

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALEXANDRA STARK, individually )  
and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

1:23-CV-22

BLUE CROSS AND BLUE SHIELD )  
OF NORTH CAROLINA and )  
CHANGE HEALTHCARE )  
RESOURCES, LLC, )

Defendants. )

**ORDER**

The plaintiff, Alexandra Stark, individually and on behalf of the proposed Settlement Class, and the defendants, Blue Cross and Blue Shield of North Carolina and Change Healthcare Resources, LLC, have entered into a Settlement Agreement, dated May 31, 2024, that, if approved, would resolve this action. Under Federal Rule of Civil Procedure 23, Ms. Stark moves for: 1) preliminary approval of the class action settlement; 2) provisional certification of the proposed settlement class; 3) appointment of class counsel, a class representative, and a settlement administrator; 4) approval of the proposed notice plan; and 5) scheduling of the Final Approval Hearing.

The Court has considered the record, consulted with counsel at a hearing held on June 26, 2024, and thoroughly reviewed the Settlement Agreement together with all exhibits and attachments thereto. Based on the evidence and its experience managing

class actions, and in its discretion, the Court **FINDS**, for the purposes of this Order only and subject to reconsideration, and **ORDERS**:

**I. PRELIMINARY APPROVAL**

1. Unless otherwise defined herein, all terms that are capitalized shall have the same meaning ascribed to those terms in the Settlement Agreement.

2. The Court has jurisdiction over this Litigation, Representative Plaintiff, Defendants, and the Settlement Class Members, and any party to any agreement that is part of or related to the Settlement Agreement.

3. The Court has reviewed the terms of the proposed Settlement Agreement, the exhibits and attachments thereto, Plaintiff's motion papers and briefs, and the declarations of counsel. On June 26, 2024, the Court also held a hearing, during which it asked counsel several clarifying questions about the Settlement.

4. Based on its review, the Court finds that the Settlement Agreement is the result of extensive discovery, Doc. 63-2 at p. 6 ¶ 12, and informed, arm's-length negotiations conducted with the assistance of an experienced mediator, former Magistrate Judge David Jones, during a mediated settlement conference on January 29, 2024, and follow-up negotiations. Doc. 60 at ¶¶ 1-4. The terms of the Settlement Agreement do not improperly grant preferential treatment to any individual or segment of the Settlement Class and fall within the range of possible approval as fair, reasonable, and adequate.

5. The Court therefore grants preliminary approval of the Settlement Agreement and all of the terms and conditions contained therein, subject to review upon motion for final approval.

6. The Court’s preliminary approval is subject to the right of any Settlement Class Member to challenge the Settlement and to show cause, if any exists, why a Final Approval Order and Judgment, dismissing this action based on the Settlement should not be entered, after due and adequate notice has been provided to the Settlement Class and a Final Approval Hearing has been held as otherwise ordered herein.

## **II. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

7. Under Federal Rule of Civil Procedure 23, the Court preliminarily certifies, for settlement purposes only, the Settlement Class defined in the Settlement Agreement as follows:

All regular users or subscribers to numbers assigned to wireless carriers which Change Healthcare, on behalf of BCBSNC, called during the Settlement Class Period using an artificial or pre-recorded voice who were not members or subscribers of BCBSNC or that opted out of receiving calls from Change Healthcare.

Doc. 63-1 at p. 6 ¶ 1.1.33. Excluded from the Settlement Class are:

“(1) the Judges presiding over this action and members of their families; (2) the Defendants, Defendants’ respective subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded person(s).”

*Id.*

8. The Court preliminarily finds that the Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(a) for settlement purposes only: the Settlement Class is made up of more than 1,400 individuals; there are questions of law

and fact common to the Settlement Class; the Representative Plaintiff's claims are typical of those of the Settlement Class Members; and the Representative Plaintiff will fairly and adequately protect the interests of the Settlement Class.

9. The Court preliminarily finds that the Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only: the questions of law and fact common to the Settlement Class predominate over individual questions and class action litigation is superior to other available methods for the fair and efficient adjudication of this controversy.

10. The Court hereby appoints Alexandra Stark as the class representative of the Settlement Class. The Court provisionally finds that Ms. Stark is similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class and that she will be an adequate class representative.

11. The Court finds the following counsel are experienced and adequate counsel and appoints them as Class Counsel for the Settlement: Avi R. Kaufman of Kaufman P.A., located at 237 South Dixie Highway, Floor 4, Coral Gables, FL 33133, and Stefan Coleman of Coleman PLLC, located at 66 West Flagler Street, Suite 900, Miami, FL 33130. Other counsel of record may and shall participate as needed and appropriate.

### **III. NOTICE AND ADMINISTRATION**

12. The Court provisionally finds KCC Class Action Services LCC is experienced and capable, Doc. 65-1, and appoints it as the Settlement Administrator.

KCC shall perform all the duties of the Settlement Administrator set forth in the Settlement Agreement.

13. The Court finds that the Notice Plan and Long-Form Notice, Exhibit B, Doc. 63-1 at pp. 33–40, in the Settlement Agreement, as clarified at the June 26, 2024, hearing, and the Summary Notice, Exhibit C, as revised, Doc. 65-3, satisfy the requirements of due process and Federal Rule of Civil Procedure 23. The Parties shall serve subpoenas on 10 telephone carriers<sup>1</sup> to obtain the names and addresses of potential Identifiable Settlement Class Members, Doc. 63-1 at p. 12 ¶ 6.5.2, and will provide such information to the Settlement Administrator, who shall mail them the Summary Notice. *Id.* at p. 12 ¶ 6.5.3.

14. The Notice Plan, Long-Form Notice, and Summary Notice provide the best notice practicable under the circumstances. They are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the scope of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the processes for doing so, and the date of the Final Approval Hearing. The Court therefore approves the Notice Plan, Long-Form Notice, and Summary Notice, as clarified herein, and directs the Settlement Administrator to proceed with providing notice to Settlement Class Members under the terms of the Settlement Agreement and this Order.

