

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

STEVEN K. FARMER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

HUMANA INC., a Delaware corporation,
and COTIVITI, INC., a Delaware
corporation,

Defendants.

Case No.: 8:21-cv-01478-MSS-SPF

**PLAINTIFF’S UNOPPOSED MOTION TO DIRECT CLASS NOTICE AND
GRANT PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff, Steven K. Farmer (“Plaintiff”) respectfully moves for preliminary approval of the Settlement and for certification of the Settlement Class.¹

I. INTRODUCTION

Defendant Cotiviti, Inc. (“Cotiviti”) helps Defendant Humana, Inc. (“Humana”) request medical records needed to verify data reported to the Centers for Medicare and Medicaid Services. S.A. ¶ I.1. Cotiviti in turn uses a subcontractor, Visionary RCM Infotech (India) Pvt Ltd (“Visionary”), to review the collected medical records. *Id.*

On or about March 1, 2021, Humana disclosed that between October 12, 2020 and December 16, 2020, an employee of Visionary gained access to personally

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement (“S.A.”), which is attached hereto as **Exhibit A**.

identifiable information (“PII”) and protected health information (“PHI”) of Humana members and shared that information with others in connection with a personal coding business (the “Data Incident”). *Id.* ¶¶ I.2-3.

On May 6, 2021, Plaintiff commenced the instant litigation by filing a complaint in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, relating to the Data Incident. *Id.* ¶ I.3. The complaint sought class action status and remedies for Plaintiff and other Humana members impacted by the Data Incident. *Id.* ¶¶ I.3-4. On or about June 17, 2021, Defendants removed the matter to this Court. *Id.*

Thereafter, the parties engaged in motion practice, including Defendants’ Motions to Dismiss (Docs. 15, 16). On January 25, 2022, the Court entered an Order granting in part and denying in part the Motions to Dismiss (Doc. 32).

On March 10, 2022, the parties engaged in mediation with mediator Harry Schafer, an experienced mediator. In advance of the mediation, the parties submitted mediation briefs advancing their respective positions on the merits of the claims and class certification. After extensive arm’s length settlement negotiations, the parties were able to reach an agreement, which, if approved by the Court, would resolve the claims of Plaintiff and the other Humana members impacted by the Data Incident.

Pursuant to the terms that were negotiated between them, the parties now wish to fully and finally resolve their dispute on a class-wide basis. Those terms are memorialized in the Settlement Agreement, which provides for the resolution of all claims asserted, or that could have been asserted, against Defendants relating to the Data Incident, by and on behalf of Plaintiff and Settlement Class Members.

The relief negotiated by counsel extremely experienced in litigating privacy litigation and security incidents of the type at issue in the present litigation, and provided by the Settlement, is designed to address the injuries and repercussions typically experienced by individuals whose personally identifiable information has been compromised in a security incident of the type at issue here. Specifically, the Settlement Agreement provides an aggregate cap of \$500,000.00, to be paid by Cotiviti, for the following general categories of relief; (i) the reimbursement of ordinary expenses, (ii) the reimbursement of other extraordinary expenses, and (iii) credit monitoring and identity protection. The Settlement Agreement also requires Cotiviti to separately pay for (i) all costs for notice to the Settlement Class as required under S.A. ¶¶ IV.3.1 and IV.3.2; (ii) Costs of Claims Administration under S.A. ¶¶ IV.8.1, IV.8.2, and IV.8.3; and (iii) the costs of Dispute Resolution described in S.A. ¶ IV.2.6. *See* S.A. ¶ IV.2.7. These services will be handled by a neutral experienced in disseminating notice to class members and administering claims of the type which may be filed by Settlement Class Members. Cotiviti will also separately pay the attorney's fees, costs, and expenses of Proposed Class Counsel and a service award to Class Representative (if permitted), as set forth in S.A. ¶ IV.7, subject to Court approval. Proposed Class Counsel has agreed to request, and Cotiviti has agreed to pay, subject to Court approval, the amount of \$300,000.00 to Proposed Class Counsel for attorney's fees, costs, and expenses. S.A. ¶ IV.7.2. Proposed Class Counsel will move the Court for a service award payment not to exceed \$2,500 per Class Representative to be paid if and only if the *en banc* Eleventh Circuit vacates the decision

in *Johnson v. MPAS Solutions, LLC*. S.A. ¶ IV.7.3. As the Court may be aware, a motion seeking *en banc* review has been pending since the end of 2020. Proposed Class Counsel will file the motion for attorneys' fees, costs, expenses, and service award at least 21 days before the deadline for objections and opt-outs.

II. BACKGROUND

A. Information About the Settlement

To explore and potentially negotiate a class-wide settlement before a neutral, the parties agreed on and retained Harry Schafer, a highly experienced mediator. Declaration of John A. Yanchunis, attached as **Exhibit B** ("Yanchunis Decl."), ¶ 16. The parties briefed their respective positions on the facts, claims, defenses, and assessments of the risk of litigation.

On March 10, 2020, the parties had a full-day mediation session with Mr. Schaffer. *Id.* The negotiations were hard-fought throughout, and the process was conducted at arm's length and non-collusive. *Id.* After extensive arm's length settlement negotiations conducted through Mr. Schaffer, the parties reached an agreement on the essential terms of settlement. *Id.* The subject of attorneys' fees, costs, and expenses, subject to Court approval, was negotiated only after all substantive terms of the Settlement were agreed upon by the parties. *Id.* ¶ 19.

Based on Plaintiff's counsel's independent investigation of the relevant facts and applicable law, experience with many other data breach cases, including other data breach cases in this District and before this Court, and the information provided by

Defendants, Plaintiff's counsel submits that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

B. The Terms of the Settlement Agreement

1. The Settlement Class

The proposed Settlement Class sought to be certified for purposes of settlement is defined as follows:

“All individuals residing in the United States whose personal information was or may have been compromised in the data breach that is the subject of the Notice of Privacy Incident that Humana sent to Plaintiff and others in substantially the same form on or around March 1, 2021.” The Settlement Class specifically excludes: (i) Humana Inc. and Cotiviti, Inc. and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity involved in the Data Incident or who pleads nolo contendere to any such charge.

S.A. ¶ IV.1.26.

2. The Settlement Benefits

Under the Settlement, Settlement Class Members are eligible to receive the following benefits:

- Reimbursement of ordinary expenses, not to exceed \$250 per Settlement Class Member, including attested-to lost time spent to address the repercussions of the Data Incident at a rate of \$20 per hour for up to 3 hours;
- Reimbursement of other extraordinary expenses not covered in the ordinary expense category incurred as a result of the Data Incident, not

to exceed \$5,000 per Settlement Class Member; and

- In order to provide protection from the potential consequences of the Data Incident, Settlement Class Members may enroll in two (2) years of IDX Identity Protection Services, regardless of whether the Settlement Class Member submits a claim for reimbursement of ordinary or extraordinary expenses.

S.A. ¶¶ IV.2.1, IV.2.2, IV.2.3.

The Identity Protection Services to be provided by IDX under the Settlement are robust and important. The retail cost of buying the same Identity Protection Services would be \$238.80 per person for 2 years of service. *See* Yanchunis Decl. ¶ 27.

3. Proposed Notice Program

Pursuant to the Settlement Agreement, the parties propose RG/2 Claims Administration LLC be appointed as Settlement Administrator. RG/2 Claims Administration LLC is a nationally-recognized class action notice and administration firm that has designed a class notice program for this case, which the parties and RG/2 Claims Administration LLC believe is an effective program.

Subject to Court approval, this Notice Program involves direct notice disseminated via mail or email to all Settlement Class Members. S.A. ¶ IV.3.1.f. The forms of Notice are attached as Exhibits B and C to the Settlement Agreement. A declaration from RG/2 Claims Administration LLC with additional details about the Notice Program is attached hereto as **Exhibit C** (“Wickersham Decl.”).

Finally, RG/2 Claims Administration LLC will also establish a settlement website. S.A. ¶ IV.3.2. In addition to the Notice, the website will include information about the Settlement, related case documents, and the Settlement Agreement.

Settlement Class Members will also be able to submit claims electronically.

Notice of the Settlement will be given to the Settlement Class no later than thirty (30) days from the date of the Court's Preliminary Approval Order. *Id.*²

The Notice informs Settlement Class Members of the nature of the Action, the litigation background, the terms of the agreement, the relief provided, Proposed Class Counsel's request for fees, costs, and expenses, and the scope of the release and the binding nature of the Settlement on Class Members. The Notice also describes the procedure for objecting to the Settlement; advises Settlement Class Members that they have the right to opt out and describes the consequences of opting out; and will state the date and time of the final approval hearing (subject to this Court's scheduling), advising that the date may change and how to check the settlement website.

Plaintiff is informed that all costs for notice to the Settlement Class as required under ¶¶ IV.3.1 and IV.3.2, Costs of Claims Administration under ¶¶ IV.8.1, IV.8.2, and IV.8.3, and the costs of Dispute Resolution described in ¶ IV.2.6 are expected to be approximately \$80,057.00. Wickersham Decl. ¶ 13.

4. Exclusion and Objection Procedures

The proposed Notice advises Settlement Class Members of their rights to object or opt out of the Settlement and directs Settlement Class Members to the settlement website for more information. The Notice provides instructions for Settlement Class Members to exclude themselves from the Settlement Class. The Notice also provides

² A proposed Preliminary Approval Order is attached hereto as **Exhibit D**.

instructions for Settlement Class Members to object to the Settlement and/or to Plaintiff's Counsel's application for attorneys' fees, costs, and expenses. S.A. ¶¶ IV.5.1, IV.5.2.

5. Attorneys' Fees, Costs, and Expenses

Proposed Class Counsel has agreed to request, and Cotiviti has agreed to pay, subject to Court approval, the amount of \$300,000 for attorneys' fees, costs, and expenses. S.A. ¶ IV.7.2. Notably, the parties did not negotiate this agreement or any other issue with respect to attorneys' fees, costs, and expenses until after they had reached an agreement on Class relief. Yanchunis Decl. ¶ 19.

6. Release of Claims

Under the Settlement, each Settlement Class Member will release:

any and all claims and causes of action that were or could have been brought in the Litigation based on, relating to, concerning or arising out of the Data Incident and alleged theft or misuse of Humana members' PII or PHI, or the allegations, facts, or circumstances related to the Data Incident as described in the Litigation ... by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Data Incident and alleged theft or misuse of Humana members' PII or PHI or the allegations, facts, or circumstances related to the Data Incident as described in the Litigation.

S.A. ¶¶ IV.1.21, IV.6.1.

III. ARGUMENT

A. Certification of the Settlement Class is Appropriate

Prior to granting preliminary approval of a proposed settlement, the Court should first determine the proposed Settlement Class is appropriate for certification.

See MANUAL FOR COMPLEX LITIG., § 21.632 (4th ed. 2004); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Class certification is proper if the proposed class, proposed class representative, and proposed class counsel satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a). Fed. R. Civ. P. 23(a)(1)–(4); see also *Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 313 (S.D. Fla. 2001). Additionally, where (as here) certification is sought under Rule 23(b)(3), the plaintiff must demonstrate that common questions of law or fact predominate and that a class action is superior to other methods of adjudicating the claims. Fed. R. Civ. P. 23(b)(3); *Amchem*, 521 U.S. at 615–16. District courts are given broad discretion to determine whether certification of a class action lawsuit is appropriate. *Walco Investments, Inc. v. Thenen*, 168 F.R.D. 315, 323 (S.D. Fla. 1996).

Judges in this district have noted—many times—that “[a] class may be certified solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.”³

“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem*, 521 U.S.

³ *Iverson v. Advanced Disposal Servs., Inc.*, 2021 WL 4943585, at *3 (M.D. Fla. Aug. 6, 2021) (Toomey, M.J.), report and recommendation adopted, 2021 WL 4943586 (M.D. Fla. Sept. 17, 2021) (Davis, J.); *Flores v. Acorn Stairlifts, Inc.*, 2020 WL 9549903, at *1 (M.D. Fla. Jan. 31, 2020) (same) (Smith, M.J.) report and recommendation adopted, Case No. 6:19-cv-00844, ECF No. 49 (M.D. Fla. March 24, 2020) (Berger, J.).

at 620. This case meets all of the Rule 23(a) and (b)(3) prerequisites, and for the reasons set forth below, certification is appropriate.

1. The Proposed Settlement Class Meets the Requirements of Rule 23(a).

a. Numerosity.

Numerosity requires “the class [be] so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). “While ‘mere allegations of numerosity are insufficient,’ Fed. R. Civ. P. 23(a)(1) imposes a ‘generally low hurdle,’ and ‘a plaintiff need not show the precise number of members in the class.’” *Manno v. Healthcare Revenue Recovery Grp., LLC*, 289 F.R.D. 674, 684 (S.D. Fla. 2013) (citation omitted). Courts require only that plaintiffs provide “some evidence of the number of members in the purported class, or at least a reasonable estimate of that number.” *Leszczynski v. Allianz Ins.*, 176 F.R.D. 659, 669 (S.D. Fla. 1997).

Here, Humana sent notices of the Data Incident to 64,653 Humana members. S.A. ¶ I.2. Thus, numerosity is easily satisfied.

b. Commonality.

The second prerequisite to certification is commonality, which “requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2545 (2011) (citation omitted). The

commonality requirement presents a low hurdle, as it does not require that all questions of law and fact raised be common. *Muzuco v. Re\$submitIt, LLC*, 297 F.R.D. 504, 514 (S.D. Fla. 2013). “[F]or purposes of Rule 23(a)(2) ‘[e]ven a single [common] question’ will do.” *Dukes*, 131 S. Ct. at 2556. Rule 23(a)(2) requires “only that there be at least one issue whose resolution will affect all or a significant number of the putative class members.”⁴ Here, commonality is readily satisfied.

The Settlement Class Members are joined by the common questions of law and fact that arise from the same event: the Data Incident. *See Manno*, 289 F.R.D. at 685. Specifically, Plaintiff alleged, among others, the following common questions:

- a. Whether and to what extent Defendants had a duty to protect the PII and PHI of Plaintiff and Class Members;
- b. Whether Defendants had duties not to disclose the PII and PHI of Plaintiff and Class Members to unauthorized third parties;
- c. Whether Defendants had duties not to use the PII and PHI of Plaintiff and Class Members for non-business purposes;
- d. Whether Defendants failed to adequately safeguard the PII and PHI of Plaintiff and Class Members;
- e. Whether and when Defendants actually learned of the Data Breach;
- f. Whether Defendants adequately, promptly, and accurately informed Plaintiff and Class Members that their PII and PHI had been compromised;
- g. Whether Defendants violated the law by failing to promptly notify Plaintiff and Class Members that their PII and PHI had been compromised;
- h. Whether Defendants failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the

⁴ *Sharf v. Fin. Asset Resolution, LLC*, 295 F.R.D. 664, 669 (S.D. Fla. 2014) (cleaned up) (quoting *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009)); *James D. Hinson Elec. Contr. Co. v. BellSouth Telecomms., Inc.*, 275 F.R.D. 638, 642 (M.D. Fla. 2011) (citing *Williams*, 568 F.3d at 1355).

information compromised in the Data Breach;

- i. Whether Defendants adequately addressed and fixed the vulnerabilities which permitted the Data Breach to occur;
- j. Whether Defendants engaged in unfair, unlawful, or deceptive practices by failing to safeguard the PII and PHI of Plaintiff and Class Members;
- k. Whether Plaintiff and Class Members are entitled to actual damages, statutory damages, and/or nominal damages as a result of Defendants' wrongful conduct;
- l. Whether Plaintiff and Class Members are entitled to restitution as a result of Defendants' wrongful conduct; and
- m. Whether Plaintiff and Class Members are entitled to injunctive relief to redress the imminent and currently ongoing harm faced as a result of the Data Breach.

(Compl. ¶ 69). Such issues, focusing on Defendant's conduct, satisfy commonality.⁵

c. Typicality.

The next prerequisite to certification, typicality, “measures whether a significant nexus exists between the claims of the named representative and those of the class at large.” *Hines v. Widnall*, 334 F.3d 1253, 1256 (11th Cir. 2003); Fed. R. Civ. P. 23(a)(3). A class representative's claims are typical of the claims of the class if they “arise from the same event or pattern or practice and are based on the same legal theory.”⁶ Simply put, when the same course of conduct is directed at both the named

⁵ See, e.g., *In re Countrywide Fin. Corp. Cust. Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) (“All class members had their private information stored in Countrywide's databases at the time of the Data Security Incident”); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) (“Answering the factual and legal questions about Heartland's conduct will assist in reaching classwide resolution.”).

⁶ *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984); see also *Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004) (“Neither the typicality nor the commonality requirement mandates that all putative class members share identical claims, and . . . factual differences among the claims of the putative members do not defeat certification.”).

plaintiff and the members of the proposed class, the typicality requirement is met. *Kennedy v. Tallant*, 710 F.2d 711, 717 (11th Cir. 1983).

Here, typicality is satisfied for the same reasons as commonality. Specifically, Plaintiff's claims are typical of those of other Settlement Class Members because they arise from the Data Incident. They are also based on the same legal theory, *i.e.*, that Defendants had legal duties to protect Plaintiff's and Settlement Class Members' PII and PHI. Because there is a "sufficient nexus" between Plaintiff's and Settlement Class Members' claims, typicality is met. *Hines*, 334 F.3d at 1256.

d. Adequacy.

Rule 23(a)(4) requires that the class representative "not possess interests which are antagonistic to the interests of the class." 1 NEWBERG ON CLASS ACTIONS § 3:21. Additionally, the class representative's counsel "must be qualified, experienced, and generally able to conduct the litigation." *Id.*; *Amchem*, 521 U.S. at 625–26. At this stage, there is nothing suggesting this requirement is not satisfied. Plaintiff is a member of the Settlement Class and does not possess any interests antagonistic to the Settlement Class. He authorized Humana to collect and retain his PII and PHI and alleges it was compromised by the Data Incident, as the PII and PHI of the Settlement Class was also allegedly compromised. Indeed, Plaintiff's claims coincide identically with the claims of the Settlement Class, and Plaintiff and the Settlement Class desire the same outcome of this litigation. Because of this, Plaintiff has prosecuted this case for the benefit of all Settlement Class Members.

In addition, Proposed Class Counsel are experienced in class action litigation and have submitted their skills and experience in handling class litigation around the country and in this District. Yanchunis Decl., ¶¶ 3–12, and its Composite Exh. 1. Because Plaintiff and his counsel have devoted substantive time and resources to this litigation, the adequacy requirement is satisfied.

2. The Predominance and Superiority Requirements of Are Met.

In addition to meeting Rule 23(a), the proposed Settlement Class must also meet one of the three requirements of Rule 23(b). *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 660 (S.D. Fla. 2011). Here, Plaintiff seeks certification under Rule 23(b)(3), which requires that: (1) questions of law and fact common to members of the class predominate over any questions affecting only individuals; and (2) the class action mechanism is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3). “It is not necessary that all questions of fact or law be common, but only that some questions are common and that they predominate over individual questions.” *BellSouth Telecomms., Inc.*, 275 F.R.D. at 644 (quoting *Klay v. Humana, Inc.*, 382 F.3d 1241, 1254 (11th Cir. 2004)). The “inquiry into whether common questions predominate over individual questions is generally focused on whether there are common liability issues which may be resolved efficiently on a class-wide basis.” *Agan*, 222 F.R.D. at 700. The Settlement Class readily meets these requirements.

a. Predominance.

