM/UIM statute, NMSA § 66-5-301. *See Schmick v. State Farm Mut. Auto. Ins. Co.*, 1985-NMSC-073, 103 N.M. 216, 704 P.2d 1092.

2. In 2020, Plaintiff was offered and elected to purchase UM/UIM coverage from AAA at the state-minimum limits of \$25,000 per-person/\$50,000 per occurrence.

3. On October 13, 2020, Plaintiff was injured in a motor vehicle collision caused by an at-fault third-party. The third party carried liability coverage in the amount of \$25,000 per person/\$50,000 per accident for bodily injury. After the collision, Plaintiff made a claim with the tortfeasor’s insurer and received \$25,000, the full extent of liability coverage under the tortfeasor’s policy. Plaintiff then made a claim for underinsured motorist benefits with AAA under his policy. AAA denied the claim because the third party was not an “underinsured driver” because of the *Schmick* offset.

4. On May 4, 2022, Plaintiff filed suit against AAA in the Second Judicial District in the State of New Mexico, County of Bernalillo. AAA timely removed the case to United States District Court for the District of New Mexico.

5. Plaintiff claims that the UIM portion of his UM/UIM coverage was “illusory”, without value, or misleading by virtue of AAA’s application of the *Schmick* offset and claimed that AAA failed to adequately inform him about the limitations of UIM coverage due to the *Schmick* offset, which resulted in AAA’s denial of his UIM bodily injury claim. Plaintiff asserted the following claims against AAA in the Class Action Complaint filed May 4, 2022: (1) negligence; (2) violations of New Mexico’s Unfair Trade Practices Act; (3) violations of New Mexico’s Unfair Insurance Practices Act; (4) reformation of insurance policy; (5) breach of the covenant of good faith and fair dealing; (6) negligent misrepresentation; (7) unjust enrichment; and (8) declaratory judgment and injunctive relief. Plaintiff also sought punitive

damages, compensatory damages, treble damages, costs and expenses, and attorneys' fees.

6. On October 4, 2021, the New Mexico Supreme Court issued *Crutcher v. Liberty Mutual Insurance Company*, No. S-1-SC-37478, 501 P.3d 433 (N.M. 2021). In *Crutcher*, the Court held that minimum-limits UIM coverage “was illusory in that it may mislead minimum UM/UIM policyholders to believe that they will receive underinsured motorist benefits, when in reality they may never receive such benefit.” Thus, the Court determined that “an insurer must adequately disclose the limitations of minimum limits UM/UIM coverage—namely, that . . . a policyholder may never receive underinsurance motorist coverage” because of the *Schmick* offset. *Id.* at \*1. The Court held that “hereafter, the insurer shall bear the burden of disclosure to the policyholder that a purchase of the statutory minimum of UM/UIM insurance may come with the counterintuitive exclusion of UIM insurance if the insured is in an accident with a tortfeasor who carries minimum liability insurance . . . . As such, we will now require every insurer to adequately disclose the limitations of minimum limits UM/UIM policies in the form of an exclusion in its insurance policy.” *Id.*

7. Following *Crutcher*, in March 2022, AAA instituted revised UM/UIM selection forms and policy jackets incorporating the necessary disclosure and exclusion required by *Crutcher*.

8. On August 19, 2025, the Parties, through nationally recognized class action and insurance mediator Michael Ungar, engaged in good faith, arm's-length settlement negotiations, agreeing on the key terms of the Settlement. To further settlement discussions, AAA provided Plaintiff with certain data, including the aggregate UM/UIM coverage premiums earned by AAA, and UM/UIM claims data.

9. Plaintiff, through Class Counsel, believes that the Settlement confers substantial benefits on the Settlement Class and is in the best interest of the Settlement Class. It is also understood that Plaintiff, through Class Counsel, believes that his claims have substantial merit. Nonetheless, Plaintiff, through Class Counsel, recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the Action against AAA through discovery, motions practice, trial, and potential appeals. Plaintiff, through Class Counsel, has also considered the uncertain outcome and risks of further litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel is experienced in insurance litigation and knowledgeable regarding the relevant claims, remedies, and defenses at issue in such litigation and specifically in this Action. Class Counsel has determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interest of the Settlement Class.

10. AAA continues to deny each and all of the claims and contentions alleged against them in the Action. AAA denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Action. However, AAA has concluded that further litigation would be protracted and costly. AAA has considered the uncertainty and risks inherent in any litigation, and AAA has therefore determined that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

**NOW, THEREFORE**, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is hereby agreed by the Plaintiff and Class Representative, individually and on behalf of the Settlement Class, and AAA that, subject to the approval of the Court, the Action be forever resolved, settled, compromised, and

dismissed with prejudice on the following terms and conditions:

## II. DEFINITIONS

1. The terms used in this Settlement Agreement, and listed in this section, shall have the following meanings:

a. “AAA” means Defendant Interinsurance Exchange of the Automobile Club.

b. “AAA’s Counsel” means Baker & Hostetler, LLP and Allen Law Firm, LLC.

c. “Action” means *Joshua Smith, individually and on behalf of other similarly situated individuals, v. Interinsurance Exchange of the Automobile Club, aka AAA*, United States District Court for the District of New Mexico, Case No. 1:22-cv-00447.

d. “Agreement,” “Settlement Agreement,” or “Settlement” means this Settlement Agreement, Exhibits, and the settlement terms embodied herein.

e. “Claim” means a claim for a Payment for those Offset Subclass Members who, during the class period, submitted an underinsured motorist claim that was subject to a *Schmick* offset, made under the terms of this Settlement Agreement.

f. “Claim Form” means the document, which will be available on the Settlement Website for electronic completion or available to receive by mail for a mailed submission, that certain Offset Subclass Members must submit to potentially receive an Offset Subclass Payment, as set forth in and subject to the provisions of this Agreement. A copy of the Claim Form is attached hereto as Exhibit A.

g. “Claimant” means an Offset Subclass Class Member who makes a Claim for benefits under this Settlement Agreement.

h. “Claim Deadline” means the final date by which a Settlement Class Member must submit a Claim for an Offset Subclass Payment. The Claim Deadline shall be sixty (60) days after the Notice Date.