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<sup>1</sup> The 10 carriers are AT&T, Carolina West Wireless, CSC Wireless, MetroPCS, Omnipoint Mobile, PCS Wireless, Sprint, T-Mobile, US Cellular, and Verizon.

15. The Court approves the proposed Claim Form, as revised. Doc. 65-2. The Court confirmed at the hearing that Identifiable Settlement Class Members whose summary notices are not returned and who do not opt out of the Settlement will automatically receive payment without having to complete, sign, and submit a Claim Form. Two categories of Class Members must submit a Claim Form to receive payment: 1) Identifiable Settlement Class Members whose mailed Summary Notices are returned as undeliverable and 2) Unidentifiable Settlement Class Members. Doc. 63-1 at p. 9 ¶ 4.3.2. For those required to submit a Claim Form to receive payment, the deadline for submission is December 2, 2024, which is approximately 135 days from entry of this Order.

16. Administrative costs can be reduced by using electronic payment methods instead of mailing checks. The Parties will use the revised Summary Notice and Claim Form, Doc. 65-2; Doc. 65-3, to provide Settlement Class Members with the option to receive payment electronically.

17. The Settlement Administrator shall commence and conclude the Notice Plan within the time required by the Settlement Agreement and in compliance with the requirements in this Order. The Settlement Administrator shall file a declaration under oath attesting to its compliance with the requirements of the Notice Plan and providing the number of people reached by the Notice Plan and the number of Settlement Class Members who opt out of the Settlement. The Settlement Administrator shall not use or disclose the names, contact information, or any personal information disclosed to them as

part of administering this Settlement except to accomplish the purposes of this Settlement. Selling or trading any such information is prohibited.

#### **IV. EXCLUSION AND OBJECTIONS**

18. Settlement Class Members who wish to opt out and exclude themselves from the Settlement Class may do so by notifying the Settlement Administrator in writing, postmarked no later than December 2, 2024, which is approximately 135 days from entry of this Order. To be valid, each request for exclusion must be made in writing and: (a) signed by the Settlement Class Member; (b) include the Settlement Class Member's name, address, and the phone number or numbers at which the Settlement Class Member received calls covered by this Settlement; and (c) state that the Person wishes to be excluded from the Litigation and the Settlement. Doc. 63-1 at p. 17 ¶ 9.4.1. Any request that does not include all of this information and is not postmarked by the Opt Out Deadline and received by the Settlement Administrator at the specified address will be invalid. *Id.* Requests for a "mass" or "class" opt out, seeking exclusion of more than one Settlement Class Member, will not be permitted. *Id.*

19. All Settlement Class Members who do not opt out and exclude themselves shall be bound by the Court's Orders in this Litigation and by the Settlement Agreement. *Id.* at pp. 17–18 ¶¶ 9.4.1, 9.4.3.

20. Settlement Class Members who wish to object to the Settlement may do so by notifying the Clerk's Office of the United States District Court for the Middle District of North Carolina at 324 W. Market Street, Greensboro, NC 27401, in writing, postmarked no later than December 2, 2024, which is approximately 135 days from entry

of this Order. *Id.* at p. 16 ¶ 9.2.1. To be valid, each request for exclusion must be made in writing and contain: (a) a caption or title that identifies it as “Objection to Class Settlement in *Stark v. Blue Cross Blue Shield of North Carolina and Change Healthcare Resources, LLC*, No. 1:23-cv-00022-CCE-LPA;” (b) the objector’s name, address, and telephone number; (c) the phone number or numbers at which the Settlement Class Member received calls covered by this Settlement; and (d) the factual basis and legal grounds for the objection. *Id.* at p. 16 ¶ 9.2.2.

21. Settlement Class Members may raise an objection either on their own or through an attorney hired at their own expense. *Id.* at p. 16 ¶ 9.2.1. Any Person who submits a request to opt out may not file an objection to the Settlement. *Id.* at p. 18 ¶ 9.4.4.

22. Any Settlement Class Member who does not timely submit a written objection in accordance with these procedures and those detailed in the Settlement Agreement shall be deemed to waive any objection, shall not be permitted to object to the Settlement, and shall be precluded from seeking any review of the Settlement Agreement or the Final Approval Order by appeal or other means. *Id.* at p. 17 ¶ 9.2.3.

## V. FINAL APPROVAL HEARING

23. The Court will hold a Final Approval Hearing on December 16, 2024, at 9:30 a.m. in the United States District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, North Carolina 27401.

24. At the Final Approval Hearing, the Court will consider whether: (a) the Settlement is fair, reasonable, and adequate; (b) the preliminary certification of the



Settlement Class should be made final; (c) the preliminary appointment of Class Counsel, the class representative, and the Settlement Administrator should be made final; (d) Class Counsels’ motion for a Fee Award should be granted; and (g) a final Judgment should be entered.

25. As needed and in its discretion, the Court may continue the date of the Final Approval Hearing without further written notice to Settlement Class Members. The Settlement Administrator shall post any changes to the date and time of the Final Approval Hearing on the Class Settlement Website.