The predominance requirement focuses on whether a defendant's liability is common enough to be resolved on a class basis, *see Dukes*, 131 S. Ct. at 2551–57, and whether the proposed class is “sufficiently cohesive to warrant adjudication by representation,” *Amchem*, 521 U.S. at 623. Common issues of fact and law predominate “if they have a direct impact on every class member’s effort to establish liability and on every class member’s entitlement to injunctive and monetary relief.”⁷ Predominance does not require that all questions of law or fact be common, but rather, that a significant aspect of the case “can be resolved for all Settlement Class Members of the class in a single adjudication.” *In re Checking*, 275 F.R.D. at 660. “When ‘one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.’”⁸

Common issues readily predominate here because the central liability question in this case—whether Defendants failed to safeguard Plaintiff’s PII and PHI, like that of every other Settlement Class Member—can be established through generalized evidence.⁹ Several case-dispositive questions could be resolved identically for all

⁷ *BellSouth Telecomms., Inc.*, 275 F.R.D. at 644 (citing *Klay*, 382 F.3d at 1255); *see also Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1179 (11th Cir. 2010) (noting that “[t]he relevant inquiry [is] whether questions of liability to the class . . . predominate over . . . individual issues relating to damages. . .”).

⁸ *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (quoting 7AA C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 1778, 123–124 (3d ed. 2005)).

⁹ *See Klay*, 382 F.3d at 1264 (“When there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member’s individual position, the predominance test will be met.”).

members of the Settlement Class, such as whether Defendants had duties to exercise reasonable care in safeguarding, securing, and protecting their PII and PHI and whether Defendants breached those duties. The many common questions that arise from Defendants' conduct predominate over individualized issues. Other courts have recognized that common issues arising from a data breach predominate.¹⁰ Because the claims are being certified for settlement purposes, there are no manageability issues.¹¹

b. Superiority.

Finally, a class action is superior to other methods available to fairly, adequately, and efficiently resolve the claims of the proposed Settlement Class. As courts have historically noted, “[t]he class action fills an essential role when the plaintiffs would not have the incentive or resources to prosecute relatively small claims in individual suits, leaving the defendant free from legal accountability.” *In re Checking*, 286 F.R.D. at 659. At its most basic, “[t]he inquiry into whether the class action is the superior method for a particular case focuses on ‘increased efficiency.’”¹² Factors the Court may consider are: (1) the interests of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members

¹⁰ See, e.g., *Countrywide*, 2009 WL 5184352, at *6–7 (finding predominance where proof would focus on data breach defendant's conduct both before and during the theft of class members' information); *Heartland*, 851 F. Supp. 2d at 1059 (finding predominance where “several common questions of law and fact ar[ose] from a central issue: Heartland's conduct before, during, and following the Data Security Incident, and the resulting injury to each class member from that conduct”).

¹¹ *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”).

¹² *Agan*, 222 F.R.D. at 700 (quoting *Sikes v. Teleline, Inc.*, 281 F.3d 1350, 1359 (11th Cir. 2002)).

of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class.

Here, resolution of numerous claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See* Fed. R. Civ. P. 23(b)(3). Indeed, absent class treatment, each Settlement Class Member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. Moreover, there is no indication that Settlement Class Members have an interest or incentive to pursue their claims individually, given the amount of damages likely to be recovered, relative to the resources and expense required to prosecute such an action.¹³ Additionally, the Settlement will give the parties the benefit of finality.

B. Plaintiff's Counsel Should Be Appointed as Class Counsel.

Under Rule 23, “a court that certifies a class must appoint class counsel . . . [who] must fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). In making this determination, the court must consider the proposed class counsel's: (1) work in identifying or investigating potential claims; (2) experience in handling class actions or other complex litigation and the types of claims

¹³ *See In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 700 (S.D. Fla. 2004) (class actions are “particularly appropriate where . . . it is necessary to permit the plaintiffs to pool claims which would be uneconomical to litigate individually”).

asserted in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).

As discussed above, and as fully explained in Mr. Yanchunis' Declaration, Proposed Class Counsel have extensive experience prosecuting similar class actions, as well as other complex litigation, and have the experience to assess the risk of continued litigation and appeals. Proposed Class Counsel have diligently investigated and prosecuted the claims here, have dedicated substantive resources to the litigation of those claims, and have successfully negotiated the Settlement to the benefit of Plaintiff and the Settlement Class. Accordingly, the Court should appoint John A. Yanchunis and Ryan D. Maxey as Class Counsel.

C. The Settlement Is Fair, Reasonable, and Adequate.

After determining that certification is appropriate, courts next consider whether the proposed settlement warrants preliminary approval. Under Rule 23(e), the Court should approve a class action settlement if it is fair, reasonable, and adequate.¹⁴

Further, it must be noted that there is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation.¹⁵ Thus,

¹⁴ See *Taylor v. Citizens Telecom Servs. Co., LLC*, ---F. Supp. 3d --- 2022 WL 456448, at *2 (M.D. Fla. Feb. 8, 2022) (Honeywell, J.) (finding the "Settlement Agreement, including all Exhibits thereto, [were] entered into in good faith and [thus were] fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members").

¹⁵ *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits"); *Warren v. City of Tampa*, 693 F. Supp. 1051, 154 (M.D. Fla. 1998), *aff'd*, 893 F. 2d 347 (11th Cir. 1998); *Access Now, Inc. v. Claires Stores, Inc.*, No. 00-cv-14017, 2002 WL 1162422, at *4 (S.D. Fla. May 7, 2002). This is because class action settlements ensure class members a benefit, as opposed to the "mere possibility of recovery at some indefinite time in the future." *In re Domestic Air Transport.*, 148 F.R.D. 297, 306 (N.D. Ga. 1993); see also, e.g., *Ass'n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (finding that the policy

while district courts have discretion in deciding whether to approve a proposed settlement, deference should be given to the consensual decision of the parties. *Warren*, 693 F. Supp. at 1054 (“affording great weight to the recommendations of counsel for both parties, given their considerable experience in this type of litigation”).

1. The Settlement Satisfies Amended Rule 23(e)

Rule 23(e)(1) now provides that notice should be given to the class, and hence, preliminary approval should be granted, where the Court “will likely be able to” (i) finally approve the settlement under Amended Rule 23(e)(2), and (ii) certify the class for settlement purposes. Fed. R. Civ. P. 23(e)(1)(B)(i)–(ii); *see also id.* 2018 Amendment Advisory Committee Notes. As explained above, the Class here meets the criteria for certification of a settlement class, including all aspects of numerosity, commonality, typicality, adequacy, and predominance. Rule 23(e)(1)(B)(ii) is therefore met.

As to Rule 23(e)(1)(B)(i), final approval is proper under the amended rule upon a finding that the settlement is “fair, reasonable, and adequate” after considering:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and

favoring settlement is especially relevant in class actions and other complex matters, where the inherent costs, delays and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain).

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e). Here, the Court will “likely be able to” finally approve this Settlement and thus preliminary approval should be granted.

a. Adequacy of Representation and Arm’s Length Negotiation

As explained above, Plaintiff and Class Counsel have adequately represented the Class. *See supra* § III.A.1.d. Moreover, the Settlement was negotiated at arm’s length using experienced mediator Harry Schafer. Yanchunis Decl. ¶ 16.¹⁶ Subsections (A) and (B) of Rule 23(e)(2) are therefore met.

b. Adequacy of Relief

The relief offered by the Settlement is adequate considering the risks of continued litigation. Although Plaintiff is confident in the merits of his claims, the risks involved in prosecuting a class action through trial cannot be disregarded. Plaintiff’s claims would still need to succeed against the pending motion to dismiss (Doc. 89), and on a motion for class certification, and likely survive an appeal thereof.

Pursuant to the Settlement, Cotiviti will pay an aggregate cap of \$500,000.00 for (i) the reimbursement of ordinary expenses, (ii) the reimbursement of other extraordinary expenses, and (iii) credit monitoring and identity protection. Each Settlement Class Member who submits a timely and valid claim form may receive

¹⁶ *See also Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding class settlement not collusive in part because it was overseen by “an experienced and well-respected mediator”); *Lipuma*, 406 F. Supp. 2d at 318-19 (approving settlement where the “benefits conferred upon the Class are substantial, and are the result of informed, arms-length negotiations by experienced Class Counsel”).

reimbursement of (i) ordinary expenses not to exceed \$250 per Settlement Class Member, including attested-to lost time at a rate of \$20 for up to 3 hours and (ii) other extraordinary expenses not to exceed \$5,000 per Settlement Class Member. Settlement Class Members are also eligible to enroll in IDX Identity Protection Services for two (2) years by affirmatively requesting credit monitoring on the Claim Form. S.A. ¶ 2.3. Given the relief available, Class Counsel believe the results achieved are well within the range of possible approval.

Here, the central legal issues affecting the Settlement Class are as attacks on the substantive claims Plaintiff has alleged. *See* (Doc. 15, 16). Nevertheless, and despite the strength of the Settlement, Plaintiff is pragmatic in his awareness of the various defenses available to Defendants, as well as the risks inherent to continued litigation. Defendants have consistently denied the allegations and made clear that they would vigorously defend this case through trial as needed.

Settlement relief will be distributed via a straight-forward claims process utilizing an easy-to-understand claim form. Checks for approved claims shall be mailed and postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later. S.A. ¶ IV.8.2.

Attorneys' fees, costs, and expenses were negotiated separate, apart, and after reaching agreement on Class relief. Yanchunis Decl. ¶ 19. Proposed Class Counsel will request the amount of \$300,000 for attorneys' fees, costs, and expenses, S.A. ¶ IV.7.2, and move the Court for a service award payment not to exceed \$2,500 per Class Representative to be paid if and only if the *en banc* Eleventh Circuit vacates the

decision in *Johnson v. MPAS Solutions, LLC*. S.A. ¶ IV.7.3. Cotiviti shall pay the Court-approved amount of attorneys' fees, costs, expenses, and service award to Plaintiff (if applicable) to an account established by Proposed Class Counsel within thirty (30) days after the entry of an order of Final Approval, regardless of any appeal that may be filed or taken by any Class Member or third party. S.A. ¶ IV.7.4. Class Counsel will repay to Cotiviti the amount of the award of attorneys' fees and costs in the event that the final approval order and final judgment are not upheld on appeal and, if only a portion of fees or costs (or both) is upheld, Class Counsel will repay to Cotiviti the amount necessary to ensure the amount of attorneys' fees or costs (or both) comply with any court order. *Id.*

Accordingly, the relief provided by the Settlement is fair, reasonable, and adequate especially when considering the inherent costs, risks, and delay were this matter to proceed. Subsection (C) of Rule 23(e)(2) is therefore met.

c. The Settlement Treats Class Members Equitably

The last requirement of the new Rule 23(e) is that the Settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement treats Class Members equitably because all Settlement Class Members are eligible for reimbursement following submission of a claim form and/or IDX Identity Protection Services for two (2) years from the Effective Date. Yanchunis Decl. ¶ 27.

2. The Settlement Satisfies Historic Preliminary Approval Factors

The historical procedure for review of a proposed class action settlement is a well-established two-step process. ALBA & CONTE, 4 NEWBERG ON CLASS ACTIONS,

§11.25, at 38–39 (4th ed. 2002). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval.”¹⁷ “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, No. 09-cv-60646, 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010). Settlement negotiations involving arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness.¹⁸

Here, there is no question that the proposed Settlement is “within the range of possible approval.” As explained above, the process used to reach the Settlement was exceedingly fair and overseen by an experienced neutral. The Settlement is the result of intensive, arm’s length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues in this case. Further, the relief provided is significant, especially considering the risks and delay further litigation would entail. Thus, the Settlement is due to be preliminarily approved.

D. The Proposed Class Notice Satisfies Rule 23.

“Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal,

¹⁷ *Id.* (quoting MANUAL FOR COMPLEX LITIG., §30.41 (3rd ed. 1995)); *Fresco v. Auto Data Direct, Inc.*, No. 03-cv-61063, 2007 WL 2330895, at *4 (S.D. Fla. May 14, 2007).

¹⁸ *See* MANUAL FOR COMPLEX LITIG. at §30.42. (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted).

or compromise regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3).” MANUAL FOR COMPL. LITIG. § 21.312 (internal quotation marks omitted). The best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). To satisfy this standard, “[n]ot only must the substantive claims be adequately described but the notice must also contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action.” *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998) (internal quotation marks omitted).

The Notice program here satisfies all of these criteria and is designed to provide the best notice practicable. The Notice is reasonably calculated to apprise the Settlement Class of the pendency of the case, class certification (for settlement purposes), the terms of the Settlement, Proposed Class Counsel’s request for attorney’s fees, costs, and expenses, Settlement Class Members’ rights to opt-out of or object to the Settlement, as well as the other information required by Fed. R. Civ. P. 23(c)(2)(B). The Notice program is comprised of: (1) direct Notice sent by mail or email; and (2) Notice posted to the settlement website. S.A. ¶¶ IV.1.18, IV.3.1(f), IV.3.2. This approach will satisfy due process. Wickersham Decl. ¶ 12.

The form of the Preliminary Approval Order, Exhibit D, has been drafted and approved by counsel for Plaintiff and counsel for Defendants. The proposed claim form, S.A. Exhibit A, likewise satisfies all of the above criteria. Finally, Defendants

will cause the Claims Administrator to provide the notification required by the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, to the relevant state and federal governmental officials. S.A. ¶ IV.3.4.

Therefore, the Notice and Notice Program satisfy all applicable requirements of the law, including Rule 23 and Due Process. The Court should therefore approve the Notice, Notice Program, and the form and content of the claim form and Notice.

E. The Court Should Schedule a Final Approval Hearing.

The last step in the preliminary approval process is to schedule a Final Approval Hearing, at which the Court will hear evidence and argument necessary to make its final evaluation of the Settlement; whether to enter a Final Approval Order under Rule 23(e); and whether to approve Proposed Class Counsel’s request for the Fee Award and Costs. Plaintiff requests that the Court schedule the Final Approval Hearing at a date convenient for the Court, at least 90 days after Defendants notify the appropriate government officials pursuant to CAFA. Class Counsel will file the motion for Final Approval no later than 21 days prior to the hearing.

IV. CONCLUSION

For the reasons stated, Plaintiff respectfully requests that the Court enter an order: (1) preliminarily approving the proposed settlement; (2) preliminarily certifying the Settlement Class; (3) appointing Steven K. Farmer as Settlement Class representative; (4) appointing John A. Yanchunis and Ryan D. Maxey as Class Counsel; (5) approving the proposed Notice Program and authorizing its dissemination; (6) appointing RG/2 Claims Administration LLC as the Settlement

Administrator; (7) approving the procedures for exclusions and objection; and (8) setting a schedule for the final approval process. A proposed Preliminary Approval Order is attached as **Exhibit D**.

Dated: May 23, 2022

Respectfully submitted,

/s/ John A. Yanchunis

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*Attorneys for Plaintiff and the Proposed
Class*

Local Rule 3.01(g) Certification

In accord with Local Rule 3.01(g), Plaintiff conferred with Defendants regarding the relief requested in this motion and Defendants do not object to the relief sought herein but only in connection with the proposed settlement of this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 23, 2022, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using CM/ECF. Copies of

the foregoing document will be served upon counsel via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ John A. Yanchunis

Exhibit A

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 8:21-cv-001478-MSS-SPF

STEVEN K. FARMER, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

HUMANA INC., a Delaware corporation; and
COTIVITI, INC., a Delaware corporation,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement, dated May 22, 2022, is made and entered into by and among:

(1) Plaintiff Steven K. Farmer; and (2) Defendant Humana Inc. ("Humana"); and (3) Defendant Cotiviti, Inc. ("Cotiviti") (collectively, the "Parties").

I. BACKGROUND

1. Cotiviti helps Humana request medical records needed to verify data reported to the Centers for Medicare and Medicaid Services. Cotiviti in turn uses a subcontractor, Visionary RCM Infotech (India) Pvt Ltd ("Visionary"), to review the collected medical records.

2. This litigation arises from a data incident that occurred between October 12, 2020 and December 16, 2020. The circumstances giving rise to the above-captioned lawsuit involved an employee of Visionary who gained access to personally identifiable information ("PII") and protected health information ("PHI") of Humana members and shared that information with others in connection with a personal coding business (the "Data Incident"). The exposed information may have included names, partial or full social security numbers, dates of birth, addresses (with

city, state, and zip code), phone numbers, email addresses, member identification numbers, subscriber information numbers, dates of service, dates of death, provider names, medical record numbers, treatment information, and actual images (x-rays, photographs, etc.). Following the Data Incident, Humana sent notices to 64,653 Humana members.

3. After Humana provided notice of the Data Incident on or about March 1, 2021, Plaintiff Farmer filed a putative class action Complaint on May 6, 2021 in the Circuit Court for the Twelfth Judicial Circuit in and for Sarasota County, Florida. This case was removed to the U.S. District Court for the Middle District of Florida on June 17, 2021.

4. In his Complaint, Plaintiff Farmer asserted claims against Humana and Cotiviti (collectively “Defendants”) for negligence, breach of implied contract (against Humana only), invasion of privacy, breach of confidence, and violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”).

5. Humana and Cotiviti separately moved to dismiss Plaintiff Farmer’s claims, and those motions were granted in part and denied in part. *See* ECF No. 32. With respect to Cotiviti, the Court dismissed the invasion of privacy, breach of confidence, and FDUTPA claim (to the extent Plaintiff Farmer seeks damages). The only claims surviving against Cotiviti are (1) negligence and (2) the FDUTPA claim to the extent Farmer seeks injunctive relief under that statute. With respect to Humana, the Court dismissed the invasion of privacy, breach of confidence, and FDUTPA claim. The only claims surviving against Humana are (1) negligence and (2) breach of implied contract.

6. On March 10, the Parties participated in a full-day mediation with Mediator Harry Schafer. After coming to an agreement in principle, the Parties finalized the terms of this Settlement Agreement and the attached exhibits.

7. Pursuant to the terms set out below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Humana, Cotiviti, and the Released Persons (as defined below) relating to the Data Incident, by and on behalf of the Representative Plaintiff and Settlement Class Members (as defined below) and any other such actions by and on behalf of any other persons in the United States and relating to the Data Incident.

II. CLAIMS OF REPRESENTATIVE PLAINTIFF AND BENEFITS OF SETTLING

8. Representative Plaintiff Farmer believes the claims asserted in the Litigation, as set forth in the Complaint, have merit. Representative Plaintiff and Proposed Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the litigation against Humana and Cotiviti through motion practice, trial, and potential appeals. They have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Proposed Class Counsel are experienced in class action litigation and are very knowledgeable regarding the relevant claims, remedies, and issues generally in such litigation and in this Litigation. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interest of Plaintiff and the Settlement Class.