i. “Class Counsel” means Kedar Bhasker of Law Offices of Kedar Bhasker, Corbin Hildebrandt of Corbin Hildebrandt P.C., Geoffrey Romero of Romero, Harada & Winters, LLC, and Andrea D. Harris of Valle, O’Cleireachain, Zamora & Harris.

j. “Class Period” means January 1, 2010 –May 4, 2022.

k. “Class Representative” means the Plaintiff, Joshua Smith.

l. “Complaint” means the Class Action Complaint filed by Plaintiff on May 4, 2022, in the Second Judicial District Court, Bernalillo County, New Mexico, which forms the basis of the Action, and any amendments or proposed amendments thereto.

m. “Confidential Information” means the names, addresses, policy numbers and any and all data provided by AAA relating to potential Class Members, and any other proprietary business information of AAA.

n. “Court” means the United States District Court for the District of New Mexico.

o. “Defendant” means Interinsurance Exchange of the Automobile Club (also known as AAA).

p. “Direct Premium Refund Fund” means the portion of the Settlement Fund remaining after the following amounts are deducted: (i) Attorneys’ Fee Award and Costs approved by the Court; (ii) Incentive Compensation Payment approved by the Court; (iii) Notice and Administrative Expenses incurred; (iv) Taxes and Tax-Related Expenses; (v) payment of Valid Claims for Offset Subclass Payments; and (vi) estimated Notice and

Administrative Expenses necessary to effectuate the Direct Premium Refund Payments as determined by the Settlement Administrator.

q. Direct Premium Refund Payments means the payments as defined in paragraph VII.4, below.

r. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement in the Action shall become effective and final, and occurs when each and all of the following conditions have occurred:

i. This Settlement Agreement has been fully executed by all Parties and their counsel;

ii. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement, and approving the Notice (described below);

iii. The Notice program has been executed in accordance with the Preliminary Approval Order;

iv. The Court has entered a Final Order and Judgment finally approving the Settlement; and

v. The Final Order and Judgment, as defined below, has been entered and all times to appeal therefrom have expired with (1) no appeal or other review proceeding having been commenced; (2) an appeal or other review proceeding having been commenced, and such appeal or other review having been concluded such that it is no longer subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for

writ of certiorari, or otherwise, and such appeal or other review has been resolved in a matter that affirms the Final Judgment in all material respects.

s. “Final Fairness Hearing” means the hearing to be conducted by the Court after the Notice program is complete, at which time Class Counsel and AAA’s Counsel will request that the Court grant final approval of the Settlement set forth herein.

t. “Final Order and Judgment” means an order and judgment that the Court enters after the Final Fairness Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Agreement.

u. “Motor vehicle” means any motor vehicle as defined by NMSA 1978, § 66-1-4.11(H).

v. “Neutral Evaluation on Appeal” means the neutral Referee’s resolution of an Offset Subclass Member’s appeal of a Notice of Determination.

w. “Non-Profit *Cy Pres* Recipient” means Equal Access to Justice. subject to the Court’s approval.

x. “Notice” means the mailed or emailed notice, substantially in one of the two forms shown in Exhibits A, C, and D hereto (depending on whether the notice is mailed or emailed), to the Settlement Class Members, notifying them of the Settlement and inviting Settlement Class Members to make a Claim for Settlement Class Payments.

y. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or

costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, determining the eligibility of any person to be a Settlement Class Member, any Neutral Evaluation on Appeal (including, but not limited to, expenses charged or incurred by the Referee), and administering, calculating, and distributing the Settlement Fund to Settlement Class Members. Notice and Administrative Expenses also includes all third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

z. “Notice Date” means the first date upon which the Notice is mailed or emailed to the Settlement Class Members.

aa. “Notice of Determination” means the notice sent by the Settlement Administrator to an Offset Subclass Member who makes a Valid Claim for Payment (described in Paragraph VII.2) of the Settlement Administrator’s determination of their eligibility for an Offset Subclass Payment.

bb. “Notice of Determination Appeal” means an appeal by an Offset Subclass Settlement Class Member of a Notice of Determination.

cc. “Offset Subclass” or “Offset Subclass Members” means those Class Members who submitted a claim for underinsured motorist coverage benefits for a Motor Vehicle accident occurring between January 1, 2010 and May 4 , 2022 and whose underinsured motorist benefits were offset by amounts paid by the insurer of the person liable for the Motor Vehicle accident.

dd. “Offset Subclass Payments” means payments to be made to Offset Subclass Members, as described in Section V below.

ee. “Opt-Out Deadline” means the last day of the period that begins the day

after the earliest on which the Notice is first distributed, and that ends not later than 30 days before the Final Fairness Hearing. The Opt-Out Deadline will be specified in the Notices.

ff. “Parties” means Plaintiff Joshua Smith (“Plaintiff” or “Class Representative”) and Defendant Interinsurance Exchange of the Automobile Club (also known as AAA).

gg. “Plaintiff” means the Plaintiff in this action, Joshua Smith.

hh. “Preliminary Approval Order” means the proposed order substantially in the form of Exhibit B, hereto, preliminary approving the Settlement and directing mailed and emailed Notice to the Settlement Class Members of the pendency of the Action and of the Settlement, to be entered by the Court.

ii. “Referee” means the designated neutral third party, appointed by the Court who has been selected by Class Counsel and agreed to by AAA, who will be assigned to resolve an Offset Subclass Member’s appeal, if any, of a Notice of Determination pursuant to the procedures set forth herein for the Neutral Evaluation on Appeal.

jj. “Released Claims” means any and all past, present, or future, claims, rights, demands, charges, complaints, causes of action, liabilities, and damages of any and every kind and nature that either has been asserted, was asserted, or could have been asserted, by any of the Releasing Parties against any of the Released Parties in the Action or in any other action or proceeding before any court, arbitrator(s), tribunal, or administrative body, regardless of whether they are known or unknown, accrued or unaccrued, foreseen or unforeseen, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, direct or derivative, class or individual, asserted or unasserted, arising out of, or related or connected in any way with, the claims and causes of action of every kind and description that were or

could have been brought, alleged, argued, raised or asserted in any pleading or court filing in the Action, including, without limitation, (a) any and all claims that arise out of the alleged facts, circumstances, and occurrences underlying the allegations set forth in the Complaints filed in the Action; (b) any and all claims disputing the value of UM/UIM coverage or premiums based on or relating to the the *Schmick* offset or New Mexico being a “gap theory” state with respect to the payment of UIM benefits; (c) any and all claims related to or arising out of UIM benefits being reduced or denied due to a *Schmick* offset; (d) any and all claims for penalties arising from or relating to late payment, non-payment, or underpayment of benefits for UM/UIM claims; and (e) any and all claims arising from or relating the charging of premiums for Underinsured Motorist insurance coverage. Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the Settlement contained in this Settlement Agreement.