**VI. DEADLINES & TERMINATION**

<b>From Settlement Agreement Filing Date</b>	<b>May 31, 2024</b>
<b>CAFA Notice:</b> Settlement Administrator shall serve CAFA Notice on the appropriate federal and state officials. Doc. 63-1 at p. 11 ¶ 6.4.1.	+10 days June 10, 2024
<b>From Order Granting Preliminary Approval</b>	<b>July 17, 2024</b>
<b>Class Contact Information:</b> Parties shall serve subpoenas on 10 telephone carriers to obtain names and addresses of any potential Identifiable Settlement Class Members. <i>Id.</i> at p. 12 ¶ 6.5.2.	+5 days July 22, 2024
<b>Funding Date:</b> Defendants shall create a Settlement Fund. <i>Id.</i> at pp. 4, 9 ¶¶ 1.1.17, 4.1.	+20 days August 6, 2024
<b>Notice Date:</b> Settlement Administrator shall send mailed notices. <i>Id.</i> at pp. 4, 12 ¶¶ 1.1.20, 6.5.3.	+75 days September 30, 2024
<b>Class Settlement Website:</b> Settlement Administrator shall create and activate website. <i>Id.</i> at pp. 11–12, ¶¶ 6.3.1, 6.5.4.	+75 days September 30, 2024
<b>Fee Award Deadline:</b> Class Counsel must file any motion for attorneys’ fees, expenses & costs. <i>Id.</i> at p. 10 ¶ 5.1.	+105 days October 30, 2024
<b>Claims Deadline:</b> Settlement Class Members must submit Claims Forms to Settlement Administrator. <i>Id.</i> at pp. 3, 12–13 ¶¶ 1.1.4, 7.1	+ approximately 135 days December 2, 2024

<b>Opt Out Deadline:</b> Persons who want to be excluded from the Settlement must mail written request to the Settlement Administrator. <i>Id.</i> at pp. 4, 17 ¶¶ 1.1.22, 9.4.1.	+ approximately 135 days December 2, 2024
<b>Objection Deadline:</b> Settlement Class Members who want to object must mail written request to the Court’s Clerk. <i>Id.</i> at p. 16 ¶ 9.2.1.	+ approximately 135 days December 2, 2024
<b>Motion for Final Approval Deadline:</b> Parties must file such motion with the Court. <i>Id.</i> at pp. 18–19 ¶ 9.4.5.	+ approximately 135 days December 2, 2024
<b>Settlement Administrator Declaration:</b> Settlement Administrator shall file declaration under oath attesting to compliance with the Notice Plan and providing number of valid opt out requests.	+145 days December 9, 2024
<b>Final Approval Hearing:</b> <i>Id.</i> at p. 15 ¶ 9.1.2.	+ approximately 150 days December 16, 2024
<b>From Effective Date</b>	<b>TBD</b>
<b>Payment of Fee Award:</b> Settlement Administrator shall issue payment for attorneys’ fees, expenses & costs by wire transfer. <i>Id.</i> at p. 10 ¶ 5.4.	+10 days
<b>Deactivation of Class Settlement Website:</b> The Class Settlement Website will terminate. <i>Id.</i> at p. 11 ¶ 6.3.2.	+120 days
<b>Payment of Claims:</b> Settlement Administrator shall issue payment by check or electronic payment from the Settlement Fund. <i>Id.</i> at p. 13 ¶ 7.3.	+60 days

26. All proceedings and deadlines in this matter, except those necessary to implement this Order and the Settlement, are hereby stayed and suspended until further order of the Court.

27. All Settlement Class Members who do not validly opt out and exclude themselves are hereby enjoined from pursuing or prosecuting any of the Released Claims as set forth in the Settlement Agreement until further order of the Court.

28. If the Settlement Agreement is terminated according to the terms of the Settlement Agreement: (a) the Settlement Agreement and this Order shall become null and void; (b) the Parties will be returned to the *status quo ante* in the Litigation as of February 5, 2024, as if no Settlement Agreement had been negotiated or entered into; and (c) any portion of the Settlement Fund remaining shall be returned to Defendants proportionally based on the amount of their contributions. *Id.* at pp. 16, 19, 22 ¶¶ 9.1.5, 10.1, 12.4.

29. The Clerk shall post this Order and the Settlement Agreement, *id.* at pp. 1–29, on the Court website for 60 days.

30. The plaintiff’s motion for preliminary approval of class action settlement, Doc. 62, is **GRANTED**.

**SO ORDERED**, this the 17th day of July, 2024.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALEXANDRA STARK, individually and  
on behalf of all others similarly situated,

*Plaintiff,*

v.

BLUE CROSS AND BLUE SHIELD OF  
NORTH CAROLINA, a North Carolina  
not for profit corporation, and CHANGE  
HEALTHCARE RESOURCES, LLC, a  
Delaware registered company,

*Defendants.*

No. 1:23-cv-00022-CCE-LPA

This Class Action Settlement Agreement (“Agreement”), is made and entered into by and between Representative Plaintiff Alexandra Stark, on behalf of herself and the Settlement Class, and Blue Cross Blue Shield of North Carolina (“BCBSNC”) and Change Healthcare Resources, LLC (“Change Healthcare”) (BCBSNC and Change Healthcare are jointly referred to as “Defendants”) to settle this action and discharge the Released Claims, as defined below, according to the terms and conditions herein.

**RECITALS**

**WHEREAS**, *Stark v. Blue Cross Blue Shield of North Carolina and Change Healthcare Resources, LLC*, No. 1:23-cv-00022-CCE-LPA, was filed January 10, 2023, and is currently pending before the Honorable Catherine C. Eagles of the U.S. District Court for the Middle District of North Carolina, alleging Defendants violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*;

**WHEREAS**, Defendants deny each and every one of Representative Plaintiff’s allegations of unlawful conduct, damages, or other injuries;

**WHEREAS**, based upon the investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, motions practice to date, plus the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Representative Plaintiff and Class Counsel have agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Settlement;

**WHEREAS**, in an effort to facilitate a resolution of the Litigation, the Settling Parties participated in a mediation with the Honorable David E. Jones (Ret.) of Resolute Systems, LLC;

**WHEREAS**, the Parties understand, acknowledge and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Agreement;

**NOW THEREFORE**, subject to the Final Approval Order of the Court as required herein and applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises and covenants contained herein, that all Released Claims against any Released Parties shall be settled, compromised and forever released upon the following terms and conditions.

