

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

YVONNE BELANGER, individually and on behalf of other  
similarly situated individuals,

Plaintiff,

v.

**No. 19-cv-00317-WJ-SCY**

ALLSTATE FIRE AND CASUALTY INSURANCE  
COMPANY;  
ALLSTATE INDEMNITY INSURANCE COMPANY;  
ALLSTATE INSURANCE COMPANY;  
ALLSTATE ASSURANCE COMPANY;  
ALLSTATE PROPERTY AND CASUALTY  
INSURANCE COMPANY; ALLSTATE VEHICLE AND  
PROPERTY INSURANCE COMPANY; and ALLSTATE  
NORTHBROOK INDEMNITY COMPANY

Defendants.

**SETTLEMENT AGREEMENT**

This Settlement Agreement, dated August 2023, is made and entered into by and among Plaintiff Yvonne Belanger (“Plaintiff” or “Class Representative”) and Defendants Allstate Fire and Casualty Insurance Company, Allstate Indemnity Company, Allstate Insurance Company, Allstate Property and Casualty Insurance Company, Encompass Home and Auto Insurance Company, Encompass Insurance Company of America, Encompass Indemnity Company, Encompass Property and Casualty Insurance Company, Esurance Property and Casualty Insurance Company, National General Assurance Company, National General Insurance Company, and Continental Insurance Company as successor by merger to Glen Falls (collectively sometimes referred to as the “Allstate Companies”) (together with the Released Parties, “Defendants” or “Allstate”) (collectively, Plaintiff and Defendants are the “Parties”). The

Settlement is intended to fully resolve the above-captioned litigation, subject to the approval of the Court and the terms and conditions set forth in this Settlement.

## I. RECITALS/BACKGROUND

1. This lawsuit arises from Plaintiffs' allegation that part of the Underinsured Motorist ("UIM") coverage they purchased from Allstate was illusory because each had a serious accident and Allstate subtracted the at-fault drivers' liability coverage payments from their respective combined Uninsured ("UM") and UIM coverage limits pursuant to the offset described in *Schmick v. State Farm Mutual Automobile Insurance Co.*, 1985-NMSC-073, 103 N.M. 216, 704 P.2d 1092 (the "*Schmick* Offset").

2. Ms. Belanger carried \$25,000 per person in UM/UIM coverage and claims that the entire amount was illusory UIM. Plaintiff claims that her UIM coverage was illusory because she was seriously injured in an accident and Allstate subtracted the at-fault drivers' \$25,000 liability coverage payments from its respective UM/UIM coverage limits to pay nothing on Ms. Belanger's claim.

3. On January 29, 2019, Plaintiff sued Allstate in the Second Judicial District in the State of Mexico, County of Bernalillo. Allstate timely removed the case to this Court. Plaintiff asserted a variety of claims: (1) negligence, (2) violations of New Mexico's Unfair Trade Practices Act, (3) violations of New Mexico's Unfair Insurance Practices Act, (4) policy reformation, (5) breach of the implied duty of good faith and fair dealing, (6) unjust enrichment, (7) negligent misrepresentation, (8) declaratory judgment, and (9) injunctive relief. *See* First Amended Complaint (Dkt. 1).

4. The case was stayed due to the following certified question of law in *Crutcher*:

Under N.M. Stat. Ann. § 66-5-301, is underinsured motorist coverage on a policy that offers only minimum UM/UIM limits of \$25,000 per person/\$50,000 per accident

illusory for an insured who sustains more than \$25,000 in damages caused by a minimally insured tortfeasor because of the offset recognized in *Schmick v. State Farm Mutual Automobile Insurance Company*, and, if so, may insurers charge a premium for that non-accessible underinsured motorist coverage?

*See Crutcher v. Liberty Mut. Ins. Co.*, 2019 WL 12661166 at \*4 (D.N.M. Jan. 9, 2019).

5. After the New Mexico Supreme Court provided their answer to the certified question of law in *Crutcher*, the Court lifted the stay and Plaintiff filed her Second Amended Complaint on December 17, 2021. (Dkt. 40).

6. On January 18, 2022, Defendants filed their 12(b)(6) motion to dismiss (Dkt. 42).

7. On March 2, 2022, this Court largely denied, in part, Defendants' motion to dismiss. (Dkt. 52).

8. On March 22, 2022, the Parties jointly requested that the Court stay the case pending the results of a mediation before nationally recognized class action and insurance mediator Rodney Max of Upchurch Watson White & Max. (Dkt. 56). The Court then stayed the case again, pending the results of the mediation. (Dkt. 59.) To further settlement discussions, Allstate agreed to provide Plaintiff with certain discovery.

9. On March 15, 2023, the Parties, through Rodney Max, engaged in good faith, arm's-length day-long settlement negotiations. The Parties did not reach settlement at this mediation but continued, with the help of Mr. Max, to negotiate.

10. On May 3, 2023, the Parties, through mediator Rodney Max, agreed verbally on the key terms of the Settlement. The Parties thereafter worked with nationally recognized settlement administrators to finalize the terms of this Settlement Agreement and the proposed notice exhibits attached hereto.

11. Plaintiffs, through class counsel, believes that the Settlement confers substantial benefits on the Settlement Class and is in the best interest of the Settlement Class. It is also

understood that Plaintiffs, through class counsel, believe that their claims have substantial merit. Nonetheless, Plaintiffs, through class counsel, recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Action against Allstate through motions practice, trial, and potential appeals. They have also considered the uncertain outcome and risks of further litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel is experienced in insurance litigation and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and specifically in this Action. Class Counsel has determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interest of the Settlement Class. It is substantially similar in its underlying terms to two prior settlements Plaintiffs' counsel has secured from similar UIM carriers based on the same allegations and behaviors alleged in this case.

12. Allstate has made policy form changes in response to the *Crutcher v. Liberty Mut.* decision with regard to its notifications about UIM and coverage offsets, which shall remain in effect unless and until there is either a change in applicable state law or in Allstate product offerings or policy terms regarding UIM premiums and coverage offsets. Allstate continues to deny each and all of the claims and contentions alleged against it in the Action. Allstate denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Action. However, Allstate has concluded that further litigation would be protracted and expensive. Allstate has considered the uncertainty and risks inherent in any litigation, and Allstate has therefore determined that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

13. For purposes of effectuating the Settlement, the Parties stipulate to Plaintiffs filing of a Third Amended Complaint joining as additional defendants the Allstate Companies currently

not named as defendants and asserting the same claims against them as are being asserted against current defendants. The Parties shall provide for same in the proposed order preliminarily approving the settlement.