kk. “Released Parties” or “Released Party” means Interinsurance Exchange of the Automobile Club (also known as AAA), and each of its respective past and present parent companies, subsidiaries, affiliates, related entities, predecessors, successors, insurers, assigns, officers, directors, governors, partners, shareholders, members, agents, employees, representatives, attorneys, administrators, and any person related to such entities or individuals who is, was, or could have been named as a defendant in the Action, and each of their respective past and present predecessors, successors, insurers, assigns, officers, directors, governors, partners, shareholders, members, agents, employees, representatives, attorneys, administrators, and any person related to such entities or individuals who is, was, or could have been named as a defendant in the Action.

ll. “Releasing Parties” means the Class Representative and the Settlement

Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns, excluding those Settlement Class Members who submit a valid request for exclusion prior to the Opt-Out Deadline.

mm. “Incentive Compensation Award” means any Court ordered payment to Plaintiff for serving as Class Representative, which is in addition to any payment due to Plaintiff as a Settlement Class Member.

nn. “Settlement Administrator” shall mean Epic Class Action & Claims Solutions, Inc., subject to Court approval.

oo. “Settlement Class,” means and includes all AAA policyholders and insureds between January 1, 2010 and May 4, 2022, who:

- i. purchased or otherwise paid a premium for a New Mexico insurance policy that included UM/UIM coverage; and/or
- ii. made a claim for UIM benefits after January 1, 2010, under a New Mexico insurance policy that did not include the disclosure and exclusion required by *Crutcher* and had benefits reduced or denied due to a *Schmick* offset.

To identify the scope of the Settlement Class, AAA searched for and provided to Class Counsel a list of:

1. All AAA policyholders who paid a premium for a New Mexico insurance policy that included UM/UIM coverage at any time between January 1, 2010 and May 4, 2022; and
2. All individuals who made a UIM claim to AAA between January 1, 2010 and May 4, 2022 under a New Mexico auto insurance policy.

The Settlement Class specifically excludes (1) any claimant who has separately filed suit against AAA up to the Notice Date, the subject of which suit includes the reduction or denial of benefits on the basis of a *Schmick* offset; (2) any individual who has settled a claim for benefits reduced or denied on the basis of a *Schmick* offset, whose claim was adjusted or readjusted without applying a *Schmick* offset, or who signed a final release prior to the Notice Date; (3) the Judge(s) presiding over this Action; and (4) any employees of the Released Parties.

pp. “Settlement Class Member(s),” “Class Member(s),” or “Member(s)” means any person or entity that falls within the definition of the Settlement Class and does not timely opt out.

qq. “Settlement Fund” means the sum of Four Million One Hundred and Fifty Thousand Dollars (\$4,150,000.00) to be paid by or on behalf of AAA as specified in Section IV. The Settlement Fund is the limit and extent of the monetary obligations of AAA, and their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, governors, members, managers, employees, shareholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing, and any other Released Parties, with respect to this Agreement and the settlement of the Action.

rr. “Settlement Website” means the website that the Settlement Administrator will establish as a means for the Settlement Class to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, access to a downloadable printable Claim Form, Motion

for Preliminary Approval, Preliminary Approval Order, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website and the Settlement Website shall remain online for 90 days following the Effective Date. The Settlement Website shall not include any advertising and shall not bear or include the Defendant's logo or Defendant's trademarks. Ownership of the Settlement Website URL shall be transferred to Defendant within 10 days of the date on which operation of the Settlement Website ceases.

ss. "Taxes and Tax-Related Expenses" means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon AAA with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

tt. "Unclaimed Funds" means the value of checks not cashed or funds that were otherwise not claimed by Settlement Class Members for Direct Premium Refund Payments and/or Offset Subclass Payments.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

For Settlement purposes only, Plaintiff and Defendant agree to ask the Court to certify the Settlement Class pursuant to the Federal Rules of Civil Procedure.

### **IV. SETTLEMENT FUND**

1. **Establishment of Settlement Fund.** Within fourteen (14) days of the latter of the entry of Preliminary Approval Order or the creation of an account established and administered by the Settlement Administrator for purposes of receiving the Settlement Fund,

AAA shall deposit or cause to be deposited an amount equal to the Settlement Administrator's expected costs into the account established and administered by the Settlement Administrator; the Settlement Administrator shall provide AAA the amount of such expected costs upon its creation of the account that it will administer. Then, within thirty (30) days of the Court's entry of a Final Order and Judgment, AAA shall deposit or cause to be deposited an amount equal to the difference between \$4,150,000.00 and the amount AAA deposited or caused to be deposited into the account established and administered by the Settlement Administrator such that the total amount AAA will have deposited into the account is \$4,150,000.00.

2. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Final Order and Judgment, all rights of AAA in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph XIV. In the event the Settlement Agreement is terminated pursuant to Paragraph XIV, the Settlement Administrator shall return to AAA within ten (10) days any amounts remaining in the Settlement Fund, less any expenses the Settlement Administrator has already incurred pursuant to the Settlement Agreement, which the Settlement Administrator shall be entitled to retain.

3. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator shall invest the Settlement Fund exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or (b) secured by instruments backed by the full faith and

credit of the United States Government. AAA and AAA's Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Settlement Administrator. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Fund and its Escrow Agent. Further, the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

4. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to AAA in the event this Settlement Agreement is terminated.

5. **Use of the Settlement Fund.** As further described in this Settlement Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Offset Subclass Claim Payments; (iv) Direct Premium Refund Payments; (v) Incentive Compensation Award Payments approved by the Court; and (vi) Attorneys' Fees Award and Costs approved by the Court. In no event shall AAA or any other Released Party have any

payment obligations to Settlement Class Members, the Settlement Class, Plaintiff, Class Counsel, the Settlement Administrator, or to any other person or entity beyond the Settlement Fund.

6. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Administrator shall indemnify and hold harmless the Parties, their counsel, and their insurers and reinsurers for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Settlement Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Settlement Agreement.

## V. **BENEFITS TO SETTLEMENT CLASS MEMBERS**

1. **Offset Subclass Claim Payments.** AAA will provide to Class Counsel and the Settlement Administrator a spreadsheet reflecting all New Mexico Underinsured Motorist Claims submitted during the Class Period. Offset Subclass Members who make a Valid Claim for payment will be entitled to one (1) payment of \$25,000.00. The total amount of the Settlement Fund to be made available for Offset Subclass Payments shall be \$1,400,000.00. If the number of valid Offset Subclass claims exceeds \$1,400,000.00, Offset Subclass Payments will be reduced pro rata. If the total amount paid to Offset Subclass members is less

than the total amount made available for Offset Subclass Payments, any remaining amounts will be added to the Direct Premium Refund Fund. To be a Valid Claim, the Offset Subclass Member must have been in an accident between January 1, 2010 and May 4, 2022 and submitted a claim to AAA for underinsured motorist coverage.

2. **Direct Premium Refund Payments.** Those Settlement Class Members who purchased a policy with or paid a premium for UM/UIM coverage between January 1, 2010 and May 4, 2022 and who do not make a Valid Claim for an Offset Subclass Payment, shall be directly paid a pro rata share of the Direct Premium Refund Fund (the “Direct Premium Refund Payment”). For those Settlement Class Members entitled to a Direct Premium Refund Payment, each such Class Member’s pro rata share of the Direct Premium Refund Fund shall be based on the total UM/UIM premiums paid by such persons between January 1, 2010 and May 4, 2022 (*i.e.*, aggregate amount of UM/UIM premium paid by an eligible Settlement Class Member/the total Direct Premium Refund Fund = pro rata percentage of Direct Premium Refund Fund).

## **VI. NOTICE PROGRAM**

1. Notice of the pendency of the Action and the Settlement Agreement (the “Notice Program”) shall be made as provided in this Section.

2. **Sending the Notice:** Within 45 days after the entry of the Preliminary Approval Order, the Class Notice, in one of the two forms substantially similar to those attached hereto as Exhibit A, C and D, shall be emailed to each Settlement Class Member’s last known email address. If AAA does not have a valid email address, notice shall be sent in one of the two forms substantially similar to those attached hereto as Exhibit A, by first class mail to those Settlement Class Members’ last known address. The last known address shall be

determined from information reasonably available in AAA's files, which will be run by the Settlement Administrator through the United States Postal Service's national change of address database prior to mailing by the Settlement Administrator. For those Settlement Class Members who make a Valid Claim for an Offset Subclass Payment, the Settlement Administrator shall offer various options to receive a Settlement Class Payment (*e.g.*, check, Paypal, Venmo) should the Settlement Administrator and/or the Referee determine that such Class Member is entitled to an Offset Subclass Payment.

3. A copy of the Claim Form, substantially in the form hereto as Exhibit A, will be available on the Settlement Website identified in the Class Notice and can be requested to be received in the mail from the Settlement Administrator.

4. AAA and the Settlement Administrator shall have no duty to perform any additional search for, or otherwise attempt to verify, e-mail and mailing addresses of Settlement Class Members, including as to returned, undelivered Class Notices. However, any Class Notices that are returned with a listed forwarding e-mail and mailing address shall then promptly be mailed a Notice to the listed forwarding address. However, the Claim Deadline shall not be adjusted due to re-mailing and e-mailing of a Class Notice to a forwarding address.

5. Unless otherwise ordered by the Court, or agreed by the Parties, the Class Notice will be sent solely to Settlement Class Members and not to any attorney or counsel who may represent them with regard to a UM/UIM claim or who have represented the Settlement Class Members with regard to any previous claim.

6. The notice shall inform Settlement Class Members, in bold type, that they are not to call the Court or AAA's counsel.

7. **Toll Free Hotline and Website:** The Settlement Administrator will establish

a toll-free telephone number with a live operator, which any Settlement Class Member may call to receive the Agreement, Class Notice and a Claim Form, as well as all information included on the Settlement Website. The Settlement Website shall contain some information about this Agreement, including printable copies of the Agreement, the Notice, and the Claim Form, which shall be maintained by the Settlement Administrator. This Settlement Website shall also contain a list of Frequently Asked Questions to give further information regarding this Agreement. The toll-free number and Settlement Website referred to herein will be established and operational by a date no later than the date the Class Notice is initially e-mailed and mailed and the Settlement Website shall remain online for 90 days following the Effective Date.

8. **Costs of Notice:** Costs of administration (including printing and mailing and e-mailing the Class Notice, providing the Settlement Website, establishing a toll-free telephone number, printing and distributing payments to Settlement Class Members and all postage relating to the foregoing) will be paid out of the Settlement Fund. Under no circumstances shall AAA be required under this Agreement to incur or pay any fees or expenses beyond the establishment of the Settlement Fund.

## **VII. ADMINISTRATION OF CLAIMS**

1. **Class Notice and Claim Deadline:** Offset Subclass Members must submit a Claim for an Offset Subclass Payment by the Claim Deadline, meaning all Settlement Class Members shall have forty-five (45) days after the Notice Date to submit a Claim for an Offset Subclass Payment. Compliance with all deadlines shall be determined based on the postmark of the communication.

2. **Process for Valid Claims for Offset Subclass Payments.**

a. The process in this subsection applies to Claims made for Offset Subclass Payments.

b. The Settlement Administrator will receive all Claims and make the initial determination of whether a Claim is a Valid Claim within 30 days of receipt. The Settlement Administrator shall review the list of UIM claims during the Class Period provided by AAA. If those records do not reflect an Underinsured Motorist claim for the submitting individual during the Class Period, the Settlement Administrator shall deny such Claim and provide notice of such denial to the claimant in the form of Notice of Determination.

c. Within thirty (30) days of Effective Date, the Settlement Administrator shall advise, in writing, all Offset Subclass members who submit a Claim of its claims determination (hereafter referred to as the “Notice of Determination”), which shall set forth: (i) the amount (if any) of the Offset Subclass Payment to be paid; (ii) the reason for denial of the Claim if it is denied; and (iii) the process and deadline for Appealing the Notice of Determination as set forth in Section 3, below.

d. If an Offset Subclass Member is due a Payment, a payment by check will be included with the Notice of Determination.