III. DENIAL OF WRONGDOING AND LIABILITY

9. Humana and Cotiviti deny all the claims and contentions alleged against them in the Litigation, and all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, Humana and Cotiviti have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement

Agreement. Humana and Cotiviti have also considered the uncertainty and risks inherent in any litigation. Humana and Cotiviti have, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. SETTLEMENT TERMS

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 and among the Class Representative, individually and on behalf of the Settlement Class, Humana, and Cotiviti that, subject to the approval of the Court, the Litigation be forever resolved, settled, compromised, and dismissed with prejudice on the following terms and conditions:

1. Definitions

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this agreement.

1.2 “Approved Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the Dispute Resolution process.

1.3 “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Claims Administrator.

1.4 “Claims Administrator” means a company experienced in administering class action claims generally and specifically those of the type provided for and made in data incident litigation, to be jointly agreed upon by the Settling Parties and approved by the Court.

1.5 “Claims Deadline” means the postmark deadline for valid claims pursuant to ¶ 2.4.

1.6 “Claim Form” means the form that the Settlement Class Member must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall require a sworn signature or electronic verification under penalty of perjury, but shall not require a notarization. The Claim Form template is attached as **Exhibit A** to this Settlement Agreement.

1.7 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.8 “Court” means the United States District Court for the Middle District of Florida Tampa Division.

1.9 “Data Incident” means the data security incident that occurred between October 12, 2020 and December 16, 2020 involving an employee of Visionary who gained access to personally identifiable information (“PII”) and protected health information (“PHI”) of Humana members and shared that information with others in connection with a personal coding business. The exposed information may have included names, partial or full social security numbers, dates of birth, addresses (with city, state, and zip code), phone numbers, email addresses, member identification numbers, subscriber information numbers, dates of service, dates of death, provider names, medical record numbers, treatment information, and actual images (x-rays, photographs, etc.).

1.10 “Dispute Resolution” means the process for resolving disputed Settlement Claims as set forth in this Agreement.

1.11 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 1.12 and ¶ 9.1 herein have occurred and been met.

1.12 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

1.13 “Judgment” means a judgment rendered by the Court.

1.14 “Litigation” or “Action” means *Steven K. Farmer v. Humana Inc. and Cotiviti, Inc.*, Case No. 8:21-cv-001478-MSS-SPF, pending in the U.S. District Court for the Middle District of Florida (Tampa Division).

1.15 “Notice” means the written notice to be sent to the Settlement Class Members pursuant to the Preliminary Approval Order.

1.16 “Objection Date” means the date by which objections to the settlement from Settlement Class Members must be filed with the Clerk of Court in order to be effective and timely.

1.17 “Opt-Out Date” means the date by which requests for exclusion from settlement must be postmarked in order to be effective and timely.

1.18 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and

any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.19 “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing mailed notice to the Settlement Class of the pendency of the Action and of the Settlement, to be entered by the Court.

1.20 “Plaintiff’s Counsel” and “Proposed Class Counsel” means John A. Yanchunis and Ryan D. Maxey of MORGAN & MORGAN COMPLEX LITIGATION GROUP.

1.21 “Related Entities” means Humana’s and Cotiviti’s past or present parents, subsidiaries, divisions, related or affiliated entities, and subcontractors (including Visionary and its past, or present parents, subsidiaries, divisions, related or affiliated entities), and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, other than any individual who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.22 “Released Claims” shall collectively mean any and all claims and causes of action that were or could have been asserted based on, relating to, concerning or arising out of the Data Incident and alleged theft or misuse of Humana members’ PII or PHI, or the allegations, facts, or circumstances related to the Data Incident as described in the Litigation including, without limitation, any violations of Florida and similar state consumer protection statutes; any violation of the California Customer Records Act, California Unfair Competition Law, California Consumers Legal Remedies Act; Florida Deceptive and Unfair Trade Practices Act; negligence; negligence per se; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; misrepresentation (whether fraudulent, negligent or innocent); unjust

enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Data Incident and alleged theft or misuse of Humana members' PII or PHI or the allegations, facts, or circumstances related to the Data Incident. Released Claims shall include Unknown Claims as defined in ¶ 1.29. Released Claims shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.23 "Released Persons" means Humana Inc. and Cotiviti, Inc., the Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

1.24 "Representative Plaintiff" means Steven K. Farmer.

1.25 "Settlement Claim" means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.26 "Settlement Class" means "All individuals residing in the United States whose personal information was or may have been compromised in the data incident that is the subject of the Notice of Privacy Incident that Humana sent to Plaintiff and others in substantially the same form on or around March 1, 2021." The Settlement Class specifically excludes: (i) Humana Inc.

and Cotiviti, Inc. and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other individual found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity involved in the Data Incident or who pleads *nolo contendere* to any such charge.

1.27 “Settlement Class Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.28 “Settling Parties” means, collectively, Humana Inc. and Cotiviti, Inc. and Representative Plaintiff, individually and on behalf of the Settlement Class.

1.29 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including the Representative Plaintiff, does not know or suspect to exist as of the date of the entry of the Preliminary Approval Order that, if known by him, might have affected his settlement with, and release of, the Released Persons, or might have affected his decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Representative Plaintiff expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

account; (ix) costs associated with credit monitoring or identity theft insurance purchased prior to the Effective Date of the Settlement, if purchased primarily as a result of the Data Incident (with reasonable documentation and an affirmative statement by Settlement Class Member that it was purchased primarily because of the Data Incident, and with proof of purchase); and (x) compensation for attested-to lost time spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath/cleanup of the Data Incident, at a rate of \$20 for up to 3 hours (attestation requires at least a narrative description of the activities performed during the time claimed and their connection to the Data Incident)

2.2 Other Extraordinary Expense Reimbursement. Settlement Class Members are also eligible to receive extraordinary expense reimbursement, not to exceed \$5,000 per Settlement Class Member, for monetary out-of-pocket losses that occurred more likely than not as a result of the Data Incident if: (a) it is an actual, documented, and unreimbursed monetary loss; (b) was more likely than not caused by the Data Incident; (c) occurred during the time period from October 2020, through and including the end of the Claims Deadline (*see* ¶ 2.4); (d) is not an amount already covered by one or more of the categories in ¶ 2.1; and (e) the claimant made reasonable efforts to avoid, or seek reimbursement for the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. Settlement Class Members may only submit one claim for benefits under this paragraph ¶ 2.2 and the total of all amounts recovered under this paragraph shall not exceed \$5,000 per Settlement Class Member.

2.3 Credit Monitoring and Identity Protection. Settlement Class Members are eligible to receive 2-years of IDX Identity Protection Services, which includes 1) single bureau credit monitoring and alerts; 2) cyber scan dark web monitoring; 3) identity theft insurance up to \$1,000,000 U.S.D.; and 4) fully managed identity recovery. Settlement Class Members must

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class Members, including Representative Plaintiff, and any of them, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Representative Plaintiff expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.30 “United States” as used in this Settlement Agreement includes the District of Columbia and all territories of the United States.

2. Settlement Benefits

2.1 Ordinary Expense Reimbursement. All Settlement Class Members who submit a valid claim using the Claim Form (**Exhibit A** to this Settlement Agreement) are eligible to receive reimbursement for documented out-of-pocket losses, if plausibly caused by the Data Incident, not to exceed \$250 per Settlement Class Member, including: (i) cost to obtain credit reports; (ii) fees relating to a credit freeze; (iii) card replacement fees; (iv) late fees; (v) overlimit fees; (vi) interest on payday loans taken as a result of the Data Incident; (vii) other bank or credit card fees; (viii) postage, mileage, and other incidental expenses resulting from lack of access to an existing

affirmatively request credit monitoring by indicating such request on the Claim Form, and codes will be sent either to an email address provided by the Settlement class member or, if they do not have an email address, mailed to the address provided on the claim form.

2.4 Cotiviti will fund the reimbursement provided under ¶¶ 2.1, 2.2, and 2.3, which total reimbursement is subject to an aggregate cap of \$500,000 for all claims of any kind. If the total claims exceed the aggregate cap, all claims will be reduced pro rata. Additionally, Settlement Class Members seeking reimbursement under ¶¶ 2.1, 2.2, or 2.3 must complete and submit a written Claim Form to the Claims Administrator, postmarked on or before the 120th day after the deadline for the completion of Notice to Settlement Class Members as set forth in ¶ 3.2 (the “Claims Deadline”). The Notice to the class will specify this deadline and other relevant dates described herein.

2.4.1 The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Notarization shall not be required. The Settlement Class Member must reasonably attest that the out-of-pocket expenses and charges claimed were both actually incurred and plausibly arose from the Data Incident. Failure to provide supporting attestation and documentation as requested on the Claim Form shall result in denial of a claim. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 2.6.

2.4.2 Claimants seeking reimbursement for expenses or losses described in ¶¶ 2.1 or 2.2 must complete and submit the appropriate section of the Claim Form to the Claims Administrator, together with proof of such losses. Claimants must provide the Claims Administrator with sufficient information to evaluate the claim, including (1) the class member’s

name and current address; (2) documentation supporting their claim; and (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Documentation supporting out-of-pocket losses can include receipts or other documentation not “self-prepared” by the class member that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

2.4.3 Nothing in this Settlement Agreement shall be construed to provide for a double payment for the same loss or injury that was reimbursed or compensated by any other source.

2.4.4 To be valid, claims must be complete and submitted to the Claims Administrator on or before the Claims Deadline.

2.4.5 No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement.

2.5 Equitable Relief.

For a period of 18 months following the execution of this Settlement Agreement, Humana and Cotiviti will maintain their vendor compliance and oversight policies that contain provisions protecting information security. Actual costs for the maintenance of such policies will be paid by Humana and Cotiviti separate and apart from the settlement consideration set forth in ¶¶ 2.1, 2.2, and 2.3 (above).

2.6 Dispute Resolution for Claims.

2.6.1 The Claims Administrator, in its sole discretion to be reasonably exercised,

will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the claimant's class membership and the expenses described in ¶¶ 2.1 and 2.2; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Incident (collectively, "Facially Valid"). The Claims Administrator may, at any time, request from the claimant, in writing, additional information ("Claim Supplementation") as the Claims Administrator may reasonably require in order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof.

2.6.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is Facially Valid, the Claims Administrator shall request additional information ("Claim Supplementation") and give the claimant thirty (30) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the 30-day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the 30-day deadline in which to comply; however, in no event shall the deadline be extended to later than one year from the Effective Date. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.6.3 Following receipt of additional information requested as Claim Supplementation, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is Facially Valid, then the claim shall be paid. If the claim is not Facially Valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Claims Administrator may reject the claim without any further action.

2.6.4 Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination.

2.7 Settlement Expenses. All costs for notice to the Settlement Class as required under ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute Resolution described in ¶ 2.6, shall be paid by Cotiviti.

2.8 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

2.9 Confidentiality of Information Submitted by Settlement Class Members.

Information submitted by Settlement Class Members pursuant to this Settlement Agreement shall be deemed confidential and protected as such by Humana, Cotiviti, and the Claims Administrator.

3. **Order of Preliminary Approval and Publishing of Notice of Fairness Hearing**

3.1. As soon as practicable after the execution of the Settlement Agreement, Proposed Class Counsel and counsel for Humana and Cotiviti shall jointly submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.8;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) the scheduling of a Final Fairness Hearing and briefing schedule for Motion For Final Hearing and Application for Class Representative Service Award and Attorneys' Fees and Costs;
- d) appointment of Proposed Class Counsel as Class Counsel;
- e) appointment of Representative Plaintiffs as Class Representatives;
- f) approval of a customary form of short notice to be mailed or emailed to Settlement Class Members ("Short-Form Notice") in a form substantially similar to the one attached hereto as **Exhibit B** and a customary long form notice ("Long-Form Notice") in a form substantially similar to the one attached hereto as **Exhibit C** which together shall include a fair summary of the parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;
- g) appointment of a Claims Administrator, or such other provider of claims administrative service, as may be jointly agreed to by the Settling Parties; and
- h) approval of a claim form substantially similar to that attached hereto as **Exhibit A**.

The Notice and Claim Form shall be reviewed by the Claims Administrator and may be revised as agreed upon by the Settling Parties prior to such submission to the Court for approval.

3.2 Cotiviti shall pay for all of the costs associated with the Claims Administrator, and for providing Notice to the Settlement Class in accordance with the Preliminary Approval Order, as well as the costs of such notice. Attorneys' fees, costs, and expenses of Proposed Class Counsel, and a service award to Class Representative (if permitted), shall be paid by Cotiviti as set forth in ¶ 7 below, subject to Court approval. Notice shall be provided to class members in accordance with the Notice plan set forth in the Motion for Preliminary Approval. The Notice plan shall be subject to approval by the Court as meeting constitutional due process requirements. The Claims Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the claim period, with the Notice and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line staffed with a reasonable number of live operators shall be made available to address Settlement Class Members' inquiries. The Claims Administrator also will provide copies of the forms of the Notice and Claim Form approved by the Court, as well as this Settlement Agreement, upon request. Prior to the Final Fairness Hearing, Proposed Class Counsel and/or Defendants' counsel shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of Notice. The Notice and Claim Form approved by the Court may be adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The Notice Program shall commence within thirty (30) days after entry of the Preliminary Approval Order and shall be completed within sixty (60) days after entry of the Preliminary Approval Order.

3.3 Proposed Class Counsel and Humana and Cotiviti's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

3.4 Humana and Cotiviti will also cause the Claims Administrator to provide (at Cotiviti's expense) notice to the relevant state and federal governmental officials as required by the Class Action Fairness Act.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. Persons wishing to opt-out of the Settlement Class will only be able to submit an opt-out request on their own behalf; mass or class opt-outs will not be permitted. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than one hundred twenty (120) days after the date on which the Notice Program commences pursuant to ¶ 3.2.

4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Proposed Class Counsel, Humana's counsel, and Cotiviti's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

4.4 In the event that within ten (10) days after the Opt-Out Date as approved by the court, there have been more Opt-Outs (persons who wish to be excluded) than listed in a separate letter agreement (to be shared with the Court under seal, if requested), Humana or Cotiviti may, by notifying Proposed Class Counsel in writing, void this Settlement Agreement. If Humana or Cotiviti voids this Settlement Agreement pursuant to this paragraph, Cotiviti shall be obligated to pay all settlement expenses already incurred, excluding any attorneys fees, costs, and expenses of Proposed Class Counsel and any incentive award.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing the objector; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation). To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court for the U.S. District Court for the Middle District of Florida (Tampa Division) no later than one hundred twenty (120) days from the date on which the Notice Program commences pursuant to ¶ 3.2, and served concurrently therewith upon Proposed Class Counsel and counsel for Humana and Cotiviti via the Court's electronic filing system.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

6. Releases

6.1 Upon the Effective Date, each Settlement Class Member, including Representative Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any Released Claim is asserted.

6.2 Upon the Effective Date, Humana and Cotiviti shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Representative Plaintiff, each and all of the Settlement Class Members, Proposed Class Counsel and Plaintiffs' Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the

Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses Humana or Cotiviti may have against such Persons including, without limitation, any claims based upon or arising out of any debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither Humana or Cotiviti, nor their Related Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Representative Plaintiff, each and all of the Settlement Class Members, Proposed Class Counsel and Plaintiffs' Counsel.

7. Plaintiff's Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Representative Plaintiff

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Representative Plaintiff, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that Cotiviti would pay reasonable attorneys' fees, costs, expenses, and a service award to Representative Plaintiff as may be agreed to by Humana, Cotiviti, and Proposed Class Counsel and/or as ordered by the Court, or in the event of no agreement, then as ordered by the Court. Humana, Cotiviti, and Proposed Class Counsel have agreed to the following:

7.2 Proposed Class Counsel has agreed to request, and Cotiviti has agreed to pay, subject to Court approval, the amount of \$300,000 to Proposed Class Counsel for attorneys' fees and costs and expenses.

7.3 Proposed Class counsel will move the Court for a service award payment not to exceed \$2,500 per Class Representative to be paid if and only if the *en banc* Eleventh Circuit

vacates the decision in *Johnson v. MPAS Solutions, LLC*. If *Johnson* is overruled, Cotiviti has agreed to pay a service award in an amount approved by the Court up to \$2,500 to the Representative Plaintiff.

7.4 Cotiviti shall pay the Court-approved amount of attorneys' fees, costs, expenses, and service award to Representative Plaintiff (if applicable) to an account established by Proposed Class Counsel within thirty (30) days after the entry of an order of Final Approval, regardless of any appeal that may be filed or taken by any Class Member or third party. Class Counsel will repay to Cotiviti the amount of the award of attorneys' fees and costs in the event that the final approval order and final judgment are not upheld on appeal and, if only a portion of fees or costs (or both) is upheld, Class Counsel will repay to Cotiviti the amount necessary to ensure the amount of attorneys' fees or costs (or both) comply with any court order.

7.5 Proposed Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses, and service award to Representative Plaintiff consistent with ¶¶ 7.2 and 7.3. If this Settlement Agreement is terminated or otherwise does not become Final (e.g., disapproval by the Court or any appellate court), Defendants shall have no obligation to pay attorneys' fees, costs, expenses, or service awards and shall only be required to pay costs and expenses related to notice and administration that were already incurred. Under no circumstances will Proposed Class Counsel or any Class Member be liable for any costs or expenses related to notice or administration.

7.6 The amount(s) of any award of attorneys' fees, costs, and expenses, and the service award to Representative Plaintiff, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s)

of any attorneys' fees, costs, expenses, and/or service award ordered by the Court to Proposed Class Counsel or Representative Plaintiff shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Administration of Claims

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2. Proposed Class Counsel and Defendants shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge any such claim if they believe it to be inaccurate or inadequate. If the Claims Administrator is unable to make a determination regarding a particular claim, any claims agreed to be paid in full by Cotiviti shall be deemed valid. The Claims Administrator's final determination of the validity or invalidity of any claims shall be binding, subject to the dispute resolution process set forth in ¶ 2.6.

8.2 Checks for approved claims shall be mailed and postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later. No approved claims shall be paid until after the Effective Date. If this Settlement Agreement is terminated or otherwise does not become Final (e.g., disapproval by the Court or any appellate court) prior to the payment of approved claims, Defendants shall have no obligation to pay such claims and shall only be required to pay costs and expenses related to notice and administration that were already incurred.

8.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits

pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4 No Person shall have any claim against the Claims Administrator, Humana, Cotiviti, Proposed Class Counsel, Plaintiff, and/or Humana or Cotiviti's counsel based on distributions of benefits to Settlement Class Members.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 3.1;
- b) Neither Humana or Cotiviti has exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.3;
- c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- d) the Judgment has become Final, as defined in ¶ 1.12.

9.2 If all of the conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 9.4 unless Proposed Class Counsel, Humana's Counsel, and Cotiviti's counsel mutually agree in writing to proceed with the Settlement Agreement.

9.3 In the event that the Settlement Agreement is not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the

Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation 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*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Cotiviti shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution above and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

10. Non-Disparagement

Plaintiff shall not make, publish, or state, or cause to be made, published, or stated, any defamatory or disparaging statement, writing or communication pertaining to Humana or Cotiviti, or their directors, officers, and employees, and/or affiliates, and Related Entities.