### **TERMS AND CONDITIONS OF THE SETTLEMENT**

#### **1. DEFINITIONS**

1.1 As used herein, the following terms have the meanings set forth below.

1.1.1 “Appeal” means a request for appellate review of any order or judgment of the Court entered in this Litigation, including but not limited to appeals as of right, discretionary appeals, interlocutory appeals, any order reinstating an appeal, and proceedings involving writs of certiorari and/or any proceedings thereon.

1.1.2 “Approved Claim” means a claim that: (a) is received by the Settlement Administrator or postmarked on or before the Claims Deadline; (b) is fully and truthfully completed by a Settlement Class Member with all information requested in the Claim Form, and in accordance with the directions on the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement as a valid claim eligible to receive payment from the Settlement Fund under the Agreement and the Final Approval Order and Judgment.

1.1.3 “CAFA Notice” means the notice of this Settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Paragraph 6.4.

1.1.4 “Claims Deadline” means the date that is approximately sixty (60) days after the Notice Date.

1.1.5 “Claim Form” means the document to be submitted by Settlement Class Members seeking payment pursuant to this Settlement, attached as Exhibit A.

1.1.6 “Class Counsel” means Avi R. Kaufman of Kaufman P.A. and Stefan Coleman of Coleman PLLC.

1.1.7 “Court” means the U.S. District Court for the Middle District of North Carolina.

1.1.8 “Complaint” means the operative complaint in this Litigation at the time the Court enters the Preliminary Approval Order.

1.1.9 “*Cy Pres* Distribution” means monies that may be distributed in connection with the Settlement pursuant to Paragraph 7.7 of this Agreement. *Cy Pres* will only be distributed for uncashed or undeposited checks and only then if a second distribution to eligible Settlement Class Members is not feasible pursuant to Section 7.7 of this Agreement.

1.1.10 “Defendants” means collectively, Blue Cross Blue Shield of North Carolina (“BCBSNC”) and Change Healthcare Resources, LLC (“Change Healthcare”), as well as their respective past, present, and future officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, alleged co-conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons.

1.1.11 “Defense Counsel” means Defendants’ counsel of record in the Litigation, Alston & Bird LLP and Hogan Lovells US LLP.

1.1.12 “Effective Date” means the first date by which any Judgment entered pursuant to the Agreement becomes Final.

1.1.13 “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses that may be awarded by the Court and that will be paid out of the Settlement Fund.

1.1.14 “Final” means one business day following the later of the following events: (i) the expiration of the time to file a motion to alter or amend a judgment under Fed. R. Civ. P. 59(e)

has passed without any such motion having been filed; (ii) the expiration of the time in which to file an Appeal of any judgment entered pursuant to this Agreement has passed without any Appeal having been taken; and (iii) the resolution of any such Appeal in a manner that does not reverse or vacate the Judgment and in a manner that permits the consummation of the Settlement substantially in accordance with the terms and conditions of this Agreement. Any proceeding or order, or any Appeal pertaining solely to any request or order regarding the Fee Award will not in any way delay or preclude the Judgment from becoming Final.

1.1.15 “Final Approval Hearing” means the final hearing, held after the Preliminary Approval Order is issued and Settlement Class Members have been given reasonable notice and an opportunity to object or to exclude themselves from the Settlement, at which the Court will determine whether to finally approve the Settlement and to enter Judgment.

1.1.16 “Final Approval Order” means an order, providing for, among other things, final approval of the Settlement.

1.1.17 “Funding Date” shall mean twenty (20) days after preliminary approval is granted to this Settlement.

1.1.18 “Judgment” means the judgment to be entered by the Court pursuant to the Settlement.

1.1.19 “Litigation” means *Stark v. Blue Cross Blue Shield of North Carolina and Change Healthcare Resources, LLC*, No. 1:23-cv-00022-CCE-LPA, currently pending in the U.S. District Court for the Middle District of North Carolina.

1.1.20 “Notice Date” means the deadline by which to send notice by mail pursuant to the Notice Plan.

1.1.21 “Notice Plan” means the proposed plan of disseminating to Settlement Class Members notice of the proposed Settlement and of the Final Approval Hearing, as approved by the Court.

1.1.22 “Opt-Out Deadline” means the date that is approximately (60) days after the Notice Date.

1.1.23 “Parties” means, collectively, Representative Plaintiff and Defendants.

1.1.24 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

1.1.25 “Preliminary Approval Order” means an order, providing for, among other things, preliminary approval of the Settlement and dissemination of notice to the Settlement Class according to the Notice Plan.

1.1.26 “Released Claims” means any and all claims, liabilities, demands, causes of action, or lawsuits of the Settlement Class Members, whether known or unknown, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law (including but not limited to any violations of the Telephone Consumer Protection Act, 47 USC § 227, the FCC’s related regulations—including internal Do Not Call requirements, similar state laws, or unfair or deceptive practices act), and whether brought in an individual, representative, or any other capacity, that were brought in the Litigation or could have been brought in the litigation or that arise from pre-recorded or artificial voice telephone calls made (to the fullest extent that those terms are used, defined, or interpreted by the Telephone Consumer Protection Act, 47 U.S.C. § 227, relevant regulatory or administrative promulgations and case law, or similar state laws), or attempted to be made, by or on behalf of Defendants from January 10, 2019, through the date preliminary approval is granted to the Settlement.

1.1.27 “Released Parties” means Defendants and any respective corporate parent, subsidiary, or affiliated entities, along with each of their current, former, and future owners, members, partners, officers, directors, shareholders, employees, agents, affiliates, marketers, vendors, contractors, assigns, successors, predecessors, servants, insurers, representatives, and attorneys.