**NOW, THEREFORE**, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is hereby agreed by the Class Representatives, individually and on behalf of the Settlement Class, and Allstate that, subject to the approval of the Court, the Action be forever resolved, settled, compromised, and dismissed with prejudice on the following terms and conditions:

## **II. DEFINITIONS**

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

- a. “Accident” means any unexpected event happening on or after January 1, 2004, resulting in Bodily Injury or Property Damage to an Insured covered under an Allstate Policy (or Policies), that was the fault, in whole or in part, of an Underinsured Driver as defined in the section labeled kk.
- b. “Action” means *Yvonne Belanger, et al. v. Allstate Fire and Cas. Ins. Co., et al.*, United States District Court for the District of New Mexico, Case No. 19-cv-00317-WJ-SCY.
- c. “Agreement,” “Settlement Agreement,” or “Settlement” means this Settlement Agreement, Exhibits, and the settlement terms embodied herein.
- d. “Allstate Company” or “Allstate Companies” means and refer to any or all of the following insurance companies: Allstate Fire and Casualty Insurance Company, Allstate Indemnity Company, Allstate Insurance Company, Allstate Property and

Casualty Insurance Company, Encompass Home and Auto Insurance Company, Encompass Insurance Company of America, Encompass Indemnity Company, Encompass Property and Casualty Insurance Company, Esurance Property and Casualty Insurance Company, National General Assurance Company, National General Insurance Company, and Continental Insurance Company as successor by merger to Glen Falls.

- e. “Allstate Policy” means a motor vehicle insurance policy issued in New Mexico by one of the Allstate Companies.
- f. “Claim” means a claim for Settlement Class Payments made under the terms of this Settlement Agreement.
- g. “Claim Form” means the document, which will be available on the Settlement Website for electronic completion or available to receive by mail for a mailed submission, that certain Settlement Class Members must submit to potentially receive a Settlement Class Payment, as set forth in and subject to the provisions of this Agreement. A copy of the Claim Form is attached hereto as Exhibit C.
- h. “Claimant” means a Settlement Class Member who makes a Claim for benefits under this Settlement Agreement.
- i. “Claim Deadline” means the final date by which a Settlement Class Member must submit a Claim for Settlement Class Payments. The Claim Deadline shall be ninety (90) days after the Notice Date.
- j. “Class Counsel” means Kedar Bhasker of Law Office of Kedar Bhasker, Corbin Hildebrandt of Corbin Hildebrandt P.C., and Geoffrey Romero of Law Offices of Geoffrey R. Romero.

- k. “Class Representatives” means the Plaintiffs.
- l. “Complaint” means the Second Amended Class Action Complaint filed on December 17, 2021 in the United States District Court for the District of New Mexico and any subsequent amended complaints.
- m. “Confidential Information” means the names, addresses, policy numbers and any and all data provided by the Allstate Companies relating to potential Settlement Class Members, and any other proprietary business information of the Allstate Companies.
- n. “Court” means the United States District Court for the District of New Mexico.
- o. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement in the Action shall become effective and final, and occurs when each and all of the following conditions have occurred:
  - i. This Settlement Agreement has been fully executed by all Parties and their counsel;
  - ii. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement, and approving the Notice (described below);
  - iii. The Notice program has been executed in accordance with the Preliminary Approval Order;
  - iv. The Court has entered a Final Order and Judgment finally approving the Settlement; and
  - v. The Final Judgment, as defined in Paragraph 67 below, has been entered and all times to appeal therefrom have expired with (1) no

appeal or other review proceeding having been commenced; (2) one (1) business day following entry of the Final Order and Judgment, if no parties have standing to appeal; or (3) an appeal or other review proceeding having been commenced, and such appeal or other review having been concluded such that it is no longer subject to review by any court, whether by appeal, petitions for rehearing or reargument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been resolved in a manner that affirms the Final Judgment in all material respects.

- p. “Defendants’ Counsel” or “Allstate Companies’ Counsel” shall mean the following attorneys, subject, where necessary, to admission *pro hac vice* to the Court:

Eric R. Burris  
Debashree Nandy  
Brownstein Hyatt Farber  
Schreck, LLP  
201 Third Street NW, Suite  
1800  
Albuquerque, New Mexico  
87102

Peter Valeta  
Abigail Horvat  
Cozen O’Connor  
123 North Wacker Drive  
Suite 1800  
Chicago, IL 60606

- q. “Evaluation Record” means the record described in paragraph 30 through 36, which Allstate shall use for adjusting Option 1 Claims.
- r. “Final Fairness Hearing” means the hearing to be conducted by the Court after the Notice Program is complete, at which time Class Counsel and Allstate’s Counsel will request that the Court grant final approval of the Settlement set forth herein.



- s. “Final Judgment” means a judgment entered by the Court, as discussed below.
- t. “Insured” means any Person who satisfies the definition of Insured in 13.12.3.14(A) NMAC with respect to an Insured Motor Vehicle under an Allstate Policy, or otherwise satisfies the definition of an “insured” or “insured person” in the applicable Allstate Policy.
- u. “Motor vehicle” means “Motor Vehicle” means any motor vehicle as defined by NMSA 1978, § 66-1-4.11(H).
- v. “Litigation” means all claims and causes of action asserted, including those asserted in the Action, or that could have been asserted, against Allstate and the Released Parties, including any and all appellate rights, as well as any other such actions by and on behalf of any other individuals or putative classes of individuals originating, or that may originate, in the jurisdictions of the United States against Allstate or the Released Parties relating to the Action.
- w. “Neutral Evaluation on Appeal” means the appeal of a Notice of Determination, to be decided by the neutral Referee.
- x. “Notice” means the mailed or emailed notice, substantially in the form as shown in Exhibits A and B hereto, to the Settlement Class Members, notifying them of the Settlement and inviting Settlement Class Members to make a Claim for Settlement Class Payments.
- y. “Notice Date” means the first date upon which the Notice is mailed or emailed to the Settlement Class Members.
- z. “Notice of Determination” means the notice sent by Allstate or the Claim Administrator to a Settlement Class Member who makes a Claim pursuant to

Option 1 (described in paragraph 16) of Allstate’s determination of the adjustment of their Claim.