11. Miscellaneous Provisions

11.1 The Settling Parties (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

11.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any

claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that neither Party shall have any liability to one another as it relates to the Litigation, except as set forth herein.

11.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

11.5 The Settlement Agreement, together with the Exhibits attached hereto, constitutes the entire agreement among the parties hereto, and no representations, warranties or inducements

have been made to any party concerning the Settlement Agreement other than the representations, warranties and covenants contained and memorialized in such document. Except as otherwise provided herein, each party shall bear its own costs. This agreement supersedes all previous agreements made between Plaintiff and Defendants.

11.6 Proposed Class Counsel, on behalf of the Settlement Class, is expressly authorized by Representative Plaintiff to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

11.7 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

11.8 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

11.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

11.10 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

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Exhibit A

HUMANA SETTLEMENT CLAIM FORM

This Claim Form should be filled out online or submitted by mail if you received a Notice of Privacy Incident regarding the Data Incident from Humana Inc. (“Humana”) on or around March 1, 2021, and you had unreimbursed out-of-pocket expenses, unreimbursed extraordinary monetary losses, or lost time dealing with the aftermath of the Data Incident. You may get a check if you fill out this Claim Form, if the Settlement is approved, and if you are found to be eligible for a payment.

The Settlement Notice describes your legal rights and options. To obtain the Settlement Notice and find more information regarding your legal rights and options, please visit the official Settlement Website, [INSERT WEBSITE], or call toll-free [INSERT PHONE #].

If you wish to submit a claim for a settlement payment electronically, you may go online to the Settlement Website, [INSERT], and follow the instructions on the “Submit a Claim” page.

If you wish to submit a claim for a settlement payment via standard mail, you need to provide the information requested below and mail this Claim Form to [INSERT], postmarked by [INSERT MONTH AND DAY], 2022. Please print clearly in blue or black ink.

1. CLASS MEMBER INFORMATION

Required Information:

First: _____ M: _____ Last: _____

Address 1: _____

Address 2: _____

City: _____ State: _____ ZIP: _____

Country: _____

Phone: _____

E-mail: _____

2. PAYMENT ELIGIBILITY INFORMATION

To prepare for this section of the Claim Form, please review the Settlement Notice and the Settlement Agreement (available for download at [INSERT WEBSITE]) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed.

To help us determine if you are entitled to a settlement payment, please provide as much

information as possible.

A. Verification of Class Membership

You are only eligible to file a claim if you are a person to whom Humana sent notification that personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Data Incident occurring between October 12, 2020 and December 16, 2020.

By submitting a claim and signing the certification below, you are verifying that you were notified by mail of the Data Incident announced by Humana on or around March 1, 2021.

In addition, to allow the Claims Administrator to confirm your membership in the Class, you must provide either:

(1) The unique identifier provided in the Notice you received by postcard or e-mail;

or

(2) name and physical address you provided to Humana for healthcare related purposes.

Thus, please **EITHER**:

(1) Provide the unique identifier provided in the Notice you received:
_____.

OR

(2) Provide your name _____ and physical address you
provided to Humana for healthcare related purposes:
_____.

UPLOAD DOCUMENT [SETTLEMENT ADMINISTRATOR TO ADD]

B. Out-Of-Pocket Expenses

Check the box for each category of out-of-pocket expenses or lost time that you incurred as a result of the Data Incident. Please be sure to fill in the total amount you are claiming for each category and attach the required documentation as described in **bold type** (if you are asked to provide account statements as part of required proof for any part of your claim, you may redact unrelated transactions and all but the first four and last four digits of any account number). Please round total amounts down or up to the nearest dollar.

I. Ordinary Expenses Resulting from the Data Incident

☐ Unreimbursed fees or other charges from your bank or credit card company due incurred on or after October 12, 2020 and [INSERT DATE] (the “Claims Deadline”) due to the Data

Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Unreimbursed overdraft fees, over-the-limit fees, late fees, or charges due to insufficient funds or interest.

[UPLOAD DOCUMENTS] Required: A copy of a bank of credit card statement or other proof of claimed fees or charges (you may redact unrelated transactions and all but the first four and last four digits of any account number)

☐ Unreimbursed fees relating to your account being frozen or unavailable incurred on or after October 12, 2020 and the Claims Deadline due to the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: You were charged interest by a payday lender due to card cancellation or due to an over-limit situation, or you had to pay a fee for a money order or other form of alternative payment because you could not use your debit or credit card, and these charges and payments were not reimbursed.

[UPLOAD DOCUMENTS] Required: Attach a copy of receipts, bank statements, credit card statements, or other proof that you had to pay these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).

☐ Unreimbursed fees or other charges relating to the reissuance of your credit or debit card incurred on or after October 12, 2020 and the Claims Deadline due to the Data Incident.

DATE	DESCRIPTION	AMOUNT

--	--	--

Examples: Unreimbursed fees that your bank charged you because you requested a new credit or debit card.

[UPLOAD DOCUMENTS] Required: Attach a copy of a bank or credit card statement or other receipt showing these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- ☐ Other unreimbursed incidental telephone, internet, mileage or postage expenses directly related to the Data Incident incurred on or after October 12, 2020 and the Claims Deadline due to the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Unreimbursed long distance phone charges, cell phone charges (only if charged by the minute), or data charges (only if charged based on the amount of data used).

[UPLOAD DOCUMENTS] Required: Attach a copy of the bill from your telephone company, mobile phone company, or internet service provider that shows the charges (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- ☐ Credit Reports or credit monitoring charges purchased on or after October 12, 2020 and the Claims Deadline due to the Data Incident. This category is limited to services purchased primarily as a result of the Data Incident and if purchased on or after October 12, 2020 and the Claims Deadline.

To obtain reimbursement under this category, you must attest to the following:

- ☐ I purchased credit reports on or after October 12, 2020 and the Claims Deadline, primarily due to the Data Incident and not for other purposes.

DATE	COST

--	--

Examples: The cost of a credit report(s) that you purchased after hearing about the Data Incident.

[UPLOAD DOCUMENT] Required: Attach a copy of a receipt or other proof of purchase for each product or service purchased (you may redact unrelated transactions).

☐ Between one (1) and three (3) hours of documented time spent monitoring accounts or otherwise dealing with the aftermath / clean-up of the Data Incident on or after October 12, 2020 and the Claims Deadline (round down to the nearest hour and check only one box).

☐ 1 Hour

☐ 2 Hours

☐ 3 Hours

Examples: You spent at least one (1) full hour calling customer service lines, writing letters or e-mails, or on the internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Check all activities, below, which apply.

☐ Time spent obtaining credit reports.

☐ Time spent dealing with a credit freeze.

☐ Time spent dealing with bank or credit card fee issues.

☐ Time spent monitoring accounts.

☐

☐ Other. Provide description(s) here:

To recover for lost time under this section, you must select one of the boxes above or provide a narrative description of the activities performed during the time claimed, and you must have at least one hour of lost time in order to claim this benefit.

Attestation (You must check the box below to obtain compensation for lost time)

☐ I attest under penalty of perjury that I spent the number of hours claimed above making reasonable efforts to deal with the Data Incident.

II. Extraordinary Expenses

If you have expenses related to the Data Incident that are more than the value or different than the type of ordinary expenses covered in the categories in Section I above, you may be entitled to compensation for your extraordinary expenses. To obtain reimbursement under this category, you must attest to the following:

☐ I incurred out-of-pocket unreimbursed expenses that occurred more likely than not as a result of the Data Incident during the time period on or after October 12, 2020 through the end of the Claims Deadline other than those expenses covered by one or more of the categories above, and I made reasonable efforts to avoid, or seek reimbursement for the loss, including but not limited to exhausting all available credit monitoring insurance and identity theft insurance.

☐ Unreimbursed fraudulent charges incurred on or after October 12, 2020 and the Claims Deadline due to the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Fraudulent charges that were made on your credit or debit card account and that were not reversed or repaid even though you reported them to your bank or credit card company. *Note: most banks are required to reimburse customer in full for fraudulent charges on payment cards that they issue.*

[UPLOAD DOCUMENTS] Required: The bank statement or other documentation reflecting the fraudulent charges, as well as documentation reflecting the fact that the charge was fraudulent (you may redact unrelated transactions and all but the first four and last four digits of any account number). If you do not have anything in writing reflecting the fact that the charge was fraudulent (e.g., communications with your bank or a police report), please identify the approximate date that you reported the fraudulent charge, to whom you reported it, and the response.

Date reported: _____

Description of the person(s) to whom you reported the fraud:

☐ Check this box to confirm that you have exhausted all applicable insurance policies, including but not limited to credit monitoring insurance and identity theft insurance, and that you have no insurance coverage for these fraudulent charges.

☐ Between one (1) and three (3) hours of documented time spent remedying actual documented fraud relating to the Data Incident on or after October 12, 2020 and the Claims Deadline (round down to the nearest hour and check only one box), which has not already been claimed in Section I, above.

☐ 1 Hour

☐ 2 Hours

☐ 3 Hours

Examples: You spent at least one (1) full hour calling customer service lines, writing letters or e-mails, or on the internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Check all activities, below, which apply.

- ☐ Calling bank/credit card customer service lines regarding fraudulent transactions.
- ☐ Writing letters or e-mails to banks/credit card companies in order to have fraudulent transactions reversed.
- ☐ Time on the internet verifying fraudulent transactions.
- ☐ Time on the internet updating automatic payment programs due to new card issuance.
- ☐ Calling credit reporting bureaus regarding fraudulent transactions and/or credit monitoring.
- ☐ Writing letters or e-mails to credit reporting bureaus regarding correction of credit reports.
- ☐ Other. Provide description(s) here:

To recover for lost time under this section, you must provide documentation substantiating or establishing the fraudulent activity, you must select one of the boxes above or provide a narrative description of the activities performed during the time claimed, and you must have at least one hour of lost time in order to claim this benefit.

[UPLOAD DOCUMENT] Required: Attach a copy of any and all receipts, correspondence, confirmations, and other documents supporting the lost time claimed immediately above.

☐ Other unreimbursed out-of-pocket expenses that were incurred on or after October 12, 2020 and the Claims Deadline as a result of the Data Incident that are not accounted for in your response above.

DATE	DESCRIPTION	AMOUNT

Examples: This category includes any other unreimbursed expenses or charges that are not otherwise accounted for in your answers to the questions above, including any expenses or charges that you believe were the result of an act of identity theft.

[UPLOAD DOCUMENTS] Required: Describe the expense, why you believe that it is related to the Data Incident, and provide as much detail as possible about the date you incurred the expense(s) and the company or person to whom you had to pay it. Please provide copies of any receipts, police reports, or other documentation supporting your claim. For claims of reimbursement for lost time, you must provide actual documentation reflecting the amount of time you spent dealing with replacement card issues or in reversing fraudulent charges sufficient to prove how much time was spent, on what, and that the time was spent on issues related to the Data Incident. The Claims Administrator may contact you for additional information before processing your claim.

☐ Check this box to confirm that you have exhausted all credit monitoring

insurance and identity theft insurance you might have for these out-of-pocket expenses before submitting this Claim Form.

III. Credit Monitoring

All Settlement Class Members who submit a valid claim are eligible to receive two (2) years of credit monitoring and restoration protections (“Credit Monitoring Protections”) provided by IDX.

Do you wish to sign up for free Credit Monitoring Protections through IDX?

☐ Yes, I want to sign up to receive free Credit Monitoring Protections.

Email Address: _____

If you select “yes” for this option, you will need to follow instructions and use an activation code that you receive after the Settlement is final. Credit Monitoring Protections will not begin until you use your activation code to enroll. Activation instructions will be provided to your email address or, if you do not have an email address, to your home address.

C. Certification

I declare under penalty of perjury under the laws of the United States that the information supplied in this Claim Form by the undersigned is true and correct to the best of my recollection, and that this form was executed at _____ [City], _____ [State] on the date set forth below

I understand that I may be asked to provide supplemental information by the Claims Administrator before my claim will be considered complete and valid.

Print Name: _____

Signature: _____

Date: _____

D. Submission Instruction

Once you’ve completed all applicable sections, please mail this Claim Form and all required supporting documentation to the address provided below, postmarked by _____, **2022**.

[INSERT CLAIMS ADMINISTRATOR
MAILING INFORMATION]

Exhibit B

Notice of Pendency and Proposed Settlement of Class Action

If you received a Notice of Privacy Incident regarding the Data Incident from Humana Inc. (“Humana”) on or around March 1, 2021,, you may be eligible for a payment from a class action settlement.

A Settlement has been reached in a class action lawsuit (“Lawsuit”) about a data incident that occurred between October 12, 2020 and December 16, 2020, which potentially exposed personally identifiable information (“PII”) and/or protected health information (“PHI”) of Humana members (the “Data Incident”). The Lawsuit alleges that Humana, Inc. (“Humana”) and Cotiviti, Inc. (the “Cotiviti”) were responsible for the Data Incident because they did not take appropriate care to protect PII and PHI from unauthorized disclosure. Humana and Cotiviti deny the claims and deny any wrongdoing.

Humana records show you are a likely member of the Settlement Class. The Settlement will reimburse eligible people who submit claims for: (1) unreimbursed, documented out-of-pocket expenses and compensation for lost time, that resulted from the Data Incident, up to a maximum of \$250 per person; and (2) unreimbursed, documented extraordinary expenses that were caused by the Data Incident, up to a maximum of \$5,000 per person. The Settlement also includes two years of credit monitoring and identity theft insurance through IDX.

If you are a Settlement Class Member and you want to receive any benefits from the Settlement, you must complete and submit a Claim Form along with any required supporting information. Claim Forms can be found and completed on this website: www.SettlementURL.com. The deadline to submit a Claim Form is **Month 00, 2022.**

Settlement Class Members may also request exclusion from the Settlement or object to it. Requests for exclusion are due by **Month 00, 2022**. Settlement Class Members who do not request exclusion can object to the Settlement. Objections are due by **Month 00, 2022**. The Court will hold a Final Settlement Approval Hearing on **Month 00, 2022 at 00:00 a.m.** at the U.S. District Court for the Middle District of Florida (Tampa Division) located at 801 North Florida Ave., Tampa, Florida, 33602, Courtroom 7A, to consider whether to approve the settlement. The Court will hear objections, determine if the Settlement is fair, and consider Class Counsel’s request for attorneys’ fees, costs, and expenses of \$300,000 and service award of up to \$2,500 for the Representative Plaintiff. You or your own lawyer may ask to appear at the hearing to be heard by the Court, but you do not have to. The motion for attorneys’ fees and costs and service awards for the Representative Plaintiff will be posted on the website after it is filed with the Court.

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit: John A. Yanchunis and Ryan D. Maxey of MORGAN & MORGAN COMPLEX LITIGATION GROUP, 201 N. Franklin St., 7th Floor, Tampa, Florida 33602.

This is only a summary. For detailed information visit www.SettlementURL.com or call **1-000-000-0000**. You may contact the Settlement Administrator at Humana Settlement, c/o Settlement Administrator, **PO Box 0000, City, State, Zip**.

Exhibit C

IN THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA,
TAMPA DIVISION

If you received a Notice of Privacy Incident regarding the Data Incident from Humana Inc. (“Humana”) on or around March 1, 2021, you may be eligible for a class action settlement payment.

A court authorized this notice. This is not a solicitation from a lawyer.

- A Settlement has been reached in a class action lawsuit about a data incident that occurred on between October 12, 2020 and December 16, 2020, which potentially exposed personally identifiable information (“PII”) and/or protected health information (“PHI”) of Humana members (the “Data Incident”).
- Cotiviti, Inc. (“Cotiviti”) helps Humana Inc. (“Humana”) request medical records needed to verify data reported to the Centers for Medicare and Medicaid Services. Cotiviti in turn uses a subcontractor (Visionary) to review the collected medical records. The circumstances giving rise to this case occurred between October 12, 2020 and December 16, 2020, and involved an employee of Visionary who gained access to personally identifiable information (“PII”) and protected health information (“PHI”) of Humana members and shared that information with others in connection with a personal coding business (the “Data Incident”). The exposed information may have included names, partial or full social security numbers, dates of birth, addresses (with city, state, and zip code), phone numbers, email addresses, member identification numbers, subscriber information numbers, dates of service, dates of death, provider names, medical record numbers, treatment information, and actual images (x-rays, photographs, etc.). Subsequently, a lawsuit was filed against Humana and Cotiviti, alleging that they did not take appropriate care to protect Humana members from the Data Incident.
- Humana and Cotiviti deny all of the Plaintiff’s claims in the lawsuit and maintain they did not do anything wrong but have agreed to settle the case to avoid the expense and burdens of litigation.
- The Settlement includes all Persons to whom Humana sent notification that their personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Data Incident.
- The Settlement provides payments to people who submit valid claims for out-of-pocket expenses and lost time that were incurred and plausibly arose as a result of the Data Incident, and for other extraordinary unreimbursed monetary losses and lost time.
- The Settlement also includes two years of credit monitoring and identity theft insurance through IDX. You must submit a claim to receive this benefit.

Your legal rights are affected even if you do nothing. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim	The only way to get a payment and/or credit monitoring. You must submit a claim by Month Day, 2022.
Ask to be Excluded	Get no payment. The only option that allows you to sue Humana and Cotiviti over the claims resolved by this Settlement. You must exclude yourself by Month Day, 2022.

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

Object	Write to the Court about why you do not like the Settlement. You must object by Month Day, 2022 .
Do Nothing	Get no payment. Give up rights.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

Questions? Call 1-**XXX-XXX-XXXX** or visit [**WEBSITE**]

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why was this Notice issued?

The Court authorized this notice because you have a right to know about the proposed Settlement in this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the Settlement. This notice explains the legal rights and options that you may exercise before the Court decides whether to approve the Settlement.

This matter involves a lawsuit styled *Steven K. Farmer v. Humana Inc. and Cotiviti, Inc.*, in the U.S. District Court for the Middle District of Florida, Tampa Division, Case No. 8:21-cv-1478-MSS-SPF. The person who sued is called the Plaintiff. Humana and Cotiviti are called the Defendants.

2. What is this lawsuit about?

The lawsuit claims that Humana and Cotiviti (collectively “Defendants”) were responsible for the Data Incident and asserted claims such as: negligence, breach of implied contract, invasion of privacy, breach of confidence, and violations of the Florida Deceptive and Unfair Trade Practices Act. The lawsuit seeks compensation for people who experienced unreimbursed, documented out-of-pocket expenses, fraudulent charges, and/or lost time spent dealing with the aftermath / clean-up of the Data Incident; or unreimbursed, documented extraordinary monetary losses as a result of the Data Incident.

Humana and Cotiviti deny all of the Plaintiff’s claims and maintain they did not do anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called “Representative Plaintiffs” sue on behalf of all people who have similar claims. All of these people together are the “Class” or “Class Members.” In this case, the Representative Plaintiff is Steven Farmer. One Court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a Settlement?

By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will get compensation. The Representative Plaintiff and their attorneys believe the Settlement is fair, reasonable, and adequate and, thus, best for the Class and its members. The Settlement does NOT mean that Humana and Cotiviti did anything wrong.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am included in the Settlement?

You are included in the Settlement Class if you are a person to whom Humana sent notification that personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Data Incident occurring between October 12, 2020 and December 16, 2020.