1.1.28 “Releasing Parties” means: (a) Representative Plaintiff, her heirs, assigns, successors in interest, and personal representatives; (b) Settlement Class Members who do not timely opt out of the Settlement Class; (c) to the extent that a Settlement Class Member is not an individual, all of its present, former, and future predecessors, successors, assigns, parents, subsidiaries, joint



ventures, and affiliates, and all employees, agents, representatives, consultants, independent contractors, insurers, directors, officers, partners, principals, members, attorneys, accountants, financial advisors, investors, investment bankers, underwriters, shareholders, lenders, and auditors of any of the foregoing Persons; and (d) to the extent the Settlement Class Member is an individual, any present, former, and future spouses, as well as the present, former, and future heirs, executors, estates, administrators, representatives, agents, attorneys, partners, successors, predecessors, and assigns of each of them, and any other representatives of any of the foregoing Persons.

1.1.29 “Representative Plaintiff” means Plaintiff Alexandra Stark.

1.1.30 “Settlement” means the settlement set forth in this Agreement.

1.1.31 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator in providing notice, processing claims, administering the Settlement, and issuing payments to Settlement Class Members. Settlement Administration Expenses shall be paid exclusively from the Settlement Fund.

1.1.32 “Settlement Administrator” means KCC Class Action Services LLC.

1.1.33 “Settlement Class” means all regular users or subscribers to numbers assigned to wireless carriers which Change Healthcare, on behalf of BCBSNC, called during the Settlement Class Period using an artificial or pre-recorded voice who were not members or subscribers of BCBSNC or that opted out of receiving calls from Change Healthcare. Excluded from the Settlement Class are: (1) the Judges presiding over this action and members of their families; (2) the Defendants, Defendants’ respective subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded person(s).

1.1.34 “Settlement Class Member” means a person who falls within the definition of the Settlement Class and who does not opt out of the Settlement as set forth in Paragraph 9.4. A Settlement Class Member is an “Identifiable Settlement Class Member” if the Parties identify the Person’s telephone number in Change Healthcare’s records and obtain the Person’s name and address information via a subpoena to a wireless carrier. A Settlement Class Member is an

“Unidentifiable Settlement Class Member” if the Parties have not been able to identify the Person’s telephone number in Change Healthcare’s records or obtain the Person’s name and address information via a subpoena to a wireless carrier as of the Notice Date.

1.1.35 “Settlement Class Period” means January 10, 2019, through the date preliminary approval is granted to the Settlement.

1.1.36 “Settlement Fund” means a common fund to which Defendants will contribute \$1,670,000.00. The Settlement Fund will be non-reversionary and represents Defendants’ maximum possible payment.

1.1.37 “Settling Parties” means, collectively, Defendants, Representative Plaintiff, and all Settlement Class Members.

1.1.38 The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

## **2. DENIAL OF WRONGDOING AND LIABILITY**

2.1 Defendants deny the material factual allegations and legal claims asserted by Representative Plaintiff in the Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Further, Defendants maintain that they have strong, meritorious defenses to the claims alleged in the Litigation and that they were prepared to vigorously defend all aspects of the Litigation.

2.2 Defendants’ Position on Conditional Certification of the Settlement Class. Defendants dispute that a class would be manageable or that common issues predominate over individual ones, and deny that a litigation class properly could be certified on the claims asserted in the Litigation. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendants do not oppose and hereby agree to certification of the Settlement Class defined in Paragraph 1.1.33, for settlement purposes only, pursuant to Fed. R. Civ. P. 23(b)(3). Certification of the Settlement Class for settlement purposes will not be deemed a concession that certification of any litigation class in the Litigation is, or was, appropriate, nor would Defendants be precluded from challenging class certification in further proceedings in the Litigation or in any other action if the

Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class resulting from this Agreement will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving Defendants. No agreements made by or entered into by Defendants in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Litigation, or any other judicial proceeding.

2.3 Admissibility. Additionally, this Agreement, any negotiations or proceedings related to it, the implementation of it, and any papers submitted in support of the motions for approval of it (collectively, the “Settlement Proceedings”) are not to be construed as or deemed to be evidence of any admission or concession by any of the Parties regarding liability, damages, or the appropriateness of class treatment, and are not to be offered or received in evidence in any action or proceeding for any purpose whatsoever; provided, however, that this Agreement and the Settlement Proceedings may be presented to the Court in connection with the implementation or enforcement of this Agreement, or as may be necessary or appropriate to further the purposes sought to be achieved by this Agreement.

### **3. THE BENEFITS OF SETTLEMENT**

3.1 Class Counsel and Representative Plaintiff recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation against Defendants through trial and appeals. Class Counsel also has taken into account the strength of Defendants’ defenses, difficulties in obtaining class certification and proving liability, and the uncertain outcome and risk of the litigation, especially in complex actions such as this one, and the inherent delays in such litigation. Class Counsel believes that the proposed Settlement confers substantial benefits upon the Settlement Class. Based on their evaluation of all of these factors, Representative Plaintiff and Class Counsel have determined that the Settlement is in the best interests of Representative Plaintiff and the Settlement Class.

#### 4. SETTLEMENT TERMS

4.1 Settlement Fund: Defendants will cause to be created a Settlement Fund in the amount of \$1,670,000.00 for the purpose of making all required payments under this Settlement. The Parties agree that Defendants' maximum monetary obligation under this Agreement shall not exceed \$1,670,000.00. Upon payment of the \$1,670,000.00, through contributions by BCBSNC and Change Healthcare, Defendants' payment obligations under this Agreement shall be deemed to have been fully satisfied.

4.2 The Settlement Fund shall be a Qualified Settlement Fund (QSF) under Section 468B of the Internal Revenue Code and 26 C.F.R. § 1.468B-1, established pursuant to the Preliminary Approval Order. The Settlement Administrator shall be the Administrator of the QSF.

##### 4.3 Payment to Settlement Class Members

4.3.1 Each Identifiable Settlement Class Member who does not opt out of the Settlement as set forth in Paragraph 9.4 and for whom all mailed notices are not returned as undeliverable shall automatically receive a payment.