- aa. “Notice of Determination Appeal” means an appeal by a Settlement Class Member of a Notice of Determination.
- bb. “Preliminary Approval Order” means the proposed order substantially in the form of Exhibit D hereto, preliminarily approving the Settlement and directing mailed and e-mailed Notice to the Settlement Class Members of the pendency of the Action and of the Settlement, to be entered by the Court.
- cc. “Released Claims” means any and all past, present, and future claims and causes of action of every nature and description (including Unknown Claims), whether arising under federal, state, statutory, regulatory, common, foreign, or other law, that arise in any way from or relate to the Litigation against Allstate or any Released Party or the Action (other than claims to enforce the Settlement), and including, but not limited to, any and all claims for fees, costs, penalties, fines, debts, damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, class or individual and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Parties based on, relating to, concerning or arising out of the Action or

the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the Settlement contained in this Settlement Agreement and shall not include the claims of Persons who have timely excluded themselves from the Settlement Class.

dd. “Referee” means the designated neutral third party appointed by the Court who has been selected and agreed to by Class Counsel and Allstate, who will be assigned to resolve an Objection, if any, pursuant to the procedures set forth herein for the Neutral Evaluation on Appeal, if any.

ee. “Released Parties” or “Released Party” means Allstate, all Allstate affiliated entities that underwrote New Mexico insurance policies with UM/UIM coverage which were first issued or renewed between January 1, 2004 and the first policy renewal after July 11, 2022, including, Allstate, their parents, current or former subsidiaries, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors and shareholders, and independent agents of Allstate and their employees, and, any Person related to any such entities or individuals who is, was, or could have been named as a defendant in the Litigation.

ff. “Settlement Administrator” shall mean Epiq, subject to Court approval.

gg. “Settlement Class” means all Allstate policyholders and persons claiming UIM coverage benefits under New Mexico insurance policies with UM/UIM coverage which were first issued or renewed between January 1, 2004 and the first policy renewal after July 11, 2022, who:

1. resided in New Mexico, or a non-resident who insured a motor vehicle insured with an Allstate Policy issued in New Mexico, which included UM/UIM coverage; and
2. purchased an insurance policy with UM/UIM coverage, or were a non-Allstate policyholder insured who made a claim for UIM benefits under an Allstate Policy and had benefits reduced or denied due to a *Schmick* Offset.

To identify the scope of the Settlement Class, Allstate agrees to search its electronic records for:

3. Any Allstate policyholder who Resided in New Mexico, or a non-resident with a New Mexico issued policy, with UM/UIM coverage whose policy was issued or renewed on or after January 1, 2004 and before July 11, 2022; and
4. Any individual who made a UIM claim to Allstate under an Allstate Policy that was issued or renewed on or after January 1, 2004 and before July 11, 2022.
5. Allstate or the Claims Administrator will de-duplicate the results of this search. The results of this search shall constitute the Settlement Class.

The Settlement Class specifically excludes 1) any claimant who has separately filed suit against Allstate up to the Notice Date, the subject of which suit includes the reduction or denial of benefits on the basis of a *Schmick* Offset; 2) any individual who has settled a claim for benefits reduced or denied on the basis of a *Schmick* Offset, whose claim was adjusted or readjusted without applying a *Schmick* Offset, and signed

a final release prior to the Notice Date; 3) any claimant for whom, at claimant's request, Allstate has already re-adjusted a claim for benefits reduced or denied on the basis of the *Schmick* Offset prior to the Notice Date; 4) any claims related to equalization of uninsured motorist coverage and/or stacking which may exist or arise in the future based upon improper rejection of coverage or stacking; *Ullman v. Safeway Ins.*, No. S-1-SC-36580 and *Lueras v. GEICO Ins. Co.*, No S-1-SC-37135; 5) the Judge(s) presiding over this Action; and 6) Allstate and any employee of Allstate.

hh. "Settlement Class Member(s)" or "Member(s)" means a Person(s) who falls within the definition of the Settlement Class.

ii. "Settlement Class Payments" means payments to be made to Settlement Class Members, as described in Section III below.

jj. "Settlement Website" means the website where Settlement Class Members can receive information about the Action and Settlement, as well as receive and submit Claim Forms.

kk. "Underinsured Driver" for purposes of this settlement agreement means the owner or operator of a motor vehicle whose negligent conduct has caused bodily injury or property damage to the Insured, and who has inadequate liability limits to fully compensate the insured for the damages caused.

ll. "Valid Claims" means the Claims for Settlement Class Payments in an amount approved by Allstate or the Settlement Administrator, as described in Section IV below.

### III. SETTLEMENT CLASS PAYMENTS

15. **Automatic Payments to Eligible Settlement Class Members.** Allstate will readjust wrongful death claims for Settlement Class Members who suffered a fatality reported to Allstate for UIM coverage under an Allstate Policy first issued or renewed between January 1, 2004 and the first policy renewal after July 11, 2022, and a date of loss after January 1, 2014 where the “DEATH\_CAUSE” designation in Allstate’s electronic business records was not “Unrelated to Loss” or blank and the “DEATH\_DT” designation was not blank, and whose UIM coverage benefits under an insurance policy were reduced, denied, or not paid by Allstate due to a *Schmick* Offset (the “Automatic Payments”). Allstate will determine these eligible Settlement Class Members by reviewing Allstate data and provide a list of eligible Settlement Class Members to the Settlement Administrator for a separate notice, including any requests for information required by law for a person to receive such benefits, including tax forms. Any separate notice to this eligible Settlement Class Member population will be drafted by and approved by both Parties and the Settlement Administrator. Settlement Class Members eligible for these Automatic Payments shall not be required to submit a claim to receive these benefits.