**3. Appeal of Notice of Determination for Offset Subclass Payments.**

a. A Settlement Class Member may appeal the Notice of Determination but must do so according to the procedures described herein.

b. The Parties will request that as part of the Final Order and Judgment, the Court appoint a designated Referee, who is a neutral third party that has been selected and agreed to by both Class Counsel and AAA. The Referee shall have a duty to recuse himself or herself upon learning of the existence of any grounds that would require the mandatory recusal

of a judge under the New Mexico Code of Judicial Conduct. In the event the Referee recuses himself or herself, AAA and Class Counsel shall agree on an alternate Referee. Neither AAA, nor the Plaintiff, nor any of the Parties' counsel, shall be liable for any act, or failure to act, of the Referee(s).

c. To initiate an appeal, the Claimant must, within thirty (30) days from the date on which his or her Notice of Determination is postmarked, submit to the Settlement Administrator (at the address provided in the Class Notice) a demand for a Neutral Evaluation on Appeal in writing similar to the form to be provided with the Notice of Determination and Neutral Evaluation Appeal attached hereto as Exhibits E and F (hereafter referred to as the "Notice of Determination Appeal"), along with a payment of a Fifty Dollar (\$50.00) appeal fee. The Fifty Dollar (\$50.00) appeal fee shall be refunded to the Claimant if the Referee determines the appeal in the Claimant's favor. If the Referee does not determine the appeal in the Claimant's favor, the Fifty Dollar (\$50.00) appeal fee shall be applied towards the costs of the Neutral Evaluation on Appeal, which costs shall otherwise be borne entirely by Settlement Fund.

d. The Notice of Determination Appeal must include a written statement providing all reasons and facts supporting the Offset Subclass Member's assertion that the Settlement Administrator's Notice of Determination is incorrect.

e. Within five (5) days of receipt of a Notice of Determination Appeal, the Settlement Administrator shall provide the Notice of Determination Appeal to Class Counsel and the Referee. The Referee will have fourteen (14) days to resolve the disputed Notice of Determination and notify the Settlement Administrator and Class Counsel of that decision. The Settlement Administrator shall then have fourteen (14) days to notify the

Claimant of such resolution, including payment for the Claim and refund of the \$50 appeal fee if the Referee finds in favor of the Claimant. The Referee's resolution of a Notice of Determination Appeal will be final and not appealable.

f. The Referee shall have no authority to determine the amount of any Payment, nor shall the Referee award any amount for attorneys' fees, interest, costs, or any other thing. The Referee's sole authority shall be to decide whether the Settlement Administrator properly denied a claim.

**4. Payment of Direct Premium Refund Payments.**

a. Within thirty (30) days after the final Offset Subclass Payment is made, the Settlement Administrator shall determine the amount of the Direct Premium Refund Fund. As part of the calculation of the Direct Premium Refund Fund, the Settlement Administrator shall also calculate the estimated Notice and Administrative Expenses necessary to effectuate the Direct Premium Refund Payments, as contemplated in Definition "q."

b. All Direct Premium Refund Payments will be processed by the Settlement Administrator based on AAA's data. Settlement Class Members receiving Direct Premium Refund Payments shall be paid a pro rata share, based upon their total premiums paid, of the Direct Premium Refund Fund, after deduction of all fees, Incentive Compensation, Administration Costs, and Offset Subclass payments. Class Members who received an Offset Subclass Payment shall not be entitled to a Premium Refund Payment.

c. Settlement Class Members do not need to make a claim to be entitled to a Direct Premium Refund Payment.

d. Direct Premium Refund Payments to those Settlement Class Members entitled to such payments shall be made within the later of (a) 210 days after the Effective

Date of this Agreement or (b) forty-five (45) days after the Settlement Administrator determines the amount of the Direct Premium Refund Fund. The Direct Premium Refund Payments shall be made by the Settlement Administrator by check made payable to the Settlement Class Member and mailed to such Member's last known address unless the Settlement Class Member has elected a payment method other than check (*e.g.*, PayPal, Venmo). The last known address shall be determined from information reasonably available in AAA's files, which will be run through the United States Postal Service's national change of address database prior to mailing by the Settlement Administrator.

**5. General Payment Provisions.**

a. If a check is issued to a Settlement Class Member, cashing the settlement check is a condition precedent to the Settlement Class Member's right to receive any payment pursuant to this Settlement Agreement. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within 90 days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until thirty (30) days after the date the check becomes void to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent for recovery of any payment pursuant to this Settlement Agreement, the Settlement Class Member's right to receive any monetary relief shall be forever extinguished, and the check shall be deemed never to have been the Settlement Class Members' property. The same provisions shall apply to any re-issued check, except that there shall be no right to request a subsequent re-issuance of any re-issued check.

b. Once the time to cash all initially issued settlement checks and any re-issued settlement checks has passed, the Settlement Administrator shall determine the

aggregate amount of Unclaimed Funds—*i.e.*, the net amount of uncashed checks and any other unclaimed amounts in the Settlement Fund (the “Aggregate Remainder”). The Settlement Administrator shall distribute the Aggregate Remainder in the Settlement Fund to the Non-Profit *Cy Pres* Recipient, subject to the restrictions in Paragraph 4(c), below.

c. In the event the estimated Notice and Administrative Expenses to effectuate payment of the Direct Premium Refund Payments (as contemplated in Paragraph VII.4 and Definition “q,” above) are lower than the actual Notice and Administrative Expenses incurred to effectuate the Direct Premium Refund Payments, the remaining funds shall be added to the Aggregate Remainder; however, in the event the Notice and Administrative Expenses necessary to effectuate the Direct Premium Refund Payments exceed the estimate provided by the Settlement Administrator, those excess fees shall be deducted from the Aggregate Remainder prior to any disbursement to the Non-Profit *Cy Pres* Recipient.

d. All Settlement Class Members are subject to and bound by the provisions of the Settlement Agreement and releases contained herein, and the Final Order and Judgment.

e. The Settlement Administrator shall return all Confidential Information to AAA within 180 days of the final Direct Premium Refund Payment. The Settlement Administrator shall, within that same 180 days, certify destruction of any electronic or other copies of any Confidential Information.

f. The confidentiality of all Confidential Information shall be protected from disclosure by Class Counsel and the Plaintiff to any Persons other than the Settlement Administrator and any Person the Court orders be allowed to access Confidential Information.

g. The Parties agree that Class Counsel or anyone associated with Class Counsel's firms shall not use any of the Confidential Information in any other litigation, whether pending or future, unless independently obtained through discovery or other procedures in that litigation.