4.3.2 Each Identifiable Settlement Class Member for whom all mailed notices are returned as undeliverable and Unidentifiable Settlement Class Member shall be entitled to submit one claim per telephone number he or she used or subscribed to for a payment. Adequate and customary procedures and standards will be used by the Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims, including, but not limited to, verifying claims with information provided by Defendants where feasible.

4.3.3 Each Identifiable Settlement Class Members who does not opt out of the Settlement and for whom all mailed notices are not returned as undeliverable, each Identifiable Settlement Class Member for whom all mailed notices are returned as undeliverable who submits an Approved Claim, and each Unidentifiable Settlement Class Member who submits an Approved Claim shall be entitled to payment in an amount equivalent to their *pro rata* share of the Settlement Fund after any approved Fee Award and Settlement Administration Expenses are deducted. Payments will be made directly to Settlement Class Members by the Settlement Administrator.

## **5. ATTORNEYS' FEES, EXPENSES, AND COSTS**

5.1 Class Counsel shall apply to the Court for attorneys' fees and documented and reasonable expenses and costs. Class Counsel's application for fees, expenses, and costs shall be filed no later than thirty (30) days prior to the Opt-Out Deadline. Any Fee Award approved by the Court shall be paid solely out of the Settlement Fund and shall not increase Defendants' total financial liability with respect to this Agreement or Settlement.

5.2 In the event the Court approves the Settlement, but declines to award a Fee Award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties and the Settlement Class Members.

5.3 Defendants shall have no liability to Class Counsel or any other Person arising from any claim regarding the division of any award of attorneys' fees, expenses, and costs between and among Class Counsel or any other counsel who may claim entitlement to any portion of the Fee Award.

5.4 The Fee Award, if approved by the Court, shall be paid by wire transfer from the Settlement Fund within ten (10) calendar days following the Effective Date, provided that the law firm or attorney being paid has executed a Form W-9 to the Settlement Administrator. The Fee Award shall be paid from the Settlement Fund, and Defendants shall have no additional obligation to pay for attorneys' fees, costs and/or expenses of any kind.

5.5 The Court shall retain jurisdiction of any dispute regarding the Fee Award and any repayment of any amount of the Fee Award.

## **6. ADMINISTRATION AND NOTICE**

6.1 All costs and expenses of administering the Settlement and providing reasonable notice in accordance with the Preliminary Approval Order shall be paid out of the Settlement Fund, including the cost of CAFA Notice.

6.2 The Settlement Administrator will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan, as well as CAFA Notice.

6.3 Class Settlement Website

6.3.1 The Settlement Administrator will create and maintain the Class Settlement Website, to be activated within seventy-five (75) days of Preliminary Approval. The Settlement Administrator's responsibilities will also include securing an appropriate URL to be agreed upon by the Parties. The Class Settlement Website will contain information about the Settlement and case-related documents such as the Settlement Agreement, the Long-Form Notice in the form attached hereto as Exhibit B, subject to Court modification and/or approval, the Claim Form, the Preliminary Approval Order, Class Counsel's application for a Fee Award, and the Complaint. Settlement Class Members shall have the option to file a claim electronically using the Class Settlement Website.

6.3.2 The Class Settlement Website will terminate (be removed from the internet) and no longer be maintained by the Settlement Administrator thirty (30) days after either (a) the Effective Date or (b) the date on which the Settlement Agreement is terminated or otherwise not approved in full, if the Settlement is terminated or otherwise not approved in full.

6.3.3 All costs and expenses related to the Class Settlement Website shall be paid out of the Settlement Fund.

#### 6.4 CAFA Notice

6.4.1 The Parties agree that the Settlement Administrator shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

6.4.2 All costs and expenses related to the CAFA Notice shall be paid out of the Settlement Fund.

6.4.3 The Settlement Administrator will file a certification with the Court stating the date(s) on which the CAFA Notices were sent. Each Party will provide the other Parties with any substantive responses received in response to any CAFA Notice.

#### 6.5 Notice Plan

6.5.1 The Notice Plan shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the U.S. Constitution (including the Due Process Clauses), and any other

applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

6.5.2 Subject to Court approval, to obtain the name and address of any potential Identifiable Settlement Class Members, within five (5) days after the Court enters the Preliminary Approval Order, the Parties shall serve subpoenas on the following telephone carriers: AT&T, Carolina West Wireless, CSC Wireless, MetroPCS, Omnipoint Mobile, PCS Wireless, Sprint, T-Mobile, US Cellular, and Verizon.

6.5.3 Subject to Court approval, within seventy-five (75) days after the Court enters the Preliminary Approval Order, the Settlement Administrator shall send direct notice substantially in the form of the Summary Notice in Exhibit C, as modified and/or approved by the Court, via U.S. Postal Service, to Identifiable Settlement Class Members. The Settlement Administrator will use customary procedures, including a search of the United States Postal Service's National Change of Address database, to update Identifiable Settlement Class Members' addresses received via subpoena. The Settlement Administrator will use customary procedures, including third party services, to identify an alternate address for any Identifiable Settlement Class Member for whom the initial mailed notice is returned as undeliverable, and promptly remail notice to them.

6.5.4 Subject to Court approval, within seventy-five (75) days after the Court enters Preliminary Approval, the Settlement Administrator shall disseminate a plain-language notice publicizing the Settlement and directing potential Settlement Class Members who did not receive direct notice to the Settlement Website to file a Claim Form through an internet media campaign designed by the Parties and the Settlement Administrator to target adults 18 years or older in North Carolina on desktop and mobile devices via the Google Display Network and Facebook social media platform for a 60-day duration.