16. **Other Payment Options.** Settlement Class Members who are not eligible for Automatic Payments under wrongful death may submit a claim for one of the following two options:

- a. Option 1: Allstate will readjust the claims for Settlement Class Members who make a Valid Claim for Option 1. To be a Valid Claim, the Settlement Class Member must have been in an accident and may have UIM coverage benefits under an Allstate Policy first issued or renewed between January 1, 2004 and the first policy renewal after July 11, 2022, reduced or denied by Allstate pursuant to a *Schmick*

Offset. Readjusted payments will be equal to the amount of any *Schmick* Offset taken for uncompensated recoverable damages caused by the UIM tortfeasor, subject to applicable UIM bodily injury or property damage limits. Any claim under this option not involving wrongful death where the crash and injuries occurred between January 1, 2004 – December 31, 2009 will receive 55% of the total amount of the final Notice of Determination. Wrongful death claimants will receive 100% of the total amount regardless of date. All claimants eligible for benefits under Option 1, including Wrongful Death Claimants whose claims arose between January 1, 2004 and December 31, 2013, must submit a claim.

- b. Option 2: Allstate will make a payment to all Allstate policyholders who make a Valid Claim for Option 2 and who purchased UM/UIM coverage on an Allstate Policy first issued or renewed between January 1, 2004 and the first policy renewal after July 11, 2022. The payment will equal **12 percent** of the total premium paid by the Settlement Class Member for UM/UIM coverage who purchased for UM/UIM coverage at minimum limits, unstacked. The payment will equal **18 percent** of the total premium paid by Settlement Class Members for UM/UIM coverage who purchased UM/UIM coverage at minimum limit stacked coverage and all other limits regardless of whether or not such coverage limits were stacked. Option 2 payments will be subject to a \$2,200,000 aggregate cap for all Settlement Class Members. If the aggregate value of Valid Claims made exceeds \$2,200,000, Settlement Class Members who submit Valid Claims under this Option 2, shall have their payments reduced, and each Member will be paid a pro rata share of \$2,200,000 based on their respective payment amounts. If the aggregate value of

Valid Claims for Option 2 made is less than \$2,200,000, Settlement Class Members who submit Valid Claims under this Option 2, the "Residue" (the difference between \$2,200,000 and the aggregate Option 2 Valid Claims value) shall be distributed to the Class Members who submitted Valid Option 2 Claims, and receiving a pro rata share of the Residue based on their respective payment amounts so that a total payment of \$2,200,000 will be paid under Option 2.

17. All Settlement Class Members who submit a Valid Claim, as approved through the Notice Program described in Section IV below, shall be eligible to receive Settlement Class Payments under one of the two options described above.

18. If any Settlement Class Member submits a Valid Claim for both Options 1 and 2, Allstate shall pay the higher amount.

19. A Settlement Class Member's personal representative may make claims on behalf of a deceased or incompetent Settlement Class Member. Where there is no estate open, the claim made be made by a person authorized to obtain the decedent's property under an applicable small estate statute in accordance with that procedure.

- a. Any person or entity making a claim under this provision shall agree to hold harmless and indemnify the parties to this Agreement and the Claims Administrator, including the payment of reasonable attorney's fees and costs in defending any such claims, with respect to any claims paid under this Agreement by a person or entity claiming an interest in the claim. The Parties, their counsel (including Class Counsel and Defendants' Counsel), or the Claims Administrator shall not be responsible to anyone for any further disposition or allocation of any payments made to successors pursuant to this provision.



#### **IV. NOTICE PROGRAM**

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

##### **A. Sending the Notice**

21. Within 60 days after the entry of the Preliminary Approval Order, the Class Notice, in the form substantially like that attached hereto as Exhibits A and B, shall be emailed to each Settlement Class Member’s last known email-address and a postcard with the unique ID and pin number, with one follow-up email to be sent before the objection deadline and two (2) more follow-up emails at fifteen (15) and at thirty (30) days before the Claim Deadline. If Allstate does not have a valid email address, notice shall be sent by first class mail to those Settlement Class Members’ last known address. The last known address shall be determined from information reasonably available in Allstate’ files, which will be run through the United States Postal Service’s national change of address database prior to mailing by the Settlement Administrator.

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

23. Allstate and the Settlement Administrator shall have no duty to perform any additional search for, or otherwise attempt to verify, email or mailing addresses of Settlement Class Members, including as to returned, undelivered Class Notices. However, any Class Notices that are returned with a listed forwarding email or mailing address shall then promptly be sent or mailed a Notice to the listed forwarding address. If an email notice is returned as undeliverable, the Settlement Administrator shall mail a Class Notice to the Settlement Class Member’s last known mailing address. However, the Claims Deadline shall not be adjusted due to re-mailing of

a Class Notice to a forwarding address or mailing of a Class Notice to Settlement Class Members whose emails were returned as undeliverable.

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

**B. Toll Free Hotline and Website**

25. Allstate, through the Settlement Administrator, will establish a toll-free telephone number with an automated operator, which any Settlement Class Member may call to receive the Agreement, Class Notice and a Claim Form, as well all information included on the Settlement Website. The Settlement Website shall contain information about this Agreement, including printable copies of the Agreement, the Notice, and the Claim Form, which shall be maintained by the Settlement Administrator. This Settlement Website shall also contain a list of Frequently Asked Questions to give further information regarding this Agreement. The toll-free number and Settlement Website referred to herein will be established and operational by a date no later than the date the Class Notice is initially mailed and will remain operational until 60 days after the Settlement Administrator has made final distribution of Settlement Class Payments to Settlement Class Members.

**C. Costs Of Notice**

26. Allstate shall pay all notice and administration costs in accordance with the terms of the Court's Preliminary Approval Order and without regard to whether the Court grants final approval of the Agreement. Costs of administration (including printing and mailing the Class Notice, providing the Settlement Website, establishing a toll-free telephone number, printing and

distributing Settlement Class Payments to Settlement Class Members and all postage relating to the foregoing) will be paid by Allstate and neither the Named Plaintiffs, Settlement Class Members, nor Class Counsel shall bear any responsibility for such costs. Under no circumstances shall Defendants be required under this Agreement to incur or pay any fees or expenses which they are not explicitly obligated to incur or pay hereunder.

## V. ADMINISTRATION OF CLAIMS

27. Subject to the approval of the Court as set forth in and made part of the Preliminary Approval Order, Epiq will be selected as Claims Administrator and retained by Defendants with notice to and the consent of Class Counsel, which consent shall not be unreasonably withheld. Defendants' retention of, and any agreement with, the Claims Administrator will not be inconsistent with any of the terms of this Settlement Agreement, and the engagement agreement shall provide that it will fairly, impartially, and independently perform all of the Claims Administrator's duties.