**6. Claim Status Reports.**

a. The Settlement Administrator shall provide weekly reports to Class Counsel indicating (1) the number of Claims received; and (2) the Notice of Determination of any adjustment of Claims.

**VIII. STIPULATED CLASS ACTION SETTLEMENT CERTIFICATION**

1. AAA does not consent to certification of any class for any purpose other than effectuating this Settlement and disputes that any class should or could be certified for any other purpose. Solely for the purposes of effectuating the Settlement, the Class Representative, Class Counsel, and AAA agree and stipulate to certification of the Settlement Class as defined in this Agreement. Class Representative, Class Counsel, and AAA further agree and stipulate that, subject to Court approval, Class Counsel shall act as counsel for the Settlement Class. If the Court does not approve this Settlement, either preliminarily or finally, or the Settlement Agreement terminates as provided below, and the Parties do not otherwise reach an amended agreement (i) this Agreement shall be automatically of no force or effect; (ii) any Preliminary Approval Order and all of its provisions shall be vacated; (iii) no term or draft of this Agreement, or any aspect of the Parties' settlement discussions, negotiations, documentation, or confirmatory discovery (including without limitation any declarations and briefs filed in support of the motions for preliminary and/or final approval) shall have any effect or be admissible into evidence for any purposes in this Litigation or any other proceeding.

2. The Class Representative, Class Counsel, and AAA agree and stipulate that the Settlement should be approved by the Court, and that the Court should make a determination that the Settlement is fair, reasonable, adequate, and made in good faith.

## **IX. RELEASES**

1. Upon the Effective Date, and without any further action, in consideration of the Settlement benefits described herein, (a) Plaintiff's claims and Complaints against AAA shall be released and dismissed with prejudice, and (b) Plaintiff and each Settlement Class Member shall be deemed to have released, acquitted, and forever discharged AAA and all other Released Parties from any and all Released Claims from January 1, 2010 through the Effective Date.

2. Upon entry of the Final Order and Judgment, Plaintiff and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Order and Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to the releases herein.

3. The obligations incurred under this Settlement shall be in full and final disposition of the Action and of any and all Released Claims against all Released Parties.

4. Plaintiff further agrees not to assist knowingly and voluntarily, in any way, any third party in commencing or maintaining any suit against the Released Parties relating to any Released Claim.

## **X. OPT-OUT PROCEDURES**

1. Under the procedure set forth in the Notice, potential Settlement Class

Members have the right and ability to exclude themselves from the Settlement Class as set forth in the proposed Preliminary Approval Order.

2. In order to validly be excluded from the Settlement, the potential Settlement Class Member must send a letter that says he or she wants to be excluded from the Settlement in *Joshua Smith, individually and on behalf of other similarly situated individuals, v. Interinsurance Exchange of the Automobile Club, aka AAA*, United States District Court for the District of New Mexico, Case No. 1:22-cv-00447, to the Settlement Administrator at the address identified in the Notice and include his or her name, address, and signature within thirty (30) days after the Notice Date, or any different date set by the Court in the Preliminary Approval Order.

3. The Settlement Administrator shall provide Class Counsel and AAA's Counsel with a list of all valid opt-outs within 14 days of the deadline described in Paragraph X.2. The Settlement Administrator shall also provide this information to the Court, no later than seven (7) days prior to the Final Fairness Hearing. If the opt-out is untimely or otherwise fails to comply with any of the provisions for a valid opt-out, it shall not be considered a valid optout.

4. Plaintiff shall not elect or seek to opt out or exclude himself from the Settlement Class, and any such attempt will be deemed a breach of this Agreement and sufficient to permit AAA to terminate the Agreement.

5. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and all their claims shall be dismissed with prejudice and released as provided for herein pursuant to the terms of a Final Order and Judgment.

6. AAA shall have the right to terminate the Settlement if more than 25 people

opt out of the Settlement Class. If AAA chooses to exercise this provision, the case will resume as if the Settlement never took place.

7. Class Counsel and their respective law firms agree not to represent, encourage, solicit, or assist any Person in requesting exclusion from the Settlement Class. Nothing in this paragraph shall preclude or prevent Class Counsel from answering inquiries from any potential Settlement Class Member.

## **XI. OBJECTION PROCEDURES**

1. The Notice will inform the Settlement Class Members that they may send in a written objection in this Settlement. To be valid, an objection must state: (a) the objector's full name, address, telephone number, and email address (if any); (b) information identifying the objector as a Settlement Class Member; (c) a written statement of all grounds for the objection, accompanied by any legal support the objector cares to submit; (d) the identity of all lawyers (if any) representing the objector; (e) the identity of all of the objector's lawyers (if any) who will appear at the Final Fairness Hearing; (f) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (g) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector's signature or the signature of the objector's duly authorized lawyer or other duly authorized representative (along with documentation setting forth such representation).