## **7. CLAIMS PROCESS**

7.1 Submission of Claims. To obtain a payment from the Settlement, Identifiable Settlement Class Members for whom all mailed notices are returned as undeliverable and Unidentifiable Settlement Class Members must timely submit online a valid Claim Form substantially in the form attached as Exhibit A, as modified and/or approved by the Court, by the

Claims Deadline. All Claim Forms must be submitted to the Settlement Administrator by the Claims Deadline. A valid Claim Form means a Claim Form containing all required information and which is signed by the claimant and is timely submitted. Any Claim Form which is not timely submitted shall be denied. In the event an Identifiable Settlement Class Member for whom all mailed notices are returned as undeliverable or Unidentifiable Settlement Class Member submits a Claim Form by the Claims Deadline but the Claim Form is not complete, then the Settlement Administrator shall give such Settlement Class Member a reasonable opportunity to provide any requested missing information. For any Settlement Class Member who submits a Claim Form determined by the Settlement Administrator to be incomplete, the Settlement Administrator shall mail a notice directly to such Settlement Class Member, notifying him or her of the missing information and providing him or her with an opportunity to cure (the "Cure Notice"). Settlement Class Members must cure incomplete claims on or before the Effective Date.

7.2 Claims Processing. The Settlement Administrator shall apply the terms of this Settlement Agreement and the requirements set forth in the Claim Form, and any Claim Form submitted that does not meet the requirements of this Agreement is not eligible to be an Approved Claim. The Settlement Administrator also shall employ reasonable procedures to screen claims for abuse, fraud, or duplication, and shall deny Claim Forms where there is evidence of abuse, fraud, or duplication. The Settlement Administrator's decisions regarding the Settlement Class Members' eligibility for a claims payment shall be final. The Parties, the Released Parties, and their respective counsel shall have no responsibility or liability whatsoever for the Settlement Administrator's conduct, omissions, or actions.

7.3 Payment of Claims. Within sixty (60) days after the Effective Date, or such other date as the Court may set, the Settlement Administrator shall issue payment by check or electronic payment from the Settlement Fund to each Identifiable Settlement Class Member who does not opt out of the Settlement and for whom all mailed notices are not returned as undeliverable, each Identifiable Settlement Class Member for whom all mailed notices are returned as undeliverable who timely submits a valid claim, and each Unidentifiable Settlement Class Member who timely submits a valid claim.



7.4 All payments to Settlement Class Members will state on their face that they will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

7.5 To the extent that any payments to Settlement Class Members expire and become null and void, the Settlement Administrator shall distribute the funds associated with those payments on a *pro rata* basis to Settlement Class Members who were issued and cashed their initial payments, if doing so is administratively and economically feasible (i.e., those Settlement Class Members would receive a second distribution of more than \$1 after costs of administration).

7.6 To the extent the amount due in payments to any Settlement Class Member in any single calendar year exceeds \$599 (or as otherwise required by law), the Settlement Class Member will be issued payments totaling \$599 (or as otherwise permitted by law) with a request to complete a Form W-9 electronically through the Settlement Website to receive any additional amounts due. If the Settlement Class Member does not complete a Form W-9, they will not be issued any additional payment, and any amount associated with the unissued additional payment shall be distributed on a *pro rata* basis to Settlement Class Members who submit a completed Form W-9.

7.7 Any remaining monies, including to the extent a second distribution is not administratively feasible, shall be paid as *cy pres* to the National Legal Aid and Defender Association, subject to Court approval. No money remaining in the Settlement Fund shall revert to or otherwise be paid to Defendants.

7.8 No decisions by the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendants as to any matter of fact, law, or evidence having any collateral effect on any claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

## **8. RELEASES**

8.1 Upon entry of the Judgment, Representative Plaintiff and each Settlement Class Member will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims against the Released Parties.

8.2 After entering into this Settlement Agreement, Representative Plaintiff or Settlement Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. Representative Plaintiff and Settlement Class Members expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

8.3 Upon entry of the Final Approval Order, Representative Plaintiff, and any Settlement Class Member who does not opt out as set forth in Paragraph 9.4 is hereby barred against bringing any action against any of the Released Parties for any of the Released Claims. Additionally, Representative Plaintiff and Settlement Class Members agree and covenant, and each Settlement Class member will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the Released Claims, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

## **9. APPROVAL PROCESS**

### **9.1 Court Approval**

9.1.1 Class Counsel shall submit the Agreement together with its Exhibits to the Court and request that the Court grant preliminary approval of the Settlement, issue a Preliminary Approval Order, and schedule a hearing on whether the Settlement should be granted final approval (collectively, “Motion for Preliminary Approval”).

9.1.2 In the Motion for Preliminary Approval, Class Counsel shall request that the Court schedule a Final Approval Hearing for a date no less than one hundred fifty (150) days from entry of the Preliminary Approval Order.

9.1.3 The date the Motion for Preliminary Approval is filed is the date by which the Settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715.

9.1.4 If the Motion for Preliminary Approval is granted, Class Counsel shall be responsible for asking the Court to grant final approval of the Settlement and to enter a Final

Approval Order and Judgment, in accordance with the date set by the Court for the Final Approval Hearing.

9.1.5 If the Court does not enter a Preliminary Approval Order or a Final Approval Order and Judgment or if the Final Approval Order is reversed or vacated, by any court, this Agreement shall terminate and be of no force or effect, except as otherwise set forth in this Agreement, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain Court approval. If this Agreement is terminated, any portion of the Settlement Fund remaining shall be returned to Defendants proportionally based on the amount of their contributions to the Settlement Fund. Notwithstanding any provision of this Agreement, the Parties agree that any decision by any court as to any Fee Award to Class Counsel shall not prevent the Agreement from becoming effective, prevent Final Judgment from being entered, or provide any grounds for termination of the Agreement or the Settlement.

## 9.2 Procedures for Objecting to the Settlement

9.2.1 Settlement Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given final approval, subject to each of the sub-provisions contained in this section. Any objection to this Settlement Agreement, including any of its terms or provisions, must be in writing, filed with the Court or mailed to the Clerk's Office of the United States District Court for the Middle District of North Carolina, L. Richardson Preyer Courthouse, 324 W. Market Street, Greensboro, NC 27401-2544 by no later than the Opt-Out Deadline. Settlement Class Members may object either on their own or through an attorney hired at their own expense.