28. Class Counsel shall have the right to *ex parte* communicate with and consult with the Claims Administrator to ensure that the Claims Administrator is appropriately discharging the duties of Claims Administrator under this Agreement.

### A. Class Notice and Claims Deadline

29. Settlement Class Members must submit a Claim for Settlement Class Payments by the Claim Deadline, meaning all Settlement Class Members shall have ninety (90) days after the Notice Date to submit a Claim for Settlement Class Payments. All deadlines for Class Notice shall be determined based on postmark of communication or, for email Notice, the date the email is sent.

### B. Claims Adjusting Process for Option 1 Claims

30. The process in this Subsection and Subsection C applies to Claims made under Option 1.

31. The Settlement Administrator will receive all Claims and make the initial determination of whether a Claim is a Valid Claim.

32. All Valid Claims under Option 1 will be processed by Allstate's claims department and shall be adjusted expeditiously, as it would be in the ordinary course of business. However, if Allstate previously adjusted a settlement class members claim, Allstate will provide benefits according to the previous adjustment, without offset, except that Allstate will fully adjust such claims if the previous adjustment did not include a complete and comprehensive adjustment evaluation.

33. Allstate will determine the dollar amount of UM/UIM benefits each Settlement Class Member who makes a Valid Claim under Option 1 would have been paid but for Allstate's reduction or denial of UM/UIM benefits based on a *Schmick* Offset, if any. The uncompensated recoverable damages caused by the UIM tortfeasor represented by the difference between the dollar amount of UM/UIM benefits that would have been paid but for Allstate's reduction or denial of UM/UIM benefits based on a *Schmick* Offset and the amount previously paid by Allstate will be payable for that claim, subject to applicable UIM bodily injury or property damage limits.

34. In adjusting claims for a Settlement Class Payment pursuant to this Agreement, Allstate shall consider: (i) any claim files or other documentation already in its possession pertaining to the applicable Settlement Class Member's claim for UM/UIM Benefits; (ii) the information or documentation, if any, provided by the Settlement Class Member in the Claim Form or with the Claim Form; and/or (iii) any additional information or documentation provided by the Settlement Class Member and/or requested or obtained by Allstate from the Settlement Class

Member and/or third party sources during the claims adjustment process before the adjuster renders a determination pursuant to a Notice of Determination. The documents and information described in this paragraph and paragraphs 35 below, are referred to collectively as the “Evaluation Record.”

35. In adjusting claims for a Settlement Class Payment pursuant to this Agreement, Allstate shall be entitled to request and receive from any Settlement Class Member, or obtain from any third-party source, any information or documentation Allstate reasonably determines will assist its review. The Settlement Class Member shall reasonably cooperate with Allstate by providing documents or information requested by Allstate, including, but not limited to, signing authorizations, such as medical and/or wage authorizations for release of medical and/or employment information, and allowing Allstate to obtain relevant information directly from health care providers, employers, or government entities. This includes, but is not limited to, information potentially relevant to liens or reimbursement claims or rights by, for example and without limitation, health insurers, medical providers, or government programs such as Medicare or Medicaid. Allstate shall promptly provide the Settlement Class Member with all information and/or documents obtained by Allstate from any third party. The Settlement Class member must submit the additional documents or materials no later than 30 days after any request is made by Allstate. If Allstate does not receive a timely response, it may deny all or part of the claim on the basis of insufficient documentation. If the Settlement Class Member is unable to recover medical records and billings Allstate may obtain a records release from the Class Member and request records on its own. The Class Member cannot be penalized due to delay by the healthcare provider in providing records or billings.

36. Within the later of (1) 180 days after the Effective Date of this Agreement or (2) thirty days after Allstate has a complete Evaluation Record or (3) thirty days after Allstate has not timely received a response for documentation necessary for the Evaluation Record, Allstate or the Settlement Administrator shall advise the Settlement Class Member in writing of Allstate's claims adjustment determination (hereafter referred to as the "Notice of Determination"), which shall set forth: (i) the amounts (if any) of the Settlement Class Payment to be paid; (ii) where not otherwise obvious, a brief explanation of the calculation and basis for the determination of those amounts; and (iii) if any claims or dollar amounts are rejected, a brief explanation of the reasons for the rejection. If any Settlement Class Payment is determined by Allstate to be due, a payment by check will be included with the Notice of Determination unless the Settlement Class Member has elected for an alternative payment option. The Notice of Determination shall also inform the Settlement Class Member that he or she is free to immediately cash any check regardless of whether the Settlement Class Member plans to appeal the Notice of Determination to a Referee for a Neutral Evaluation on Appeal as provided in subsection C below, and that under no circumstances will the Settlement Class Member be required to reimburse Allstate for any of the money received as part of the Notice of Determination.

**C. Appeal to Notice of Determination for Option 1 Claims**

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

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

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

39. To initiate an appeal, the Settlement Class member must, within 30 days from the date on which his or her Notice of Determination is postmarked or emailed, submit a demand for a Neutral Evaluation on Appeal in writing (hereafter referred to as the "Notice of Determination Appeal") to the Settlement Administrator (at the address provided in the Class Notice) with a payment of a Fifty Dollar (\$50.00) appeal fee, which fee shall be refunded to the Claimant if the Claims Arbitrator determines the appeal in the Claimant's favor. The Fifty Dollar (\$50.00) appeal fee shall be applied towards the costs of arbitration, which costs shall be borne entirely by the parties to the Determination Appeal.

40. The Notice of Determination Appeal must include a written statement providing all reasons and facts supporting the Settlement Class Member's assertion that Allstate's Notice of Determination is not an accurate adjustment of the Settlement Class Member's claim.

41. Within five days of receipt of a Notice of Determination Appeal, the Settlement Administrator shall provide the Notice of Determination Appeal to Allstate's Counsel and Class Counsel. Allstate's Counsel and Class Counsel will have fourteen days to meet and confer about a resolution of the Notice of Determination Appeal. If both Counsel agree on a resolution, Counsel shall submit the resolution to the Settlement Administrator. The Settlement Administrator shall then have fourteen days to notify the Settlement Class Member of such resolution, including any additional settlement amounts. This resolution of a Notice of Determination Appeal will be final and not appealable.