2. In addition to the foregoing, objections should also provide the following information: (a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the prior three (3) years; (b) a list, by case name, court, and docket number, of all other cases in which the objector's lawyer (on behalf of any person or entity) has filed

an objection to any proposed class action settlement within the last three (3) years; and (c) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

3. The long form notice substantially in the form of Exhibit A hereto will further inform Settlement Class Members that to be considered timely, any valid objection in the appropriate form must be **filed** with the Clerk of the United States District Court for the District of New Mexico, no later than thirty (30) days after the Notice Date, or any different date set by the Court in the Preliminary Approval Order. The long form notice will inform Settlement Class Members that they must **mail** a copy of their objection to the following three different places postmarked no later than the date set by the Court and outlined in the Notice:

<b>COURT</b>	<b>CLASS COUNSEL</b>	<b>AAA's COUNSEL</b>
US District Court District of New Mexico Pete V. Domenici U.S. Courthouse 333 Lomas Blvd NW, Suite 270 Albuquerque, NM 87102	Kedar Bhasker LAW OFFICE OF KEDAR BHASKER, LLC 2741 Indian School Rd. NE Albuquerque, NM 87106	Rodger L. Eckelberry BAKER & HOSTETLER LLP 200. Civic Center Dr. Suite 1200 Columbus, Ohio 43215

4. Any Settlement Class Member who does not file a timely notice of intent to object may, in the discretion of the Court, waive the right to object or to be heard at the Final Fairness Hearing and be barred from making any objection to this Settlement Agreement. Settlement Class Members have the right to exclude themselves from this Settlement Agreement and pursue a separate and independent remedy against AAA by complying with the exclusion provisions set forth herein. Settlement Class Members who object to this Settlement Agreement shall remain Settlement Class Members and waive their right to pursue an independent remedy against AAA. To the extent any Settlement Class Member objects to this

Settlement Agreement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court. Settlement Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth herein. The Parties agree that Plaintiff will take the lead in drafting the response to any objections to the Settlement, including any appeals filed by the objectors. However, both Parties retain their right to make any argument(s) in response to any objector.

## **XII. ATTORNEYS' FEES AND EXPENSES AND PAYMENT TO THE CLASS REPRESENTATIVE**

1. To date, the only discussion of attorneys' fees has been limited to the requirement that they be paid out of the Settlement Fund, subject to Court approval; the parties have not discussed any amount or percentage of the Settlement Fund that Class Counsel may seek.

2. The Parties agree that, subject to Court approval, attorneys' fees and costs will be paid in an amount approved by the Court. The Parties further agree that the Court-approved attorneys' fees and costs will be paid from the Settlement Fund.

3. At least twenty-eight (28) days before the Final Fairness Hearing, Class Counsel shall file a motion for an Incentive Compensation Award for Plaintiff. The Parties agree that the Court-approved Incentive Award will be paid to Plaintiff from the Settlement Fund.

4. Payment of these fees discussed in this sub-section that the Court awards, if any, shall be due thirty (30) calendar days after the Effective Date, and shall be paid by the Settlement Administrator from the Settlement Fund. AAA shall have no liability whatsoever

for the payment to any person or entity of any fees or other amounts other than the \$ 4,150,000 Settlement Fund.

5. Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any Court-approved attorney fees award and costs amongst Class Counsel. AAA shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

### **XIII. PRELIMINARY APPROVAL AND FINAL APPROVAL OF SETTLEMENT**

1. As soon as practicable after the execution of the Settlement Agreement, or other date ordered by the Court, Class Counsel shall submit this Settlement Agreement to the Court and file a Motion for Preliminary Approval of the Settlement with the Court requesting entry of the Preliminary Approval Order attached to Plaintiff's Motion for Preliminary Approval, or an order substantially similar to such form, requesting, *inter alia*:

- a. Preliminary approval of the Settlement Agreement as set forth herein;  
and
- b. Approval of the Notice, which includes a notice to be individually mailed.

2. If the Preliminary Approval Order is entered by the Court, Class Counsel will move the Court for a Final Order and Judgment approving of this Settlement, to be issued following the Final Fairness hearing. Such Motion for Final Order and Judgment shall be filed within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline, and at least ninety (90) days after AAA notifies the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. In connection with the motion for preliminary approval, Class counsel shall request that

the Court set a date for the Final Fairness Hearing that is no earlier than 100 days after entry of the Preliminary Approval Order.

3. Class Counsel and AAA's Counsel agree to recommend approval of the Settlement by the Court and to undertake their best efforts and to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement and the entry of the Final Order and Judgment.

#### **XIV. TERMINATION**

1. If the Effective Date of Settlement does not occur, or if the Settlement is terminated or fails to become effective for any reason, then (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. The Settlement Administrator shall return the Settlement Fund in its entirety to AAA, less any amount due to the Settlement Administrator.

#### **XV. NO ADMISSION OF WRONGDOING OR LACK OF MERIT**

1. The terms of this Settlement (whether the Settlement becomes final or not), the negotiations leading up to this Settlement, the fact of the Settlement, and the documents

provided and the proceedings taken pursuant to the Settlement, shall not: (a) be construed as an admission of liability or an admission of any claim or defense on the part of any Party, in any respect; (b) be construed as an admission by AAA regarding the appropriateness of certification of any class other than the Settlement Class (defined above), solely for settlement purposes; (c) form the basis for any claim of estoppel by any third-party against any of the Released Parties; or (d) be admissible in any action, suit, proceeding, or investigation as evidence, or an admission of any wrongdoing or liability whatsoever by any Party, or as evidence of the truth of any of the claims or allegations in the Complaints.

#### **XVI. INCAPACITATED AND DECEASED SETTLEMENT CLASS MEMBERS**

1. Claims may be submitted by any attorney or interested person on behalf of an incapacitated or deceased Settlement Class Member eligible for an Offset Subclass Payment.

#### **XVII. PROVISION FOR MEDICAL OR ATTORNEYS' LIENS**

1. All Offset Subclass Class Members eligible for a payment pursuant to this Agreement shall be responsible for the discharge of: (i) any subrogation or reimbursement claim or lien for any medical treatment of that Settlement Class Member arising out of the accident which is the subject of the Offset Subclass Member's claim, including hospital or medical liens of any medical provider, plan, insurer, or governmental entity, including but not limited to, Medicare, CMS, or Medicaid, and/or (ii) any attorneys' lien arising out of the accident which is the subject of the Offset Subclass Member's claim, and the Offset Subclass Class Member agrees to provide the Settlement with written evidence of the discharge or satisfaction of such claims. Any Offset Subclass Member receiving an Offset Subclass Payment pursuant to this Agreement agrees to indemnify and hold harmless the Released Parties from the Offset Subclass member's failure to satisfy such claim or lien and any ensuing

impairment action brought against the Released Parties by any entity. No medical or attorneys' liens shall be created by any of the Parties' efforts in attempting to effectuate the terms of this Agreement.

