

**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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