42. For any Notices of Determination Appeals that cannot be resolved by Counsel within fourteen days of receipt, the Settlement Administrator shall forward the Notice of Determination Appeal, and the Evaluation Record, to the Referee who will resolve it within thirty days, or any longer period as may be agreed upon by the Parties. The Referee shall have the discretion to contact Allstate, through Allstate's Counsel, or the Settlement Class Member submitting the Notice of Determination Appeal, at any time. The Referee shall not award any amount in excess of the policy limits less the amount of any prior payments by Allstate, nor shall the Referee award any amount for attorneys' fees, interests, costs or for bad faith, unfair claims practices, unfair trade practices, or other extra-contractual, statutory and/or punitive damages or fines based on or arising out of Allstate's conduct, including but not limited to, in handling claims submitted by Settlement Class Members, either previously or in conjunction with this Agreement. Any determination by the Referee shall be final and non-appealable. The Referee shall mail or email Allstate, the Settlement Administrator, Class Counsel and the Settlement Class Member of the Referee's decision. Allstate or the Settlement Administrator shall mail any additional payments awarded to the Settlement Class Member by the Referee within 45 days of the date the Referee's decision is post-marked or emailed.

**D. Payment of Automatic Payments and Option 2 Claims**

43. All Valid Claims under Option 2 will be processed by the Settlement Administrator based on Allstate's data. All Valid Claims for Option 2 shall be paid within fifteen (15) days of the Effective Date or the date the Settlement Administrator determines that the Claim for Option 2 is a Valid Claim, whichever is later. If all claims for Option 2 are more than or less than \$2,200,000.00, then the following will occur: (a) the date for Option 2 payments will be within 15



days of the later of the Effective Date or the date the last Option 2 claim is determined as valid (including any Option 1 Claims that are converted).

44. All Valid Claims for Automatic Payments shall be paid within fifteen (15) days of the Effective Date or the date the Settlement Administrator and Allstate determine the Claim is a Valid Claim for a sum certain.

45. To be a Valid Claim for Automatic Payments, eligible Settlement Class Members must complete all required documentation requested by the Settlement Administrator.

**E. General Payment Provisions**

46. For the Automatic Payments, the Settlement Administrator shall mail and email, if any, any documentation requirements to the last known address (and email address, if any) of the Settlement Class Member's executor or similar representative and/or any known attorney with the Notice. Beginning no later than thirty (30) days after the Notice Date, the Settlement Administrator also shall make at least two attempts to call both the Settlement Class Member's executor or similar representative and his or her known attorney at their last known telephone numbers to attempt to secure the required documentation and appropriate payment instructions. The Settlement Administrator shall notify Allstate's Counsel and Class Counsel if it is unsuccessful in any attempt to notify a Settlement Class Member eligible for an Automatic Payment, and Class Counsel may perform additional measures to notify that Settlement Class Member of their eligibility for Automatic Payments within the Claim Period. If the eligible Settlement Class Member, or their appropriate designee, does not respond to the Notice attempts or requests for required documentation by the Claims Deadline, no further Notice obligations will exist and the Settlement Class Member will be bound by the terms of this Settlement Agreement, including the Release herein.

47. The Settlement Administrator or Allstate shall offer various options to receive a Settlement Class Payment. If a check is requested, cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive Settlement Class Payments. All settlement checks shall be void one hundred and twenty (120) days after issuance and shall bear the language: "This check must be cashed within 120 days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until one hundred and eighty (180) days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of Settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, the check shall be deemed never to have been the Settlement Class Members' property, and Allstate shall have no obligation to make payments to the Settlement Class Member for Settlement Class Payments or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred and eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void. If a check is returned with a forwarding address, the check shall be forwarded to that address. If no forwarding address exists, the check shall become void. Allstate reserves the right, at its sole discretion, to reissue any check that is deemed void as provided in this Paragraph, and the reissuance of any such check is not a waiver of this Paragraph, nor does it require Allstate to reissue any other checks to other Settlement Class Members.

48. All Settlement Class Members who fail to timely submit a Valid Claim for Settlement Class Benefits, shall be forever barred from receiving any payments or benefits pursuant to the Settlement set forth within, but will in all other respects be subject to and bound

by the provisions of the Settlement Agreement, the releases contained herein, and the Final Judgment.

**F. Claim Status Reports**

49. Allstate or the Settlement Administrator shall provide weekly reports to Allstate, Allstate's counsel, and Class Counsel indicating (1) the number of Claims received, (2) whether it was an Option 1 or Option 2 claim, (3) the applicable UIM limits for Option 1 claimants, (4) fatality claims, (5) applicable UIM limits of fatality claimants; (6) the Notice of Determination of any adjustment of Claims; and (7) any Notice of Determination Appeals.

**VI. STIPULATED CLASS ACTION SETTLEMENT CERTIFICATION**

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

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

## VII. RELEASES

52. Upon the Effective Date, and without any further action, in exchange for amounts to be paid by Allstate, Plaintiffs' claims and Complaint against Allstate shall be released and dismissed with prejudice. Plaintiffs and the Settlement Class Members hereby release Allstate and all Released Parties from any and all claims, rights, demands, charges, complaints, causes of action, obligations or liability of any and every kind whether known or unknown that were asserted, or could have been asserted in the Litigation, including all such claims that arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set forth in Plaintiffs' Second Amended Complaint, or any complaint, including any claim disputing the value of UM/UIM premiums based on a *Schmick* Offset and/or UIM benefits being reduced or denied due to a *Schmick* Offset, whether such allegations were or could have been based on common law or equity, statute, rule, regulation, order, or law, whether federal, state, or local, or on any grounds whatsoever, from January 1, 2004 to **the Effective Date**. This Release includes any claim for penalties arising from or relating to late payment, non-payment, or underpayment of benefits for UM/UIM claims. This release does not apply to any claims related to equalization of uninsured motorist coverage and/or stacking which may exist or arise in the future based upon improper rejection of coverage or stacking, *see Ullman v. Safeway Ins.*, No. S-1-SC-36580 and *Lueras v. GEICO Ins. Co.*, No S-1-SC-37135;

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

54. The Class Representatives further agree not to assist knowingly and voluntarily, in any way, any third party in commencing or maintaining any suit against the Released Parties relating to any Released Claim.