Specifically excluded from the Settlement Class are: (i) Humana and Cotiviti and their parents, subsidiaries, affiliates, officers and directors, and any entity in which Humana or Cotiviti has a controlling interest; (ii) all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; (iii) any and all federal, state, or local governments, including but not limited to their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; (iv) the attorneys representing the any of the parties in the lawsuit; (v) all judges assigned to hear any aspect of the lawsuits, as well as their immediate family members; and (vi) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the Data Incident, or who pleads *nolo contendere* to any such charge.

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call 1-XXX-XXX-XXXX with questions or visit [WEBSITE]. You may also write with questions to Humana Claims Administrator, PO Box XXXX, City, State zip code. Please do not contact the Court with questions.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

The Settlement will provide payments to people who submit valid claims.

There are two types of general payments that are available:

- (1) Ordinary Expense Reimbursement (Question 8) and
- (2) Extraordinary Expense Reimbursement (Question 9).

You may submit a claim for either or both types of payments. You must also provide proof of your class membership in the form of either (1) the unique identifier provided in the notice you received by postcard or e-mail; or (2) name and physical address you provided to Humana for healthcare purposes.

If you provide a bill or payment card statement as part of required proof for any part of your claim, you may redact unrelated transactions and all but the first four and last four digits of any account number. In order to claim each type of payment, you must provide related documentation with the

Claim Form, and the expense for which you are submitting a claim form cannot have been reimbursed through any other source.

The Settlement also includes two years of credit monitoring and identity theft insurance through IDX for a period of 2 years from the effective date of the Settlement. You must submit a claim to obtain this credit monitoring service.

Finally, as part of the Settlement, Humana and Cotiviti have agreed to maintain certain data security measures. More details are provided in the Settlement Agreement, which is available at [\[WEBSITE\]](#).

8. What payments are available for Expense Reimbursement?

Class Members are each eligible to receive reimbursement of up to \$250 (in total, per person) for the following categories of unreimbursed, documented out-of-pocket expenses resulting from the Data Incident:

- Cost to obtain credit reports;
- Fees relating to credit freezes;
- Card replacement fees;
- Late fees;
- Overlimit fees;
- Interest on payday loans taken as a result of the Data Incident;
- Other bank or credit card fees;
- Postage, mileage, and other incidental expenses resulting from lack of access to an existing account;
- Costs associated with credit monitoring or identity theft insurance if purchased primarily as a result of the Data Incident; and
- up to three (3) hours of unreimbursed attested lost time (at \$20 per hour) spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath / clean-up of the Data Incident (only if at least one full hour was spent and the Class Member provides a description of the activities performed during the time claimed as reflected in the Claim Form).

9. What payments are available for Extraordinary Expense Reimbursement?

Class Members who had other extraordinary unreimbursed fraudulent charges or out-of-pocket losses and/or lost time incurred as a result of, or in resolving issues and losses caused by, the Data Incident, are eligible to make a claim for reimbursement of up to \$5,000 per Class Member. As part of the claim, the Class Member must provide documentation plausibly supporting that:

- (1) it is an actual, documented, and unreimbursed monetary loss;
- (2) the loss was caused in material part by the Data Incident;
- (3) the loss occurred during the time period on or after October 12, 2020 through and including the end of the Claims Deadline;

- (4) the loss is not already covered by one or more of the categories in Question 8 or reimbursed through any other source; and
- (5) a reasonable effort was made to avoid or seek reimbursement for the loss (including exhaustion of all available credit monitoring insurance and identity theft insurance).

Class Members who had documented extraordinary unreimbursed expenses may also make a claim for up to three (3) hours of unreimbursed attested lost time (at \$20 per hour) spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath / clean-up of the Data Incident (only if at least one full hour was spent and the Class Member provides a description of the activities performed during the time claimed as reflected in the Claim Form).

More details are provided in the Settlement Agreement, which is available at [WEBSITE].

HOW TO GET BENEFITS

10. How do I get benefits?

To ask for a payment or to sign up for credit monitoring, you must complete and submit a Claim Form. Claim Forms are available at [WEBSITE], or you may request one by mail by calling [PHONE #]. Read the instructions carefully, fill out the Claim Form, and mail it postmarked no later than **Month Day, 2022** to:

Humana Claims Administrator
PO Box XXXXX
City, State zip code

11. How will claims be decided?

The Claims Administrator will decide in their professional judgment whether the information provided on a Claim Form is complete and valid. The Claims Administrator may require additional information from any claimant. If the required information is not provided timely, the claim will be considered invalid and will not be paid.

REMAINING IN THE SETTLEMENT

12. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the Settlement, but if you want a payment you must submit a Claim Form postmarked by **Month Day, 2022**.

13. What am I giving up as part of the Settlement?

If the Settlement becomes final, you will give up your right to sue for the claims being resolved by this Settlement. The specific claims you are giving up are described in Section 13.bb of the Settlement Agreement. You will be “releasing” Humana and Cotiviti and all related people or

entities as described in Sections 1.21 and 1.23 of the Settlement Agreement. The Settlement Agreement is available at [WEBSITE].

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the law firms listed in Question 17 for free or, you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue Humana and Cotiviti about issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

14. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any benefits of the Settlement, but you will not be bound by any judgment in this case.

15. If I do not exclude myself, can I sue Humana and Cotiviti for the same thing later?

No. Unless you exclude yourself, you give up any right to sue for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

16. How do I exclude myself from the Settlement?

To exclude yourself, send a letter that says you want to be excluded from the Settlement in lawsuit styled *Steven K. Farmer v. Humana Inc. and Cotiviti, Inc.*, in the U.S. District Court for the Middle District of Florida, Tampa Division, Case No. 8:21-cv-1478-MSS-SPF. Include your name, address, and signature. You must mail your Exclusion Request postmarked by **Month Day, 2022**, to:

Humana Settlement Exclusions
PO Box XXXXX
City, State zip code

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyers as “Class Counsel”: John A. Yanchunis and Ryan D. Maxey of MORGAN & MORGAN COMPLEX LITIGATION GROUP, 201 N. Franklin St., 7th Floor, Tampa, Florida 33602.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the lawyers be paid?

Class Counsel will request the Court's approval of an award for attorneys' fees and reasonable costs and expenses of up to \$300,000. Class Counsel will also request approval of an incentive award of \$2,500 for the Representative Plaintiff. Any amount that the Court awards for attorneys' fees, costs, expenses, and an incentive award will be paid separately per the terms of the Settlement Agreement and will not reduce the amount of payments to Class Members who submit valid claims.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

19. How do I tell the Court that I do not like the Settlement?

You can object to the Settlement if you do not like it or some part of it. The Court will consider your views. To do so, you must **file** a written objection in this case, *Steven K. Farmer v. Humana Inc. and Cotiviti, Inc.*, in the U.S. District Court for the Middle District of Florida, Tampa Division, Case No. 8:21-cv-1478-MSS-SPF, with the Clerk of the Court at the address below.

Your objection must include all of the following:

- your full name , address, telephone number, and e-mail address (if any);
- information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class, which is described in response to Question 5;
- a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe is applicable;
- the identity of all counsel representing you, if any, in connection with your objection;
- a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing;
- your signature or the signature of your duly authorized attorney or other duly authorized representative;

To be timely, your objection must be **filed** with the Clerk of the Court for the U.S. District Court for the Middle District of Florida (Tampa Division) no later than **Month Day, 2022**.

In addition, you must **mail** a copy of your objection to both Class Counsel and Defense Counsel, postmarked no later than **Month Day, 2022**:

Court	Class Counsel	Humana's Counsel
Clerk of the Court	John A. Yanchunis Ryan D. Maxey	Paul G. Karlsgodt Michelle R. Gomez

U.S. District Court for the Middle District of Florida (Tampa Division) 801 North Florida Ave., Tampa, Florida, 33602	MORGAN & MORGAN COMPLEX LITIGATION GROUP 201 N. Franklin St., 7 th Floor, Tampa, Florida 33602	BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, Colorado 80202
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20. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you do not exclude yourself from the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement.

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at : on **Month Day, 2022**, at the U.S. District Court for the Middle District of Florida (Tampa Division) located at 801 North Florida Ave., Tampa, Florida, 33602, Courtroom 7A (or by Zoom if the Court so orders). The hearing may be moved to a different date or time without additional notice, so it is a good idea to check **[WEBSITE]** or call **[PHONE #]**. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys' fees and reasonable costs and expenses, as well as the request for an incentive award for the Representative Plaintiff. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

22. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 19, the Court will consider it.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file an objection according to the instructions in Question 19, including all the information required therein. Your Objection must be **filed** with the Clerk of Court for the U.S. District Court for the Middle District of Florida (Tampa Division) by mailing it postmarked no later than **Month Day,**

2022. In addition, you must **mail** a copy of your objection to both Class Counsel and Defense Counsel listed in Question 19, postmarked no later than **Month Day, 2022**.

IF YOU DO NOTHING

24. What happens if I do nothing?

If you do nothing, you will get no benefits from this Settlement. Unless you exclude yourself, after the Settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the legal issues in this case, ever again against Humana, Cotiviti or any related people or entities as described in Sections 1.21 and 1.23 of the Settlement Agreement. The Settlement Agreement is available at **[WEBSITE]**.

GETTING MORE INFORMATION

25. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at **[WEBSITE]**. You may also write with questions to **the** Claims Administrator, PO Box **XXXXXX, City, State Zip**. You can also get a Claim Form at the website, or by calling the toll-free number, **[PHONE]**.

Exhibit B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

STEVEN K. FARMER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

HUMANA INC., a Delaware corporation,
and COTIVITI, INC., a Delaware
corporation,

Defendants.

Case No.: 8:21-cv-01478-MSS-SPF

I, John A. Yanchunis, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I have been licensed to practice law in the state of Florida since 1981.

2. I am one of the attorneys for Plaintiff and the proposed Settlement Class in this case. I submit this declaration in support of the Motion for Preliminary Approval of the Class Action Settlement.¹ The facts herein stated are true of my own personal knowledge, and if called to testify to such facts, I could and would do so competently.

3. I lead the Class Action Department at Morgan & Morgan. Morgan & Morgan is the largest Plaintiff's, contingency-only law firm in the country, with over 800 lawyers in more than 50 offices throughout the United States. Its depth as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country.

4. My practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., Southern District of Texas, Houston

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement, which is attached the Motion for Preliminary Approval as its **Exhibit A**.

Division—has concentrated on complex litigation and spans over 38 years, including consumer class actions for more than two-thirds of that time. I have represented consumers in numerous successful class actions involving a wide variety of claims and topics from anti-trust, securities, civil rights, defective products, deceptive and unfair trade practices, common law fraud, and the protection of the privacy rights of consumers.

5. I was appointed co-lead counsel in the successful prosecution of the two largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, Case No. 03-61063-JEM, and *Fresco v. R.L. Polk*, Case 0:07-cv-60695-JEM (Southern District of Florida). These cases were filed against the world's largest data and information brokers—Experian, R.L. Polk, Acxiom, Reed Elsevier (which owns Lexis-Nexis) and others—to protect the important privacy rights of consumers.

6. I presently serve, or have served in the past, as lead, co-lead, or class counsel in numerous multi-district litigations across the country in a wide variety of areas affecting consumers. For example and to name only a few cases in which I have served in leadership, I presently serve as co-lead counsel in the case of *In re: Capitol One Consumer Data Sec. Breach Litig.*, No. 1:19-md-02915 (E.D. Va.). I have also served as co-lead of the *Home Depot Data Breach*, a member of the five-member overall Executive Committee in the *Target Data Breach*, No. 0:14-md-02522-PAM (Dist. Minn.), a member of the five-member Plaintiffs' Steering Committee in *In re: U.S. Office Personnel Mgmt Data Security Breach Litig.*, 1:15-cv-01321-ABJ (D.D.C.), and a member of the Plaintiffs' Steering Committee in *In re Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.). I also served as lead counsel in *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK (N.D. Cal.), a case involving a data breach of over 2.9 billion users of Yahoo's email service. The court in that case fairly recently entered final judgment and approved the settlement of the claims of a class of consumers in the United States and Israel.

7. As a result of my experience in litigation against the insurance industry, including class litigation, I served as lead counsel for the insurance regulators for the state of Florida in connection with their investigations of a number of insurance companies and brokers of allegations of price fixing, bidding rigging, undisclosed compensation and other related conduct, and negotiated a number of settlements with insurance companies and brokers who were the subject of those investigations. These investigations resulted in the recovery of millions of dollars for Florida policyholders and the implementation of changes to the way insurance is sold in Florida and throughout the United States.

8. During my career, I have tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by The Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, I served as lead counsel for several insurance companies regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. I was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of my clients.

9. As result of my experience in the area of class litigation and ethics, I have served as an expert for The Florida Bar on ethical issues arising in class action litigation.

10. I am currently a member in good standing of The Florida Bar, and of all the bars to which I have been admitted, including the United States Supreme Court, the United States Court of Appeals for the Third, Fifth, Ninth, and Eleventh Circuits, and the United States District Courts of the Southern District of Texas, Northern District of Texas, Western District of Texas, Eastern District of Wisconsin, Middle District of Florida, Southern District of Florida, Northern District of Florida, Eastern District of Michigan, Central District of Illinois and Northern District of Illinois.

11. Plaintiff requests that the Court appoint myself and Ryan D. Maxey of my firm as Settlement Class Counsel (collectively, "Class Counsel"). Class Counsel have invested considerable time and resources into the investigation of the facts underlying the claims and the prosecution of this action. Since the outset of this litigation, the firms have cooperatively and effectively collaborated to prosecute, and ultimately resolve, this case on behalf of their clients and the Class. They have performed work critical to achieving benefits for the Class, including by investigating the facts surrounding the Data Incident, researching and analyzing legal claims under state and federal law and common law, preparing and filing the Complaint, motion and discovery practice, participating in meetings with defense counsel to discuss the parties' respective positions, negotiating the proposed Settlement, and drafting this motion for preliminary approval.

12. As noted above, and as reflected in our respective resumes and biographies attached hereto as **Composite Exhibit 1**, Class Counsel are qualified, experienced, and able prosecute this litigation. Class Counsel have a wealth of experience in litigating complex class action lawsuits similar to this one and have extensive knowledge of the applicable law and sufficient resources to commit to the Settlement Class.

13. Throughout the pendency of this case, my co-counsel and I have maintained regular contact with Plaintiff to discuss with him the prosecution of the case. With the assistance of counsel, Plaintiff has been at the helm of this case and continues to be focused on the advancement of the interests and claims of the Class over his own interests. Plaintiff has always been concerned about obtaining a result that was best for the Class. Plaintiff is an adequate class representatives with no conflicts of interest.

14. Defendant Cotiviti helps Defendant Humana request medical records needed to verify data reported to the Centers for Medicare and Medicaid Services.

Cotiviti in turn uses a subcontractor, Visionary RCM Infotech (India) Pvt Ltd (“Visionary”), to review the collected medical records. This Action was initiated following Defendants’ disclosure that between October 12, 2020 and December 16, 2020, an employee of Visionary gained access to personally identifiable information (“PII”) and protected health information (“PHI”) of Humana members and shared that information with others in connection with a personal coding business (the “Data Incident”).

15. On May 6, 2021, Plaintiff commenced the instant litigation and filed a complaint in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, relating to the Data Incident. The complaint sought class action status and remedies for Plaintiff and other patients impacted by the Data Incident. On or about June 17, 2021, Defendants removed this matter to this Court. Thereafter, the parties engaged in motion practice, including Defendants’ Motions to Dismiss (Docs. 15, 16). On January 25, 2022, the Court entered an Order granting in part and denying in part the Motions to Dismiss (Doc. 32).

16. On March 10, 2022, the parties had a full-day mediation session with Harry Schafer. The negotiations were hard-fought throughout, and the process was conducted at arm’s length and non-collusive. In advance of the mediation, the parties briefed their respective positions on the facts, claims, defenses, and assessments of the risk of litigation. After extensive arm’s length settlement negotiations conducted through Mr. Schaffer, the parties reached an agreement on the essential terms of settlement.

17. This Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendants and the Released Persons (as defined in the Settlement Agreement and provided below) relating to the Data Incident, by and on behalf of Plaintiff and Settlement Class Members (as defined in the Settlement Agreement and provided below).

18. The Settlement provides an aggregate cap of \$500,000.00, to be paid by Cotiviti, for the following general categories of relief; (i) the reimbursement of ordinary expenses, (ii) the reimbursement of other extraordinary expenses, and (iii) credit monitoring and identity protection. *See* S.A. ¶ IV.2.4.

19. The parties negotiated Class Counsel's attorneys' fees, costs, and expenses only after they had reached an agreement on the benefits afforded to the Settlement Class.

20. Proposed Class Counsel has agreed to request, and Cotiviti has agreed to pay, subject to Court approval, the amount of \$300,000.00 to Proposed Class Counsel for attorney's fees, costs, and expenses. S.A. ¶ IV.7.2.

21. After investigating the facts and carefully considering applicable law, Plaintiff and Class Counsel have concluded that it is in the best interests of Settlement Class Members to enter into the Settlement in order to avoid the uncertainties of litigation and to assure meaningful and timely benefits to Settlement Class Members. I, along with the Plaintiff and Class Counsel, respectfully submit that the terms and conditions of this Settlement are fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

22. Throughout the settlement process, my co-counsel and I carefully weighed with the Plaintiff: (1) the benefits to the Class under the terms of the Settlement Agreement, which provides significant relief to the Class; (2) the quantum of damages which might have been sustained by individual Settlement Class Members, the likelihood that in the absence of a class action consumers would not pursue individual claims, particularly due to the high cost and expense, including the cost of cyber and damage experts to litigate these claims if pursued in individual litigation, and the fact that the quantum of damages would not justify the retention of an attorney, either on an hourly or contingent basis, to pursue the claims individually; (3) the difficulty in proving and calculating those damages; (4) the attendant risks and

uncertainty of litigation, as well as the difficulties and delays inherent in such litigation including the challenges to certification of a class; (5) Defendants' vigorous defense of the litigation and continued denial of the claims contained in the Complaint; (6) the desirability of consummating the present Settlement Agreement to ensure that the Class receives a fair and reasonable Settlement; and (7) providing Settlement Class Members prompt relief.

23. In particular, it is my opinion that the Settlement Agreement provides significant benefits to Settlement Class Members.

24. The relief provided by the Settlement is reasonable and adequate, particularly in light of the risks and delay of trial and associated appeals. At bottom, Plaintiff faced difficult hurdles certifying a class.

25. Further, the proposed Settlement Class is functionally equivalent to that alleged in the Complaint. The proposed Settlement Class is defined as the:

"All individuals residing in the United States whose personal information was or may have been compromised in the data breach that is the subject of the Notice of Privacy Incident that Humana sent to Plaintiff and others in substantially the same form on or around March 1, 2021." The Settlement Class specifically excludes: (i) Humana, Inc. and Cotiviti, Inc. and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity involved in the Data Incident or who pleads nolo contendere to any such charge.

S.A. ¶ IV.1.26.