2. AAA, the Released Parties, AAA's Counsel, and Class Counsel shall not be responsible in any way for attorneys' liens or medical lien(s) submitted for any Settlement Class Member(s), nor shall any such lien(s) be created by any of the efforts of the Parties or effectuate any of the terms of this Agreement.

### **XVIII. CAFA NOTICE REQUIREMENTS**

1. AAA shall serve notice of the proposed settlement, in accordance with the requirements of 28 U.S.C. § 1715(b), on the appropriate representatives of the Attorney General of the United States and of the New Mexico Superintendent of Insurance. The Parties agree that for purposes of such notice it is not feasible to provide the names of all Settlement Class Members pursuant to 28 U.S.C. § 1715(b)(7)(A) and, therefore, that the procedure set forth in 28 U.S.C. § 1715(b)(7)(B) will be utilized.

### **XIX. MISCELLANEOUS PROVISIONS**

1. **Integration of Exhibits.** All of the Exhibits attached hereto are incorporated by reference as though fully set forth herein.

2. **Entire Agreement.** This Agreement, including all exhibits thereto, shall constitute the entire Agreement among the Parties regarding the subject matter hereof and shall supersede all previous agreements, representations, communications, and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval; provided however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such

amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

3. **Complete Resolution.** The Parties to the Settlement intend and agree that the Settlement is a final and complete resolution of all disputes related to the Action by the Plaintiff and the Settlement Class Members.

4. **Voluntary and Informed Settlement.** The Parties agree that the benefits provided herein, and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties to the Settlement with the assistance of an experienced and independent mediator and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

5. **Jurisdiction.** Until the Actions are finally and fully dismissed with prejudice, the Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of this Agreement. After the Action is finally and fully dismissed with prejudice, the Parties may enforce the terms of the Agreement in the United States District Court for the District of New Mexico.

6. **Headings.** The headings contained in this Agreement are for reference

purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7. **Singular and Plurals.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

8. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to “days” in this Agreement shall refer to calendar days unless otherwise specified.

9. **No Strict Construction.** For purposes of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

10. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

11. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

12. **No Conflict Intended.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

13. **Governing Law.** The construction, interpretation, operation, effect, and validity of the Settlement, and all documents necessary to effectuate it, shall be governed by the laws of the State of New Mexico, without regard to conflicts of laws, except to the extent

that federal law requires that federal law govern. The Parties understand and agree, that any disputes arising out of the Settlement shall be governed and construed by and in accordance with the laws of the State of New Mexico, without reference or regard to choice-of-law principles.

14. **Public Statements.** The form, content, and timing of any public statement announcing the filing of and any other issue related to this Settlement Agreement will be subject to mutual agreement by Class Counsel and AAA's Counsel. The Parties and their counsel agree not to make any public statements, including statements to the media, which are inconsistent with the Settlement Agreement. Any communications to the public or the media made by or on behalf of the Parties and their respective counsel regarding the class action settlement will be made in good faith and will be consistent with the Parties' agreement to take all actions reasonably necessary for preliminary and final approval of this class action settlement. Any information contained in such communications will be balanced, fair, accurate, and consistent with the content of the Notice. Neither the Parties nor their respective counsel shall make any false or misleading statements regarding this class action settlement. Nothing herein is intended or will be interpreted to inhibit or interfere with the ability of Class Counsel or AAA's Counsel to communicate with the Court, their clients, or Settlement Class Members and/or their counsel.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically, by facsimile, or through email of an Adobe PDF shall be deemed an original. The Parties may

use electronic-signature programs, like DocuSign, to execute this Agreement.

16. **Authority.** The Parties acknowledge that each has read and understands this Agreement and that the execution hereof is not induced by any representation other than as expressly contained herein, that the person executing this Agreement on behalf of the respective party has been duly authorized to execute and deliver this Agreement, and that this Agreement is the legally binding obligation of such party.

**IN WITNESS WHEREOF**, the Parties have, through their respective counsel,  
executed this Settlement as of the date first above written.

**Approved as to form and content by counsel for Plaintiff and the Settlement Class:**

By: /s/

Kedar Bhasker  
KEDAR BHASKER  
2741 Indian School Rd. NE  
Albuquerque, NM 87106  
Phone: (505) 407-2088  
[kedar@bhaskerlaw.com](mailto:kedar@bhaskerlaw.com)

Corbin Hildebrandt  
CORBIN HILDEBRANDT, P.C.  
2741 Indian School Rd. NE  
Albuquerque, NM 87106  
Phone: (505) 998-6626  
[corbin@hildebrandtlawnm.com](mailto:corbin@hildebrandtlawnm.com)

Geoffrey Romero  
ROMERO, HARADA & WINTERS, LLC  
4801 All Saints Road NW Ste. A  
Albuquerque, NM 87120  
Phone: (505) 247-3338  
[geoff@rhwlawnm.com](mailto:geoff@rhwlawnm.com)

*Attorneys for Plaintiff and the Settlement Class*

**Approved as to form and content by counsel for AAA:**

By: /s/

Rodger L. Eckelberry  
Kevin P. Zimmerman  
BAKER & HOSTETLER LLP  
200 S. Civic Center Dr., Suite 1200  
Columbus, Ohio 43215  
Phone (614) 462-5189  
[reckelberry@bakerlaw.com](mailto:reckelberry@bakerlaw.com)  
[kzimmerman@bakerlaw.com](mailto:kzimmerman@bakerlaw.com)

Michael E. Mumford (D.N.M. Bar No. 18-95)  
Baker Hostetler LLP  
Key Tower  
127 Public Square, Suite 2000  
Cleveland, OH 44114  
Telephone: (216) 621-0200  
Facsimile: (216) 696-0740  
[mmumford@bakerlaw.com](mailto:mmumford@bakerlaw.com)

Meena H. Allen  
ALLEN LAW FIRM, LLC  
6121 Indian School Road NE, Suite 230  
Albuquerque, NM 87110  
Phone: (505) 298-9400  
[mallen@mallen-law.com](mailto:mallen@mallen-law.com)

*Attorneys for AAA*