### **VIII. OPT-OUT PROCEDURES**

55. Under the procedure set forth in the Notice, potential Settlement Class Members have the right and ability to exclude themselves from the Settlement Class as set forth in the proposed Preliminary Approval Order. In order to validly be excluded from the Settlement, the potential Settlement Class Member must send a letter that says he or she wants to be excluded from the Settlement in *Yvonne Belanger v. Allstate et al.*, United States District Court of the District of New Mexico Case No. 19-CV-00317-WJ-SCY, to Allstate and Class Counsel at the addresses identified in the Notice and include his or her name, address, and signature by the date set by the Court and as outlined in the Notice, to be set for thirty (30) days after the Notice Date. Class Counsel shall provide this information to the Court before the final approval hearing. If the opt-out is untimely or otherwise fails to comply with any of the provisions for a valid opt-out, it shall not be considered a valid opt-out.

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

57. Allstate shall have the right to terminate the Settlement if more than 200 persons opt out of the Settlement Class. If Allstate chooses to exercise this provision, the case will resume as if the Settlement never took place.

## IX. OBJECTION PROCEDURES

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

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

60. The long form notice substantially in the form of Exhibit A hereto will further inform Settlement Class Members that to be considered timely, any valid objection in the appropriate form must be **filed** with the Clerk of the United States District Court for the District

of New Mexico, no later than the date set by the Court and outlined in the Notice, to be set at thirty (30) days after Notice. The long form notice will inform Settlement Class Members that they must **mail** a copy of their objection to the following three different places postmarked no later than the date set by the Court and outlined in the Notice:

| COURT  | CLASS COUNSEL  | ALLSTATE'S COUNSEL  |
|--|--|---|
| US District Court<br>District of New Mexico<br>Pete V. Domenici U.S.<br>Courthouse<br>333 Lomas Blvd NW, Suite<br>270<br>Albuquerque, NM 87102 | Kedar Bhasker<br>LAW OFFICE OF KEDAR<br>BHASKER, LLC<br>2741 Indian School Rd. NE<br>Albuquerque, NM 87106 | Peter Valeta<br>COZEN O'CONNOR<br>123 North Wacker Drive<br>Suite 1800<br>Chicago, IL 60606 |

61. The Parties agree that Plaintiffs will take the lead in drafting responses to any objections to the Settlement, including any appeals filed by the objectors. However, both Parties retain their rights to make any argument(s) in response to any objector.

**X. ATTORNEYS' FEES AND EXPENSES AND PAYMENTS TO THE CLASS REPRESENTATIVES**

62. The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or Incentive Award to Plaintiffs until after the substantive terms of the settlement had been agreed upon.

63. The Parties agree that, subject to Court approval, Attorneys' Fees will be paid by Allstate in an amount approved by the Court, but not to exceed \$2,250,000.00, including New Mexico Gross Receipts Tax and reimbursement of costs not to exceed \$15,000.00.

64. Pursuant to Allstate's previous adjustment, Allstate shall provide an Option 1 Settlement Class Payment to Plaintiff Yvonne Belanger under Allstate policy number 829 720 835. This UIM coverage amount concerns the September 4, 2015 motor vehicle accident and will

re-adjust her claim pursuant to the Settlement Agreement and in accordance with New Mexico law, including *Fickbohm v. St. Paul Ins. Co.*, 2003-NMCA-040, 133 N.M. 414, 63 P.3d 517.

65. Allstate shall also pay, upon Court approval, Plaintiff an additional \$10,000.00 as an incentive or service award.

66. Payment of these fees shall be due fifteen (15) days after the Effective Date.

#### **XI. PRELIMINARY APPROVAL OF SETTLEMENT**

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

- a. Preliminary approval of the Settlement Agreement as set forth herein; and
- b. Approval of the Notice, which includes a notice to be individually mailed or emailed to the Settlement Class, addressed in Section IV.

#### **XII. FINAL JUDGMENT**

68. If the Preliminary Approval Order is entered by the Court, Class Counsel will move the Court for Final Approval, within the time frames contemplated by the Preliminary Approval Order, and an entry of a Final Judgment.

#### **XIII. TERMINATION**

69. If the Effective Date of Settlement does not occur, or if the Settlement is terminated or fails to become effective for any reason, then (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms



and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

70. The Class Representative and Defendants have the absolute and unconditional right, in their respective sole discretion, to terminate and render null and void this class action settlement and Settlement Agreement if (i) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement that the Class Representatives, through Class Counsel, or the Defendants determine is material, including, without limitation, the Releases or the definition of the Settlement Class, or Class Member Benefits; or (ii) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the proposed Preliminary Approval Order or the proposed Final Approval Order that the Class Representatives, through Class Counsel, or the Defendants, in their sole discretion, believe is material. Such written election to terminate this Settlement Agreement must be made to the Court within thirty (30) days of such Court order.

71. In the event this Settlement Agreement is terminated or becomes null and void, this Settlement Agreement will not be offered into evidence or used in this or any other action in the Court or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum for any purpose, including, but not limited to, the existence, certification, or maintenance of any purported class. In addition, in such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with this Agreement will be without prejudice to all Parties and will not be admissible into evidence and will not be deemed or

construed to be an admission or concession by any of the Parties of any fact, matter, or proposition of law and will not be used in any manner for any purpose. All Parties will stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

72. If this Settlement Agreement is terminated or becomes null and void, then no class shall be deemed certified by or as a result of this Agreement, and the Parties will jointly move the Court to vacate the Preliminary Approval Order and any other orders certifying the Class. The Parties intend that they shall then be returned to the *status quo* in the Action, as it existed at the time the Court issued its stay order of March 30, 2022 in the Action. The Parties agree that all stayed proceedings shall resume in a reasonable manner. In such event, Defendants shall not be deemed to have consented to class certification, and shall retain all rights to oppose class certification, including, without limitation, to certification of the identical class provided for in this Agreement.

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

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

#### **XV. INCAPACITATED SETTLEMENT CLASS MEMBERS**

74. Claims may be submitted by any attorney or interested person on behalf of an incapacitated Settlement Class Member eligible for payment under Option 1.