26. Given my experience in class actions generally, I expect that the Notice Program in this case will produce a positive claims rate. The Notice Program involves

direct notice to the approximately 64,653 Settlement Class Members for whom physical addresses or email addresses are available, and best practices for identifying additional means of contact information, such as skip traces, will be employed. Notice will also be provided through the Settlement Website and telephone line established by the Settlement Administrator.

27. Plaintiff seeks certification of a nationwide class. All members of the proposed Settlement Class are entitled to the same benefits. All Settlement Class Members who do not exclude themselves from the Settlement will be eligible to submit claims. The dollar amounts of these reimbursements may vary, but those differences reflect the differing amounts of losses that Settlement Class Members incurred as a result of the Data Incident. Thus, each Settlement Class Member who submits a valid claim will be paid proportionate to the harm they suffered. And all Settlement Class Members are eligible to claim IDX Identity Theft Protection Services or two (2) years, which has a retail value of \$9.95 per month or \$238.80 for two (2) years. *See* <https://www.idx.us/idx-identity/plans> (Identity Essentials).

28. The parties' exchange of information in the mediation setting provided Class Counsel—along with my prior experience in similar litigation and communications with many consumers in those cases and the one before the Court—with the ability to make a well informed decision about the litigation risks and the benefits of the Settlement.

29. Given my extensive experience with class action settlements, it is my informed opinion that the Notice Program, with all attendant forms and as outlined in the Settlement, makes every effort to ensure that Class Members will be made aware of their right to a recovery under the Settlement.

30. I am informed that Notice and Administrative Expenses are expected to be approximately \$80,057.00.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 23, 2022 at Tampa, Florida.

By:  _____
John A. Yanchunis, Esq.



Morgan & Morgan is a leading civil trial law firm representing consumers and commercial clients nationwide. With over 800 lawyers, and more than 3,000 non-lawyer employees, Morgan & Morgan is the largest plaintiffs' firm in the nation. Morgan & Morgan maintains over offices throughout the United States. Among its lawyers are former state attorney generals and present and former members of various state legislatures.

Morgan & Morgan has a dedicated Complex Litigation Group staffed with lawyers, paralegals, and retired FBI agents serving as investigators committed to representing consumers in complex litigation, MDL proceedings and class action cases throughout the country. It has achieved many remarkable results in class litigation, including the settlement of *In re Black Farmers Discrimination Litigation*, no. 08-0511 (D.C. Oct. 27, 2017), where one of its partners served as co-lead. The case resulted in a settlement with the United States Government in the amount of \$1.2 billion for African American farmers who had been systematically discriminated against on the basis of race, in violation of the Fifth Amendment to the United States Constitution, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act, and the Administrative Procedure Act. Morgan & Morgan has assembled a talented team of lawyers:

John A. Yanchunis leads the class action section of the law firm. His practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., S. D. Tex.—has concentrated on complex litigation and spans over 40 years, including consumer class actions for more than two-thirds of that time. As a result of his extensive experience in class litigation, including privacy and data-breach litigation, he regularly lectures nationally and internationally at seminars and symposiums regarding class litigation and privacy litigation.

He has served as lead, co-lead, and class counsel in numerous national class actions, including multi-district litigation, involving a wide range of subjects affecting consumers, including antitrust, defective products, life insurance, annuities, and deceptive and unfair acts and practices. In 2014, he was recognized by the National Law Journal as a trailblazer in the area of privacy litigation, and in 2020, he was recognized by LAW 360 for the second year in a row as one of 4 MVPs in the United States in the area of privacy and cyber security litigation. For his work in the area of privacy litigation, he was awarded lawyer of the year in the state of Florida

by The Daily Business Review.

As a result of his experience in insurance and complex litigation, beginning in 2005, he was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a member of the Florida Cabinet, to serve as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigations of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. He served as lead regulator counsel and worked with a core group of state Attorneys General from the National Association of Attorneys General, which were selected to conduct the investigations. The insurance regulator for Florida was the only insurance regulator in the group. The litigation that was filed and the related investigations netted millions of dollars in restitution for Florida consumers and resulted in significant changes in the way commercial insurance is sold in Florida and across the country.

During his career, he has tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by the Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, he served as lead counsel for several insurance companies, regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. He was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of his clients.

Mr. Yanchunis began his work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). See *Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). Subsequently, I also served as co-Lead Counsel in the DPPA class cases, *Davis v. Bank of America*, No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

He has been appointed and served in leadership positions a number of multidistrict litigation in the area of privacy and data breaches: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.) (settlement for \$190,000,000 preliminarily approved) *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-

LHK (N.D. Cal.) (“Yahoo”) (Lead Counsel) (Court approved \$117,500,000.00 common fund settlement for approximately 194 million US residents and 270,000 Israeli citizens); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs’ Steering Committee) (final judgment entered approving \$380.5 million fund for 145 million consumers); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (“OPM”) (member of the Executive Committee) (motion for preliminary approval of a \$60,000,000 common fund); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers).

His court-appointed leadership experience in non-MDL, data breach class actions is likewise significant, and to just name a few : *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.) (Co-Lead Counsel) (“Facebook”) (class certified for 8 million residents , subsequently settlement of the class was approved by the court); *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387 (N.D. Cal.) (“Kimpton”) (Lead Counsel) (class action settlement final approval order entered July 11, 2019); and *In re: Arby’s Restaurant Group, Inc. Data Security Litigation*, Nos. 1:17-cv-514 and 1:17-cv-1035 (N.D. Ga.) (co-Liaison Counsel) (final approval of a class settlement entered June 6, 2019); and *Jackson, et al., v. Wendy’s International, LLC*, No. 6:16-cv-210-PGB (M.D. Fla.) (final approval of a class settlement entered February 26, 2019); *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Montana Eighth Judicial Court – Cascade County) (final approval of class settlement entered January 5, 2021); *In re: Citrix Data Breach Litigation*, No. 19-cv-61350 (S.D. Fla.) (preliminary approval of class action settlement entered on January 26, 2021); *Kuss v. American HomePatient, Inc., et al.*, 18-cv-2348 (M.D. Fla.) (final approval of class action settlement entered on August 13, 2020); *Fulton-Green v. Accolade, Inc.*, 18-cv-274 (E.D. Pa.) (final approval of class action settlement entered September 23, 2019); *Nelson v. Roadrunner Transportation Systems, Inc.*, 18-cv-7400 (N.D. Ill.) (final approval of class action settlement entered September 15, 2020).

His experience in these major data breach matters extends far beyond simply briefing threshold issues and negotiating settlements. Rather, he has personally deposed dozens of corporate representatives, software engineers, cyber professionals and CISOs in major data breach cases such as Capital One, Yahoo, Kimpton, and Facebook. In addition, he has defended experts used in these cases and also deposed defense liability and damage experts.

Presently he leads his firm’s efforts in two major class cases pending against Google for data misuse.

As result of his experience in the area of class litigation and ethics, he has served as an expert for The Florida Bar on ethical issues arising in class action litigation. He is a frequent lecturer on privacy and class litigation nationally and internationally, including at international conferences, having presented at the University of Haifa's 2019 Class Action Conference, in Haifa, Israel, attended by lawyers, judges and law professors from around the world. In 2020 he lectured on data privacy in Mexico, and in November 2020 and 2021 he presented on class action issues to an international group of lawyers, judges and professors at a symposium in London sponsored by the London Law Society. He is schedule to speak on class action issues in 2022 at two different symposiums in Amsterdam, and two seminars on privacy and cyber security issues in the United States .

While at the University of Florida Mr. Yanchunis was a member of Florida Blue Key and Omicron Delta Kappa. He received his Juris Doctor degree from the South Texas College of Law in 1980, where he graduated magna cum laude. During law school, Mr. Yanchunis was a member of the Order of the Lytae, Associate Editor-in-Chief and Technical Editor of the South Texas Law Journal.

Michael F. Ram. Mr. Ram is a consumer class action lawyer with 40 years of experience. He graduated cum laude from Harvard Law School in 1982. He has co-tried several class action trials and frequently lectures on class trials. In 1992 he was a co-recipient of the Trial Lawyer of the Year Award given by Trial Lawyers for Public Justice for *National Association of Radiation Survivors v. Walters* No. 83-c-1861 (N.D. Cal.) (tried to class-wide judgment on remand from Supreme Court).

From 1993 through 1997, Mr. Ram was a partner with Lief, Cabraser, Heimann and Bernstein where he represented plaintiffs in several major class actions, including: *Cox v. Shell*, Civ. No 18,844 (Obion County Chancery Court, Tenn.) national class of six million owners of property with defective polybutylene plumbing systems; *In re Louisiana-Pacific Inner-Seal Litigation*, No. 95-cv-879 (D. Oregon) (co-lead counsel) national class of homeowners with defective siding; *ABS Pipe Litigation*, Cal. Judicial Council Coordination Proceeding No. 3126 (Contra Costa County) national class of homeowners.

In 1997, Mr. Ram founded Levy, Ram & Olson which became Ram & Olson and then Ram, Olson, Cereghino & Kopczynski. He was co-lead counsel in many consumer class actions including a national class of half a million owners of dangerous glass pane gas fireplaces in *Keilholtz et al. v. Superior Fireplace Company*, No. 08-cv-00836 (N.D. Cal. 2008). He was co-lead counsel for plaintiffs in *Chamberlan v. Ford Motor Company*, No. 03-cv-2628 (N.D. Cal.), a class action involving defective intake manifolds that generated four published opinions, including

one by the Ninth Circuit, 402 F.3d at 950, and settled one court day before the class trial. He was also co-counsel for plaintiffs in a number of other consumer class actions, including: *In re General Motors Corp. Product Liability Lit.* MDL No. 1896 (W.D. Wash.) (defective speedometers); *Richison v. American Cemwood Corp.*, San Joaquin Superior Court Case No. 005532 (defective Cemwood Shakes); *Williams v. Weyerhaeuser*, San Francisco Superior Court Case No. 995787 (defective hardboard siding); *Naef v. Masonite*, Mobile County, Alabama Circuit Court Case No. CV-94-4033 (defective hardboard siding on their homes); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998) (approving class action settlement); *McAdams v. Monier, Inc.* (2010) 182 Cal. App. 4th 174 (reversing denial of class certification in consumer class action involving roof tiles); *Gardner v. Stimson Lumber Co.* (King County Wash. No. 2-17633-3-SEA) (defective siding); *Rosenberg v. U-Haul* (Santa Cruz Superior Ct. No. CV-144045 (certified consumer class action for false and deceptive conduct; tried successfully to judgment); *In re Google Buzz User Privacy Litigation*, No. 10-cv-00672-JW (N.D. Cal. 2011) (international class action settlement for false and deceptive conduct); *Whitaker v. Health Net of California, Inc., and International Business Machines Corp.*, No. 2:11-cv-0910 KJM DAD (E.D. Cal.) (electronic privacy class action under the California Confidentiality of Medical Information Act); and *In re Kitec Plumbing System Products Liab. Litigation MDL No 2098*, N.D. Texas, No. 09-MD-2098 (MDL class action involving claims concerning defective plumbing systems).

From 2017 to 2020, Mr. Ram was a partner at Robins Kaplan LLP. In August, 2020, Mr. Ram joined Morgan & Morgan to open a San Francisco office for them. He is currently co-lead counsel in numerous consumer class actions, including *Gold v. Lumber Liquidators*, N.D. Cal. No. 14-cv-05373-RS, a certified multistate class action involving bamboo floors, and *Fowler v. Wells Fargo*, N.D. Cal. No. 3:17-cv-02092-HSG, a class action involving interest charges that settled for \$30 million. In addition, he is also currently serving on the Plaintiffs' Steering Committee in the *In re Philips CPAP MDL Litigation*, where he is co-chair of the Law and Briefing Committee.

Jean Sutton Martin. Ms. Martin presently serves by appointment as interim co-lead counsel in *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.), *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) (preliminary approval granted for \$68 million settlement for 15 million class members), *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.), and. She also serves as a member of the Plaintiffs' Steering Committee for the cases proceeding against LabCorp, Inc. in *In re: American Medical Collection Agency Data Breach Litigation*, 19-md-2904 (D. N.J.). She is a member of the Plaintiffs' Steering Committee in *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*, No. 17-md-2775 (D. Md.) and *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 19-md-2921 (D. N.J.).

In a case in which she serves as interim co-lead counsel, Ms. Martin argued a motion for class certification which resulted in the first order in the country granting Rule 23(b)(3)

certification in a consumer payment card data breach. *In re Brinker Data Incident Litig.*, No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021).

She has served in leadership positions in many consumer class actions and consolidated proceedings in federal courts around the country, including *inter alia*: *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.) (data breach settlement valued at over \$17.5 million) (co-lead counsel); *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (data breach) (co-lead counsel); *Linnins v. HAECO Americas, Inc., et al.*, No. 16-cv-486 (M.D.N.C.) (employee data disclosure) (co-lead counsel); *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.) (data breach) (class counsel); *Fuentes, et al. v. UniRush, LLC, et al.*, No. 1:15-cv-08372 (S.D.N.Y.) (disruption in servicing of financial accounts) (co-lead counsel); *Lewis, et al. v. Green Dot Corp., et al.*, No. 2:16-cv-03557 (C.D. Cal.) (disruption in servicing of financial accounts) (class counsel); *Brady, et al. v. Due North Holdings, LLC, et al.*, No. 1:17-cv-01313 (S.D. Ind.) (employee data disclosure) (class counsel); *Foreman v. Solera Holdings, Inc.*, No. 6:17-cv-02002 (M.D. Fla.) (employee data disclosure) (class counsel); *In Re: Outer Banks Power Outage Litigation*, No. 4:17-cv-141 (E.D.N.C.) (extended island power outage due to defective construction practices) (class counsel); and, *McCoy v. North State Aviation, LLC, et al.*, No. 17-cv-346 (M.D.N.C.) (WARN Act violations) (class counsel).

In addition to consumer class actions, Ms. Martin has practiced in the areas of mass tort and catastrophic personal injury litigation. Prior to joining Morgan and Morgan, Ms. Martin ran her own law firm concentrating in consumer class actions and mass tort litigation. She also has served as an adjunct professor at Wake Forest University School of Law.

Ms. Martin received her Juris Doctor degree from Wake Forest University School of Law in 1998, where she served as Editor-in-Chief of the *Wake Forest Law Review*. She obtained eDiscovery certification from the eDiscovery Training Academy at Georgetown Law Center in 2017. Ms. Martin graduated from Wake Forest University with a Bachelor of Science in Mathematical Economics in 1989. She earned a Master of International Business from the University of South Carolina in 1991.

Ms. Martin has been honored with the prestigious “AV” rating by Martindale-Hubbell. In 2016, Ms. Martin was selected by her peers as the foremost Litigation attorney in the State of North Carolina for *Business North Carolina Magazine's Legal Elite*, gaining membership in the *Legal Elite* Hall of Fame. In 2015, she was inducted as a Fellow of the Litigation Counsel of America, a prestigious trial lawyer honorary society comprised of less than one-half of one percent of American lawyers. Fellows are selected based upon excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. For upholding the highest principles of the legal profession and for outstanding dedication to the

welfare of others, Ms. Martin has also been selected as a Fellow of the American Bar Foundation, an honorary legal organization whose membership is limited to one third of one percent of lawyers in each state. Since 2012, she has been selected to the Super Lawyers list for North Carolina in the areas of mass torts and class actions, with repeated selection to the Top 50 Women North Carolina list since 2014. Additionally, Ms. Martin has been named by National Trial Lawyers to the Top 100 Trial Lawyers, Top 50 Class Action Lawyers, and Top 50 Mass Torts Lawyers for North Carolina.

Before entering law school, Ms. Martin worked with the sales finance team of Digital Equipment Company in Munich, Germany developing sales forecasts and pricing models for the company's expansion into the Eastern European market after the fall of the Berlin wall. She also worked as a practice management consultant for a physician consulting group and as a marketing manager for an international candy manufacturer where her responsibilities included product development, brand licensing, market research, and sales analysis.

Ms. Martin is a member of the North Carolina bar, having been admitted in 1998. She is also admitted to practice before the United States Supreme Court, the United States Court of Federal Claims, the United States Court of Appeals for the Fourth Circuit, the Western, Middle, and Eastern Districts of North Carolina, and the United States District Court of Colorado.

Marcio Valladares. Mr. Valladares was born in Managua, Nicaragua and immigrated to the United States during Nicaragua's civil war. In 1990, Marcio obtained a Bachelor of Science degree in psychology from the University of Florida. In 1993, he obtained his Juris Doctor degree, *magna cum laude*, from Florida State University. He is pursuing a Masters in Law (LL.M.) degree from Columbia University, focusing on federal and comparative law.

Before joining Morgan & Morgan, Marcio worked in both the public and private sectors. He served as a judicial law clerk to the Honorable Steven D. Merryday, United States District Judge, Middle District of Florida, and then served as a judicial law clerk to the Honorable Susan H. Black, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit. Marcio served as an Assistant United States Attorney for the Middle District of Florida. In the private sector, Marcio practiced commercial litigation and insurance defense at Holland & Knight LLP. Marcio also worked as in-house counsel for the Mayo Clinic. Marcio is fluent in English and Spanish.

Marie Noel Appel. Ms. Appel has dedicated her career to representing consumers in both individual and class action cases involving claims under consumer protection laws and other statutory and common law claims. She earned a B.A. in French from San Francisco State University in 1992 and graduated from University of San Francisco School of Law in 1996.

For most of her career, Ms. Appel has been in private practice litigating class claims related to defective products, mortgage fraud/Truth in Lending violations, unfair business practices relating to manufactured home sales, interest overcharges by the United States on military veterans' credit accounts, and statutory violations by the United States relating to offset of debts beyond the limitations period.

From 2012 to 2019, Ms. Appel left private practice to become the Supervising Attorney of the Consumer Project at the Justice & Diversity Center of the Bar Association of San Francisco which provides free legal services to low-income persons facing consumer issues.

In April 2019, Ms. Appel returned to private practice as Counsel at Robins Kaplan, LLP, then joined Morgan & Morgan in August 2020 where she focuses on class action litigation.

In addition to her legal practice, Ms. Appel is an Adjunct Professor at Golden Gate University School of Law in San Francisco where she teaches legal research and writing, and from 2011 to 2018 supervised students at the Consumer Rights Clinic, in which students performed legal work at the Justice & Diversity Center's Consumer Debt Defense and Education Clinics.

Ms. Appel has a long history of pro bono involvement and currently is a regular volunteer at the Community Legal Assistance Saturday Program, a monthly free legal clinic sponsored by the Alameda County Bar Association. Ms. Appel provides trainings to San Francisco Bay Area legal aid attorneys regarding consumer collection defense and related matters, focusing recently on defense of lawsuits against low-income individuals for unpaid back rent resulting during the COVID-19 pandemic. In the past, Ms. Appel has provided pro bono representation for numerous low-income consumers facing debt collection lawsuits, and volunteered regularly at free legal clinics through the Justice & Diversity Center in San Francisco which, on multiple years, designated her as one of the Outstanding Volunteers in Public Service.

Ms. Appel is admitted to practice in the Ninth Circuit Court of Appeals, and United States District Courts in the Central District of California; the Eastern District of California; the Northern District of California; and the Southern District of California.