#### **XVI. CLAIMS INVOLVING MINORS**

75. If any minor is a Settlement Class Member, court approval of the final distribution to that Settlement Class Member, pursuant to the applicable rules, may be required. In addition, Class Counsel reserves the right to require appointment of a conservator or Guardian Ad Litem to sign for the funds to be distributed to minor Settlement Class Members. Such costs will be borne by Defendant.

#### **XVII. DECEASED SETTLEMENT CLASS MEMBERS**

76. Claims may be submitted by non-minor, non-incapacitated, asserted heirs of, or on behalf of the estate of, a deceased Settlement Class Member eligible for payment under Option 1.

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

77. All Settlement Class Members eligible for payment under Option 1 receiving a Settlement Class Payment pursuant to this Agreement shall be responsible for the discharge of: (i) any subrogation or reimbursement claim or lien for any medical treatment of that Settlement Class Member eligible for payment under Option 1 arising out of the Accident which is the subject of the Settlement Class Member's claim, including hospital or medical liens of any medical provider, plan, insurer, or governmental entity, including but not limited to, Medicare, CMS, or Medicaid, and/or (ii) any attorneys' lien arising out of the Accident which is the subject of the Settlement Class Member's claim, and the Settlement Class Member eligible for payment under Option 1 agrees to provide Allstate with written evidence of the discharge or satisfaction of such claims. Any Settlement Class Member receiving a Settlement Class Payment pursuant

to this Agreement agrees to indemnify and hold harmless the Released Parties from the Settlement Class Member's failure to satisfy such claim or lien and any ensuing impairment action brought against the Released Parties by any entity. No medical or attorneys' liens shall be created by any of the Parties' efforts in attempting to effectuate the terms of this Agreement.

78. Neither Defendants, defense counsel nor class counsel shall be responsible in any way for attorneys' liens or medical lien(s) submitted for any of Settlement Class Members, nor shall any such lien(s) be created by any of the efforts of the Parties to effectuate any of the terms of this Agreement.

#### **XIX. CAFA NOTICE REQUIREMENTS**

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

#### **XX. MISCELLANEOUS PROVISIONS**

80. All of the Exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

81. The Parties to the Settlement intend and agree that the Settlement is a final and complete resolution of all disputes related to the Litigation by the Class Representatives and the Settlement Class Members.

82. This Settlement Agreement and its exhibits will constitute the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, letters,

conversations, agreements, term sheets, and understandings, whether written or oral, relating to the subject matter of this Settlement Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, agreement, arrangement, or understanding, whether written or oral, concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

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

84. This Settlement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest.

85. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

86. The Parties hereby irrevocably submit to the continuing and exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement as embodied in the Settlement or its applicability, and agree that they will not oppose the designation of such suit, action, proceeding, or dispute as a related case to the Action.

87. The Settlement 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, provided that counsel for the Parties to the Settlement shall exchange among themselves original signed counterparts. Electronically transmitted signatures are valid signatures as of the date thereof.

88. The construction, interpretation, operation, effect, and validity of the Settlement, and all documents necessary to effectuate it, shall be governed by the laws of the State of New Mexico, without regard to conflicts of laws, except to the extent that federal law requires that federal law govern. The Parties understand and agree that any disputes arising out of the Settlement shall be governed and construed by and in accordance with the laws of the State of New Mexico, regarding reference or regard to choice-of-law principles.

89. The Settlement shall not be construed more strictly against one Party to the Settlement than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Settlement is the result of arm's-length negotiation between the Parties to the Settlement, and all Parties to the Settlement have contributed substantially and materially to the preparation of the Settlement.

90. Any and all counsel and Parties to the Settlement who execute the Settlement and any of the exhibits hereto, or any related Settlement documents, represent that they have reviewed and understand those documents and have the full authority to execute the Settlement, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement to effectuate its terms.

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

92. Except as expressly provided in this Agreement, the Allstate Companies shall not bear or pay any other expenses, costs, damages or fees alleged or incurred by Plaintiff or any

Settlement Class Member, or any of their attorneys, experts, advisors, agents or representatives in connection with this Action, in connection with the payments or distribution of Settlement Payments to the extent the claim for expenses, costs, damages or fees arise out or is related to the subject matter of this class action.

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

94. Following and pursuant to the Final Approval Order, the Court will retain continuing and exclusive jurisdiction, to the fullest extent allowed under the law, over the Settlement, the Parties, and their counsel, all Class and Settlement Members and any person making a claim, and/or the Administrator with respect to the terms of the Settlement Agreement and the plan of distribution. Any disputes or controversies arising out of, or related to, the

interpretation, implementation, administration, and enforcement of this Settlement Agreement will be made by motion to the Court.

95. For all deadlines under this Agreement, to compute deadlines (a) exclude the day of the event that triggers the period; (b) count every calendar day, including intermediate Saturdays, Sundays, and legal holidays; and (c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

96. Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived only in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. The waiver by any Party of any breach of this Settlement Agreement by another Party will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

97. No opinion regarding tax consequences of this Settlement Agreement or of the compensation payments to Settlement Class Members is being given or will be given by the Defendants, Defendants' Counsel, Class Representatives, Class Counsel, or the Claims Administrator, nor is any representation or warranty in this regard made by virtue of this Settlement Agreement or its provision on distribution or allocation of benefit payments. Settlement Class Members must consult their own tax advisors regarding the tax consequences of the Settlement Agreement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member's tax obligations, and the determination thereof, are his or her sole responsibility, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement



Class Member. The Defendants, Defendants' Counsel, Class Representatives, and Class Counsel will have no liability or responsibility whatsoever for any such tax consequences resulting from payments under this Settlement Agreement. The Claims Administrator will report payments made under this Settlement Agreement to the appropriate authorities to the extent required by law.

98. All medical information and personal identification information shall be safeguarded and maintained on secured servers by the Claims Administrator and shall be disclosed only in conformity with HIPPA requirements.

99. The Claims Administrator shall keep and maintain the Claims Information and documents and keep the Settlement Website operational for a period of 12 months from the date of the final settlement payments pursuant to this Agreement. The documents will be disposed of in a secure manner to maintain confidentiality.

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

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

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

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

Date: August 22, 2023

By: /s/ 

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*Attorneys for Plaintiffs*

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

Date: August 22, 2023

By: /s/ 

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