Kenya Reddy. Ms. Reddy represents consumers in class action litigation. She graduated from Duke University in 1997 with a degree in political science. In 2000, she received her law degree from the University of Virginia School of Law. Prior to joining Morgan & Morgan, Ms. Reddy was a shareholder at Carlton Fields, P.A., where her primary areas of practice were antitrust, complex civil litigation, class action defense, and business litigation. She also has

experience in including labor and employment, products litigation, ERISA and employee benefits law, insurance, healthcare, and securities litigation.

Ms. Reddy has served as a law clerk for the Honorable Charles R. Wilson, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit, the Honorable Anne C. Conway, former Chief Judge of the United States District Court for the Middle District of Florida, the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida, and the Honorable Karla R. Spaulding, United States Magistrate Judge, Middle District of Florida.

Ms. Reddy was a guest speaker in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on the topic of standing in data breach cases. In October 2019, she presented on the topic of third-party litigation funding at the Mass Torts Made Perfect Conference.

Ms. Reddy is admitted to practice in the Northern, Middle, and Southern Districts of Florida.

Ryan Maxey. Mr. Maxey grew up in Tampa, Florida. He attended the University of South Florida, where he obtained Bachelors Degrees in Computer Science and Philosophy. During and after his undergraduate education, Mr. Maxey developed software and databases for Amalie Oil Company, an automotive lubricant manufacturer located in the Port of Tampa. Mr. Maxey later attended law school at the University of Florida, graduating *order of the coif* in 2008.

From 2008 to 2011, Mr. Maxey served as a judicial law clerk to the Honorable Elizabeth A. Jenkins, United States Magistrate Judge, University of Florida. Mr. Maxey then worked at one of the country's largest law firms, Greenberg Traurig, for four years. In 2015, Mr. Maxey joined Morgan & Morgan's Business Trial Group as a lead attorney handling a variety of business litigation matters. Mr. Maxey later started his own law practice, litigating claims related to breach of contract, trade secret misappropriation, the FLSA, the FDCPA, and premises liability.

Mr. Maxey was admitted to the Florida Bar in 2008 and is also admitted to practice in the Middle District of Florida and the Southern District of Florida.

Ryan J. McGee. Mr. McGee was born and raised in Tampa, Florida. He studied business economics and history at the University of Florida, where he was a teaching assistant for technology classes in the business school, and received his law degree from Stetson University College of Law, where he was an editor on the *Stetson Law Review*, a research assistant for antitrust and consumer protection laws, and a teaching assistant for Stetson's trial advocacy program.

Ryan began his legal career as a state-appointed prosecutor, where he tried over 50 jury

trials to verdict, mostly felonies, as well as a special prosecutor appointed to investigate police officers' deadly use-of-force and corruption within various law enforcement agencies. Ryan also served as a law clerk for two years for the Honorable Elizabeth A. Kovachevich, the former Chief United States District Judge, Middle District of Florida. Before joining Morgan & Morgan, Ryan's practice involved complex business disputes, antitrust, trade secret, data security, and class action investigations and defense-side litigation in state and federal courts across the country.

Since shifting his focus entirely to consumer class action representation, Ryan has been selected as a Florida Super Lawyer Rising Star in 2018 and 2019 in the field of Class Actions, and has extensive privacy and consumer fraud class action experiencing, having actively participated in the following litigations: *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.); *In re Equifax, Inc. Customer Data Sec. Breach Litigation*, No. 1:17-md-02800 (N.D. Ga.); *Morrow v. Quest*, No. 2:17-cv-0948(CCC)(JBC) (D.N.J.); *In re Google Plus Profile Litigation*, No. 5:18-cv-06164 EJD (N.D. Cal.); *Kuss v. American HomePatient, Inc., et al.*, No. 8:18-cv-02348 (M.D. Fla.); *Richardson, et al. v. Progressive Am. Ins. Co., et al.*, No. 2:18-cv-00715 (M.D. Fla.); *Hymes, et al. v. Earl Enterprises Holdings, Inc.*, No. 6:19-cv-00644 (M.D. Fla.); *Orange v. Ring, LLC, et al.*, No. 2:19-cv-10899 (C.D. Cal.).

Ryan was admitted to the Florida Bar in 2009 and is also admitted to practice in the Northern, Middle, and Southern Districts of Florida.

Patrick Barthle. Mr. Barthle was born and raised in Dade City, Florida. He attended the University of Florida where he was admitted to the Honors Program and graduated, *cum laude*, with a double major in History and Criminology in 2009. While at UF, Patrick was inducted into the Phi Beta Kappa Honor Society and served as President of the Catholic Student Center. Patrick attended Washington and Lee University School of Law, graduating *summa cum laude* in 2012; where he was a Lead Articles Editor for the Wash. & Lee Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society, and President of the W&L Law Families organization.

Before joining Morgan & Morgan in 2015, Patrick worked at one of the country's largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. Patrick has extensive privacy and consumer fraud class action experiencing, having actively participated in the following litigations: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.C.); *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.); *Morrow v. Quest Diagnostics, Inc.*, No. 2:17-cv-0948 (Dist. NJ); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.); *In re The Home*

Depot, Inc. Customer Data Security Data Breach Litigation, No. 1:14-md-02583-TWT (N.D. Ga.); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-md-02752-LHK (N.D. Cal.); and *Finerman v. Marriott Ownership Resorts, Inc.*, Case No.: 3:14-cv-1154-J-32MCR (M.D. Fla.).

Patrick was selected as a Florida Super Lawyer Rising Star in 2019 in the field of Class Actions. He is also active in speaking on privacy and class action topics, having spoken in June 2018, at the NetDiligence Cyber Risk Summit on the topic of Unauthorized Use of Personal Data; in November 2018 at the American Association for Justice's Advanced 30(b)(6) Seminar, on the topic of 30(b)(6) Depositions in Data Breach Cases; and in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on that topics of damage models and settlements in data breach cases; and Rule 23(c)(4) classes at the Mass Torts Made Perfect conference.

Mr. Barthle was admitted to the Florida Bar in 2012 and is also admitted to practice in the Middle District of Florida, the Southern District of Florida, and the District of Colorado.

Francesca Kester. Ms. Kester was born and raised in Scranton, Pennsylvania. She attended Marywood University, where she graduated with a major in English Literature, and The Pennsylvania State University's Dickinson School of Law, where she received her Juris Doctor degree in 2017. While at Dickinson, Ms. Kester competed in the American Bar Association's National Appellate Advocacy Competition, where she was awarded the highest honor for her legal brief writing, and the Texas Young Lawyer's National Trial Competition, where she finished as a regional finalist. Ms. Kester also served as Executive Chair of the Dickinson Law Moot Court Board, Founder of the Dickinson Law partnership with Big Brothers Big Sisters, and Student Director of the Bethesda Mission Men's Shelter legal clinic. At graduation, she was honored with the D. Arthur Magaziner Human Services Award for outstanding academic achievement and service to others, the Joseph T. McDonald Memorial Scholarship for excellence in trial advocacy, and the peer-selected Lee Popp Award for her devotion to the legal field.

Ms. Kester interned as a judicial clerk to United States Magistrate Judge Martin C. Carlson while in law school. After graduation, she served for two years as a law clerk to the Honorable James M. Munley in the United States District Court for the Middle District of Pennsylvania. Ms. Kester is a member of the Lackawanna County Bar Association, the Pennsylvania Bar Association, the American Association for Justice, and Order of the Barristers. In 2018 and 2019, she served as the attorney advisor for her alma mater's high school mock trial team, coaching them to a first place finish in the state and ninth in the nation.

Ms. Kester is admitted to practice law in both Pennsylvania and Florida.

Ra O. Amen. Mr. Amen was raised in both the California Bay Area and Massachusetts. In 2005, Ra graduated from Stanford University with a B.A. in Economics. After graduating, Ra worked as a Peace Corps volunteer in Morocco teaching English as a second language and business skills to local artisans. Before entering law school, Ra worked for several years in education and in business development for a mobile technology startup. In 2017, he obtained his Juris Doctor degree with Honors from Emory University School of Law. While at Emory Law, he was a Managing Editor of the Bankruptcy Developments Journal, interned at a consumer fraud law practice, and worked in-house with one of the globe's leading metals companies assisting in a diverse array of legal issues ranging from corporate restructuring to international tax and contract disputes. Before joining Morgan & Morgan in 2020, Mr. Amen worked at one of the nation's largest defense law firms in the nation where he specialized in representing clients in complex commercial, administrative, and ecclesiastical disputes.

Ra speaks both English and Spanish, and is an avid guitar player.

Ra was admitted to the Georgia Bar in 2017.

David Reign. Mr. Reign is the former Assistant Special Agent in Charge of the Tampa FBI Field office, with nearly 25 years of investigative experience. He has investigated and managed some of the FBI's most complex white-collar crime cases, with an emphasis on health care fraud, public corruption, and financial crimes. As Deputy Chief of the Enron Task Force, he led a team of investigators and analysts in the successful investigation and prosecution of several executives of the Enron Corporation. He received the Attorney General's Award for Exceptional Service for his work on the Enron matter.

Exhibit C

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 8:21-cv-001478-MSS-SPF

STEVEN K. FARMER, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

HUMANA INC., a Delaware corporation; and
COTIVITI, INC., a Delaware corporation,

Defendants.

**DECLARATION OF WILLIAM W. WICKERSHAM IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT AND INCORPORATED MEMORANDUM IN SUPPORT**

1. I am the Vice President of Business Development and Client Relations at RG/2 Claims Administration LLC ("RG/2 Claims"). In that role, I oversee the intake and management of all ongoing class action settlements including the creation and implementation of legal notice plans.

2. RG/2 Claims was established in 2002 as a full-service class action notice and claims administrator, providing notice and administration services for a broad range of collective actions, including but not limited to antitrust, securities, consumer, and employment cases. RG/2 Claims specializes in the creation, development and implementation of legal notification plans. Accordingly, RG/2 Claims is familiar with, and guided by Constitutional due process provisions, rules of states and local jurisdictions, and the relevant case law relating to legal notification. Since 2000, RG/2 has administered and distributed in excess of \$1.2 billion in class-action

settlement proceeds. A true and accurate copy of the firm's publication describing RG/2's background and capabilities is attached hereto as Exhibit A.

3. I have been involved in the development and implementation of media plans for class action notification for more than ten years.

4. I submit this declaration at the request of Proposed Class Counsel for the Settlement Class in order to describe the proposed notice plan and notice services in the settlement of claims against defendants Humana, Inc. and Cotiviti, Inc. (collectively the "Defendants") in the above-captioned litigation.

5. I have personal knowledge of the matters set forth in this declaration and, if called as a witness, could and would testify competently thereto.

6. The objective of the suggested Notice program is to provide the best notice practicable—Rule 23-compliant notice—to those members of the Class.

7. Within 10 days of Class Counsel filing for Preliminary Approval, RG/2 Claims will provide notice to relevant state and federal attorneys general in compliance with the Class Action Fairness Act.

8. RG/2 Claims proposes a notice program with the following elements:

a. Direct notice via postcard and email to the class members identified from Defendants' records.

b. Direct notice via email to the Settlement Class Members identified from Defendants' records. Any undeliverable emails will be processed and those class members will receive a postcard notice.

c. The Notice and other important court documents relevant to the Class Notice and the litigation in general will be made available on a case specific website designated

for this action. Additionally, RG/2 Claims will maintain a toll-free number to answer and address any class member inquiries.

9. The proposed notice plan provides the best practicable method to reach the potential class members and is consistent with other class action notice plans that have been approved by various federal courts for similarly situated matters.

10. Whenever practicable, direct USPS mail is the preferred form of notice for class members in a class action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-76 (1974). In 2018 Rule 23(c)(2)(B) was amended to formally allow for notice by “electronic means” including notice by email.

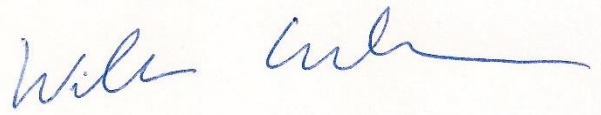
11. All undeliverable mail will be sorted and scanned. For returned notices without a forwarding address, RG/2 Claims will use Accurint (a division of Lexis-Nexis) to perform a basic “skip trace” search in order to retrieve the most accurate and updated information. The database will be updated with any new address found and the Notice will be re-mailed to the updated addresses.

12. RG/2 Claims believes the notice program described above is suitable for this case and is comparable to plans other federal courts have approved for similar cases. RG/2 Claims also believes that the Notice is drafted in the “plain language” format preferred by federal courts and provides the information required by Rule 23. RG/2 Claims believes that the Notice is understandable for members of the Class and complies with due process.

13. The total costs for the notice and settlement administration for this settlement are estimated to be \$80,057.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT TO THE BEST OF MY KNOWLEDGE THE FOREGOING IS TRUE AND CORRECT.

Executed on May 23, 2022, in Wilton, CT.

A handwritten signature in blue ink, appearing to read "Wills Wickersham", is written on a light-colored, textured background.

William W. Wickersham, Declarant

EXHIBIT A



SETTING A NEW STANDARD IN CLASS ACTION CLAIMS ADMINISTRATION

PHILADELPHIA • NEW YORK • ATLANTA • SAN DIEGO • SAN FRANCISCO

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Class Action Experience

High-Quality Service at Competitive Rates

RG/2 Claims seasoned professionals utilize their vast class action experience, tax and financial management resources to deliver high-quality service at competitive rates.

RG/2 Claims is a boutique class action claims administration firm with a nationwide presence founded by seasoned class action practitioners and highly credentialed tax professionals. Our leadership team has a collective 100 years' experience working in the field of class action litigation and settlement administration to leverage for the benefit of counsel. Our team of driven class action attorneys, *highly credentialed CPAs and forensic accountants* approach each matter with a personal goal to shepherd the settlement through the process from settlement negotiations through final approval. Our personal attention and care ensures that the administration is handled in a seamless matter that allows counsel to proceed with the knowledge and confidence that their settlement will receive the attention and care that they demand. In addition, our operations and IT personnel bring individualized innovations to each engagement, driving the notice and settlement administration to conclusion. We have the experience to handle large settlements with the personal attention and care expected from a boutique firm.

RG/2 Claims recognizes that cutting-edge technology is the key to efficient and reliable claim processing. Our IT Group, including an experienced web design team, enables RG/2 Claims to employ technologies used to enhance accuracy, efficiency and interaction of all participants in the claims process. Our approach focuses on analysis of case needs, development of solutions to maximize resources and reduce costs through accurate and efficient data collection and entry, and ongoing maintenance and support. Throughout the entire claims process, our goal is to (1) optimize completeness, accuracy and efficiency of the data management system, including online integration; (2) validate critical fields and data; and (3) track opt-outs and claimant responses. RG/2 Claims' proprietary database application provides a *single source for managing the entire claims administration process and expediting decision making and resource management*. From the initial mailing through distribution of settlement funds and reconciliation of distributed payments, RG/2 Claims' CLEVerPay® system centralizes data, facilitating information sharing and efficient communication.



Cutting-Edge Technology and Skilled Resources

The CLEVerPay® System: A proprietary and revolutionary application developed exclusively by RG/2 Claims.

At RG/2 Claims, we developed a proprietary and customizable database with the goal of providing single-source management throughout the claims administration process, expediting decision making and resource management.

From the initial mailing through distribution of settlement funds and reconciliation of payments, RG/2 Claims' CLEVerPay® system centralizes the entire process while providing information sharing and communications solutions.

Our CLEVerPay® system is a robust and user-friendly resource that can be easily customized to meet your administration and distribution needs. We recognize how essential it is for data to be clean, centralized and readily accessible. RG/2 Claims' CLEVerPay® system has the capacity to assimilate and analyze large amounts of raw data from multiple inputs, to convert that raw data into useful information and to distribute the useful information in a variety of formats.

The integration of these elements results in timely and accurate distribution of secure payments generated from RG/2 Claims' single-source CLEVerPay® system.

For more information, please visit our website to download our CLEVerPay® System Datasheet at: <http://www.rg2claims.com/pdf/cleverPayDatasheet.pdf>.

Experienced Professionals Always There When You Need Us

RG/2 Claims principals have hands-on experience in both class action practice and settlement administration. Our combined access to resources and institutions allows us to deliver superior value-added service in all aspects of settlement administration.



GRANT RAWDIN, Esq., CFP®, CEO and co-founder, is an attorney, an accountant and a Certified Financial Planner™ practitioner. *Worth* magazine named him one of the “Best Financial Advisors in America.” Mr. Rawdin’s professional background includes more than 25 years of legal and accounting experience focused in tax, business, investment analysis, legal claims and class action settlement administration. Mr. Rawdin has a juris doctor degree from Temple University Beasley School of Law and a B.A. in English from Temple University, and he is admitted to practice law in Pennsylvania and New Jersey.

rawd@rg2claims.com



MICHAEL A. GILLEN, CPA, CFE, CFF, President and co-founder, has more than 25 years of experience in many facets of litigation consulting services, with particular emphasis on criminal and civil controversies, damage measurement, fraud and embezzlement detection, forensic and investigative accounting, legal claims and class action settlement administration and taxation. He assists numerous attorneys and law firms in a variety of litigation matters. Mr. Gillen graduated from La Salle University with a B.S. in Accounting.

mikegillen@rg2claims.com



MICHAEL J. LEE, CFA, COO, the chief architect of our proprietary CLEVerPay® system is a Chartered Financial Analyst with extensive experience in litigation consulting services, including damage assessment, measurement, evaluation, legal claims and class action settlement administration. Additionally, Mr. Lee has about a decade of experience in the financial services industry, with particular emphasis on securities valuation, securities research and analysis, investment management policies and procedures, compliance investigations and portfolio management in global equity markets. Mr. Lee has a B.S. in Business Administration with a dual major in Finance and Management from La Salle University and an M.B.A. in Finance from the NYU Stern School of Business.

mlee@rg2claims.com



MELISSA BALDWIN, Director of Claims Administration—Employment and Consumer, has over 18 years of experience in the administration of class action matters, with focuses on project management, client communication, notice coordination, claims processing and auditing, and distribution in the class action practice areas of antitrust, consumer and labor and employment. As Notice and Correspondence Coordinator, Ms. Baldwin assisted in the administration of an antitrust matter involving nine defendant banks, which included over 47 million class members and the subsequent distribution of the \$330 million Settlement Fund to the valid class members. Ms. Baldwin has a B.S. in Business Administration from Drexel University.

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TINA M. CHIANGO, Director of Claims Administration—Securities and Antitrust, has over 20 years of experience in the administration of class action matters. Ms. Chiango focuses on project management; this includes establishing procedures and case workflow, client communications, notice coordination, overseeing the processing and auditing of claims, distribution to the class and preparing reports and filings for the court. Over the last 20 years, Ms. Chiango has worked on a broad spectrum of class action settlements including securities, antitrust, consumer and mass tort, among others. Ms. Chiango has a B.S. in Business Administration with a major in Accounting from Drexel University.

tchiango@rg2claims.com



WILLIAM W. WICKERSHAM, Esq., Senior Vice President, Business Development and Client Relations, focuses his practice on assisting clients in navigation of the claims administration process from pre-settlement consultation through disbursement in all class action practice areas, including, but not limited to, antitrust, consumer, labor and employment, and securities. As a seasoned director of client relations, he advises counsel on settlement administration plans and manages many large and complex class action settlements. Mr. Wickersham has also appeared in federal court on several occasions to successfully support counsel in the settlement approval process including complex securities, environmental and wage and hour matters. As a former securities class action attorney, he brings over a decade's worth of experience in the class action bar as a litigator and as a claims administrator. As a litigator, Mr. Wickersham was involved in several high profile litigations which resulted in recoveries for investors totaling over \$2.5 billion. Mr. Wickersham has a juris doctor degree from Fordham University School of Law, a B.A. from Skidmore College and is admitted to practice law in New York.

wwwickersham@rg2claims.com



CHRISTOPHER J. TUCCI, Esq., Vice President, Business Development and Client Relations, focuses on guiding clients through the class action claims administration process from pre-settlement consultation to innovative notice campaigns, to quality and cost-effective administration, to the ultimate distribution of funds. He advises clients on the administrative solutions for consumer, employment, securities, and antitrust class action. Mr. Tucci is recognized as an expert in the financial services legal community and is a sought after national speaker on litigation management, financial services laws, data security breaches, corporate investigations, and in-house counsel best practices. As a former senior in-house litigator for nearly two decades, he has extensive experience managing litigation for global financial services corporations, including dozens of securities, wage & hour, and consumer class actions matters. Mr. Tucci brings a unique perspective to class action matters with his deep practical experience in the management of litigation including selecting and managing outside counsel, handling internal investigations, communicating with state and federal regulators, and managing litigation from inception through settlement or dismissal. Mr. Tucci has a juris doctor degree from Widener University School of Law, a B.A. from the University of Delaware, and is admitted to practice in Pennsylvania and New Jersey.

ctucci@rg2claims.com

Locations



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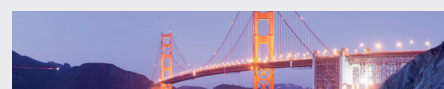
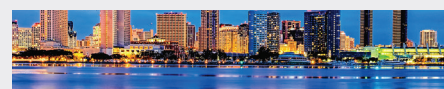
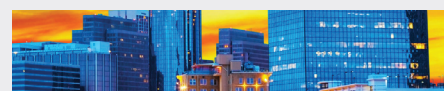
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Full Life-Cycle Support for Your Class Action With You Every Step of the Way

Whether engaged as a court-appointed settlement administrator, claims agent or disbursing agent, RG/2 Claims offers a complete range of claims, settlement administration and investment management services, including but not limited to:

PROFESSIONAL CASE MANAGEMENT CONSULTING

RG/2 Claims provides custom pre-settlement consultation and highly personalized attention throughout the life cycle of settlement administration. Each retention begins with an in-depth consultation concerning the specific needs of the case. Our professionals routinely and proactively identify administrative concerns and identify and propose solutions that avoid delay and remove unpredictability from the equation. We work through a coordinated approach involving a core of specialists that are intimately familiar with the case entrusted to our care. Our retentions result in effective and efficient solutions and greater peace of mind for busy lawyers.

NOTIFICATION PLANNING AND CAMPAIGNS

Whether routine or innovative, RG/2 Claims designs cost-effective and thorough notification plans that will suit your budget whether the settlement is national in scope or highly localized. RG/2 Claims guides you through the array of notice publication options at your disposal in a variety of media formats.

WEBSITE DESIGN

RG/2 Claims can assist in the design and hosting of a website specific to the client's needs to allow for document posting, as well as pertinent information and deadlines about the case. RG/2 Claims can also provide various options for claims filing, which includes an online portal that allows claimants to submit their claims and supporting documentation through the website.

CLAIMS PROCESSING

RG/2 Claims utilizes a proprietary and customizable database that provides a single-source management tool throughout the claims administration process, expediting decision making and resource management. RG/2 Claims' proprietary and sophisticated CLEVerPay® system centralizes the entire process while providing information sharing and communications solutions, from the initial mailing through distribution of settlement funds and reconciliation of payments.

DISTRIBUTION AND TAX SERVICES

RG/2 Claims' in-house tax, accounting and financial services professionals provide disbursement services, including management of checking, sweep, escrow and related cash accounts, as well as non-cash assets, such as credits, gift cards, warrants and stock certificates. RG/2 Claims' in-house CPAs provide a broad array of accounting services, including securing private letter rulings from the IRS regarding the tax reporting consequences of settlement payments, the preparation of settlement fund tax returns and the preparation and issuance of IRS Forms 1099 and W-2.

Range of Services

Offering Unparalleled Value

RG/2 offers a range of quality value-added services for your class action administration.

SECURITIES

RG/2 Claims' highly experienced team uses its various resources to locate beneficial holders of securities, including working with the Depository Trust Company and a proprietary list of nominee firms to identify and mail notices to the class. With RG/2 Claims' CLEVerPay system, claims are processed efficiently and accurately using our proprietary damage grid that calculates class member damages in accordance with a broad array of complex plans of allocation. Claims are automatically flagged through a validation process so RG/2 Claims can communicate with class members concerning their claims and can assist them in filing claims that are complete and properly documented. Once ready for distribution, RG/2 Claims conducts an audit of the claims to insure against calculation errors and possible fraudulent claims. Once the audit is completed, RG/2 Claims calculates distribution amounts for eligible class members in accordance with the plan of allocation and issues checks and any applicable tax documents. RG/2 Claims is also often called upon to act as the Escrow Agent for the Settlement Fund, investing the funds and filing all required tax returns.

ANTITRUST

Because of the high-dollar settlements involved in most antitrust cases and potential large recoveries on behalf of class members, RG/2 Claims understands the importance of accuracy and attention to detail for these cases. RG/2 Claims works with counsel to arrive at the best possible plan to provide notice to the class. With RG/2 Claims' CLEVerPay system, claims filed with a large volume of data, which is common in an antitrust case, can be quickly and easily uploaded into our database for proper auditing. Our highly-trained staff consults with counsel to apply an audit plan to process claims in an efficient manner while ensuring that all claims meet class guidelines. Once ready for distribution, RG/2 Claims calculates check amounts for eligible class members in accordance with the plan of allocation and will issue checks (including wire transfers for large distributions) as well as any necessary tax documents. RG/2 Claims is also available to act as the Escrow Agent for the Settlement Fund, investing the funds and filing all required tax returns.

EMPLOYMENT

With an experienced team of attorneys, CPAs, damage experts and settlement administrators, RG/2 Claims handles all aspects of complex employment settlements, including collective actions, FLSA, gender discrimination, wage-and-hour and, in particular, California state court class and PAGA settlements. RG/2 Claims utilizes technological solutions to securely receive and store class data, parse data for applicable employment information, personalize consents forms or claim forms, collect consents or claims electronically, calculate settlement amounts and make payments through our proprietary CLEVerPay system. Our proprietary database also allows for up-to-the-minute statistical reporting for returned mail, consents or claims received and exclusions submitted. Our CPAs concentrate on withholding and payroll issues and IRC section 468(B) compliance and reporting. Customizable case-specific websites allow for online notification and claims filing capabilities. With Spanish/English bilingual call center representatives on-staff, class members are provided immediate attention to their needs.

CONSUMER

RG/2 Claims handles a wide range of complex consumer matters with notice dissemination to millions of class members and with settlements involving cash, coupons, credits and gift cards. Our experienced claims administrators are available to provide guidance on media, notice and distribution plans that are compliant with the Class Action Fairness Act and the state federal rules governing notice, and that are most beneficial to the class. Our proprietary CLEVerPay system provides a secure and efficient way to track class member data, claims and payments. Integrated with our database, we can provide a user-friendly claims filing portal that will allow class members to complete a static claim form or log-in using user-specific credentials to view and submit a claim personalized just for that user. A similar online portal can be provided as a highly cost-effective method for distribution where the class member can log in to obtain coupons, vouchers or credits as their settlement award.

Effective administration requires proactive planning and precise execution. Before we undertake any matter, we work with you to develop a specific plan for the administration of your case. The service plan is comprehensive, complete and tailored to your specific needs.

RG/2 CLAIMS PROVIDES THE SERVICES SUMMARIZED BELOW:

- Technical consultation during formulation of settlement agreement, including data collection criteria and tax consequences
- Design and development of notice and administration plan, including claim form design and layout
- Claim form and notice printing and mailing services
- Dedicated claimant email address with monitoring and reply service
- Calculation and allocation of class member payments
- Claim form follow-up, including issuing notices to deficient and rejected claims
- Mail forwarding
- Claimant locator services
- Live phone support for claimant inquiries and requests
- Claim form processing
- Claim form review and audit
- Check printing and issuance
- Design and hosting of website access portals
- Online claim receipt confirmation portal
- Ongoing technical consultation throughout the life cycle of the case
- Check and claim form replacement upon request

WE ALSO PROVIDE THE FOLLOWING OPTIONAL SERVICES:

- Periodic status reporting
- Customized rapid reporting on demand
- Issue reminder postcards
- Consultation on damage analyses, calculation and valuation
- Interpretation of raw data to conform to plan of allocation
- Issue claim receipt notification postcards
- Online portal to provide claims forms, status and contact information
- Dedicated toll-free claimant assistance line
- Evaluation and determination of claimant disputes
- Opt-out/Objection processing
- Notice translation
- Integrated notice campaigns, including broadcast, print and e-campaigns
- Pre-paid claim return mail envelope service
- Web-based claim filing
- 24/7 call center support
- Damage measurement and development of an equitable plan of allocation

WE ALSO PROVIDE CALCULATION AND WITHHOLDING OF ALL REQUIRED FEDERAL AND STATE TAX PAYMENTS, INCLUDING:

- Individual class member payments
- Qualified Settlement Fund (QSF) tax filings
- Employment tax filings and remittance
- Generation and issuance of W-2s and 1099s
- Integrated reporting and remittance services, as well as client-friendly data reports for self-filing

**Don't see the service you are looking for?
Ask us. We will make it happen.**



FOR MORE INFORMATION, PLEASE CONTACT:

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BOUTIQUE ADMINISTRATOR WITH
WORLD-CLASS CAPABILITIES

PHILADELPHIA • NEW YORK • ATLANTA • SAN DIEGO • SAN FRANCISCO

Exhibit D

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

STEVEN K. FARMER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

HUMANA INC., a Delaware corporation,
and COTIVITI, INC., a Delaware
corporation,

Defendants.

Case No.: 8:21-cv-01478-MSS-SPF

**[PROPOSED] ORDER GRANTING PLAINTIFF’S UNOPPOSED MOTION
TO DIRECT CLASS NOTICE AND GRANT PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiff’s unopposed motion to direct class notice and grant preliminary approval of a proposed class action settlement in this action (Doc. __), the terms of which are set forth in a Settlement Agreement with accompanying exhibits attached as Exhibit A to Plaintiff’s motion (the “Settlement Agreement”).¹ Having fully considered the issue, the Court hereby GRANTS the motion and orders as follows:

1. **Class Certification for Settlement Purposes Only.** The Settlement Agreement provides for a Settlement Class defined as follows:

“All individuals residing in the United States whose personal information was or may have been compromised in the data breach that is the subject of the Notice of Privacy

¹ All defined terms herein have the same meaning as set forth in the Settlement Agreement.

Incident that Humana sent to Plaintiff and others in substantially the same form on or around March 1, 2021.” The Settlement Class specifically excludes: (i) Humana, Inc. and Cotiviti, Inc. and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity involved in the Data Incident or who pleads nolo contendere to any such charge.

Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving notice is justified. The Court finds that it will likely be able to approve the proposed Settlement as fair, reasonable, and adequate. The Court also finds that it will likely be able to certify the Settlement Class for purposes of judgment on the Settlement because it meets all of the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds for settlement purposes that: a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; b) there are issues of law and fact that are common to the Settlement Class; c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; d) the Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representative have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; e) questions of law or fact common to Settlement Class members

predominate over any questions affecting only individual members; and f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

2. **Settlement Class Representatives and Settlement Class Counsel.** The Court finds that the Plaintiff named in the Complaint will likely satisfy the requirements of Rule 23(e)(2)(A) and be appointed as the Settlement Class representative. Additionally, the Court finds that proposed Class Counsel, John A. Yanchuni and Ryan D. Maxey of Morgan & Morgan, will likely satisfy the requirements of Rule 23(e)(2)(A) and are appointed as Class Counsel pursuant to Rule 23(g)(1).

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the Settlement is fair, reasonable, and adequate to warrant providing notice of Settlement to the Settlement Class and accordingly is preliminarily approved. In making this determination, the Court has considered the benefits to the Settlement Class, the specific risks faced by the Settlement Class in prevailing on Plaintiff's claims, the stage of the proceedings at which the Settlement was reached, the effectiveness of the proposed method for distributing relief to the Settlement Class, the proposed manner of allocating benefits to Settlement Class Members, and all of the other factors required by Rule 23.

4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on _____, 2022, at _____ [via telephone or videoconference or in-person at the United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602], to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (b) the Settlement should be approved as fair, reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the application of Class Counsel for an award of attorneys' fees, costs, and expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (e) the application of the Settlement Class Representatives for service awards should be approved.

6. **Settlement Administrator.** The Court appoints RG/2 Claims Administration LLC as the Settlement Administrator, with responsibility for class notice and claims administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Administrator's fees will be paid by Cotiviti pursuant to the Settlement Agreement.

7. **Notice.** The proposed method for providing notice set forth in the Settlement Agreement and the Class Notice and Claim Forms attached to the Settlement Agreement as Exhibits A, B, and C are hereby approved. Non-material modifications to these Exhibits may be made with approval by the parties but without further order of the Court.

8. **Findings Concerning Notice.** The Court finds that the proposed form, content, and method of giving notice to the Settlement Class as described in the Settlement Agreement and exhibits: (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by class members.

The Settlement Administrator is directed to carry out the Notice Plan in conformance with the Settlement Agreement.

9. **Class Action Fairness Act Notice.** Within 10 days after the filing of the motion to permit issuance of notice, Defendants shall serve or cause to be served a notice of the proposed Settlement on appropriate state officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written request for exclusion to the

Settlement Administrator at the address and in the manner provided in the Notice. Such requests for exclusions must meet the opt-out deadline established by this Order and stated in the Notice.

A request for exclusion must be in writing and: (a) state the name of this proceeding (*Farmer v. Humana Inc. and Cotiviti, Inc.*, Case No. 8:21-cv-01478-MSS-SPF, or similar identifying words such as “Humana Data Incident Lawsuit”); (b) state the name and address of the Settlement Class Member seeking exclusion; (c) state “Request for Exclusion” or words communicating the person’s request for exclusion from the Settlement Class; and (d) must be signed by the Settlement Class Member.

A request for exclusion that does not include the foregoing information, or that is sent to an address other than the one designated in the Notice, or that is not received within the specified time shall be invalid and the Settlement Class Member serving such a request shall, if the Final Approval Order and Judgment is entered, be considered a Settlement Class Member and shall be bound by any judgment entered herein with respect to the Settlement Class.

The Settlement Administrator shall forward a list of all requests for exclusion to Class Counsel and to Defendants’ Counsel within 7 days of the Opt-Out Deadline.

If the Final Approval Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written request for exclusion from the Settlement Class shall be bound by all subsequent proceedings, orders, and judgments in this action, including but not limited to the Release set forth in the Final Approval Order and Judgment. Settlement Class Members who submit valid and timely requests

for exclusion shall not be entitled to receive any benefits from the Settlement.

11. **Objections and Appearances.** Any Settlement Class Member may object to the Settlement, Class Counsel's request for fees and expenses, or the request for service award payments to the Settlement Class Representatives; provided, however, that no Settlement Class Member shall be heard or entitled to contest such matters, unless the objection is: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, at the address listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. For the objection to be considered by the Court, the objection must be in writing and include:

- (a) The name of this proceeding (*Farmer v. Humana Inc. and Cotiviti, Inc.*, Case No. 8:21-cv-01478-MSS-SPF, or similar identifying words such as "Humana Data Incident Lawsuit");
- (b) The objector's full name, address, and telephone number;
- (c) The grounds for the objection, as well as any documents supporting the objection;
- (d) A statement as to whether the objection applies only to the objector and the objector's circumstances, to a specific subset of the class, or to the entire class;
- (e) the name and address of any attorneys representing the objector with respect to the objection;
- (f) A statement regarding whether the objector or his/her attorney intend to appear at the Final Approval Hearing; and
- (g) The signature of the objector or his/her attorney.

Any Settlement Class Member who fails to comply with the provisions in this Order will waive and forfeit any and all rights they may have to object, will have their

objection stricken from the record, and will lose their rights to appeal from approval of the Settlement. Any such Settlement Class Member also shall be bound by all subsequent proceedings, orders, and judgments in this action, including but not limited to the Release set forth in the Final Approval Order and Judgment if entered.

12. **Claims Process.** The Settlement Agreement contemplates the establishment of a claims process. As set forth in the Settlement Agreement, Cotiviti shall pay an aggregate cap of \$500,000.00 for the following general categories of relief; (i) the reimbursement of ordinary expenses, (ii) the reimbursement of other extraordinary expenses, and (iii) credit monitoring and identity protection. The Court preliminarily approves this process and directs the Settlement Administrator to make the claim forms or their substantial equivalents available to Settlement Class Members in the manner specified in the Notice.

The Settlement Administrator will be responsible for effectuating the claims process.

Settlement Class Members who qualify for and wish to submit a claim form shall do so in accordance with the requirement and procedures specified in the Class Notice and the claim forms. If the Final Approval Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the claim form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Final Approval Order and Judgment, including the release.

13. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before the Court entered this Order, if: a) the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement; or b) there is no Effective Date. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

14. **Use of Order.** This Order shall be of no force or effect if the Final Approval Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against any Settlement Class representative or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they may have in this litigation or in any other lawsuit.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement

Administrator. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

16. **Schedule and Deadlines.** The Court orders the following schedule of dates for the specified actions/further proceedings:

Event	Timing
Deadline for Defendants to disseminate CAFA notices	[10 days from the filing of this motion]
Deadline for Defendants to provide Settlement Class List to Settlement Administrator pursuant to the Settlement Agreement	[21 days after order directing the Settlement Administrator to send notice to Settlement Class Members]
Notice Deadline	[30 days following Preliminary Approval Order]
Deadline for Class Counsel to file motion for attorneys' fees, costs, expenses and service award	[21 days before objection and opt-out deadline]
Objection Deadline	[120 days after notice program commences]
Opt-Out Deadline	[120 days after notice program commences]
Deadline for Plaintiff to file motion for final approval of settlement and responses to any timely submitted Class member objections, which shall include a declaration from the Settlement Administrator confirming execution of and compliance with its obligations in the Settlement Agreement as of the date of the declaration and identifying all Settlement Class Members who submitted timely requests for exclusion	[21 days prior to Final Approval hearing]
Claims Deadline	[120 days after notice deadline]

Event	Timing
Final Approval Hearing	[No earlier than 90 days after Defendants notify the appropriate government officials pursuant to CAFA]

DONE AND ORDERED in Tampa, Florida on this ____ day of _____,
2022.

Mary S. Scriven
UNITED STATES DISTRICT JUDGE