9.2.2 Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as "Objection to Class Settlement in *Stark v. Blue Cross Blue Shield of North Carolina and Change Healthcare Resources, LLC*, No. 1:23-cv-00022-CCE-LPA" and also shall contain the following information: (i) the objector's name, address, and telephone number; (ii) the phone number(s) at which he or she received calls covered by this Settlement; and (iii) the factual basis and legal grounds for the objection.

9.2.3 Any Settlement Class Member who fails to comply with the applicable provisions of the preceding paragraphs concerning their objection shall waive and forfeit any and all rights he or she may have to object, appear, present witness testimony, and/or submit evidence, shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing, shall be precluded from seeking review of this Agreement by appeal or other means, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Litigation. By filing an objection, objectors and their counsel submit to the jurisdiction of the Court for all purposes, including but not limited to subpoenas and discovery.

### 9.3 Right to Respond to Objections

9.3.1 Class Counsel and the Parties shall have the right, but not the obligation, to respond to any objection no later than seven (7) days prior to the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by email or overnight delivery, to the objector (or counsel for the objector).

### 9.4 Opt Outs

9.4.1 Any Settlement Class Member who does not wish to participate in this Settlement must write to the Settlement Administrator stating an intention to be “excluded” from this Settlement. This written request for exclusion must be sent via mail to the Settlement Administrator at the address set forth in the Summary Notice and Long-Form Notice and postmarked no later than the Opt-Out Deadline. A request for exclusion must be signed by the Settlement Class Member, include the Settlement Class Member’s name, address, and the phone number(s) at which he or she received calls covered by this Settlement, and clearly state that the Person wishes to be excluded from the Litigation and the Settlement. A request for exclusion that does not include all of this information, or that is sent to an address other than that designated in the notices, or that is not postmarked within the time specified, shall be invalid, and the Person serving such a request shall be a member of the Settlement Class and shall be bound as a Settlement Class Member by the Court’s Orders in this Litigation and by this Agreement, if approved. The request for exclusion must be personally signed by the Settlement Class Member. So-called “mass” or “class” opt-outs shall not be allowed.

9.4.2 The Settlement Administrator will retain a copy of all requests for exclusion and will provide copies of any such requests to counsel for the Parties on a weekly basis. Class Counsel will keep any such Opt-Out information confidential and use it only for purposes of determining whether a person in the Settlement Class has properly opted out. The names of those persons who have properly excluded themselves from the Settlement will be provided to the Court in connection with the motion for final approval of the Settlement.

9.4.3 All Settlement Class Members will be bound by all determinations and judgments in the Litigation. In the event that the number of persons in the Settlement Class who validly and timely submit Opt-Out requests exceeds 250, Defendants, following good faith discussions between them to reach agreement, may terminate the Settlement.

9.4.4 Any Person in the Settlement Class who submits a request for exclusion may not file an objection to the Settlement. If a Settlement Class Member submits a written request for exclusion pursuant to Paragraph 9.4.1 above, he or she shall be deemed to have complied with the terms of the opt-out procedure and shall not be bound by the Agreement if approved by the Court.

9.4.5 After notice is disseminated and at least fifteen (15) days prior to the Final Approval Hearing, the Parties shall request and seek to obtain from the Court a Final Approval Order and Judgment, which will (among other things):

- (i) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject-matter jurisdiction to approve the Agreement, including all exhibits hereto;
- (ii) approve the Settlement Agreement and the proposed Settlement as fair, reasonable, and adequate as to, and in the best interests of, Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have preclusive effect on all pending and future lawsuits or other proceedings maintained by or on behalf of Representative Plaintiff and the Releasing Parties;
- (iii) find that the notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all

applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

- (iv) dismiss the action (including all individual claims and Settlement Class Member claims asserted therein) on the merits and with prejudice, without fees or costs to any Party, except as provided in the Settlement Agreement; incorporate the releases set forth above in Paragraph 8, make those releases effective as of the date of the Final Approval Order and Judgment; and
- (v) forever discharge the Released Parties as set forth herein; permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction related to the Released Claims.

## **10. WITHDRAWAL FROM SETTLEMENT**

10.1 If any of the conditions set forth below occurs and either (a) Class Counsel or (b) Defendants give notice that such Party or Parties wish to withdraw from this Agreement (subject to the terms below and herein), then this Agreement shall terminate and be null and void, and the Parties will be returned to the *status quo ante* as if no settlement had been negotiated or entered into:

- (i) Any objections to the proposed settlement are sustained, which results in changes to the Settlement described in this Agreement that the withdrawing Party deems in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement);
- (ii) The Final Approval of the Settlement described in this Agreement results in changes that the withdrawing Party deems in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement);
- (iii) More than 250 of the Settlement Class Members exclude themselves from the Settlement as set out in Paragraph 9.4.3;
- (iv) The Final Approval of the Settlement described in this Agreement is (i) substantially modified by an appellate court and the withdrawing Party deems any such modification in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement) or (ii) reversed by an appellate court.

## **11. TAXES**

Settlement Class Members, Representative Plaintiff, and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

11.1 Qualified Settlement Fund. The Parties agree that the Escrow Account into which the Settlement Fund is deposited is intended to be a separate taxable entity and is and will at all times

constitute a “Qualified Settlement Fund” within the meaning of § 1.468B-1(c) of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended from time to time. The Settlement Administrator will timely make such elections as necessary, including if necessary, the “relation back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections must be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It is the responsibility of the Settlement Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

11.2 Settlement Administrator is “Administrator.” For the purpose of § 1.468B of the Code and the Treasury regulations thereunder, the Settlement Administrator must be designated as the “administrator” of the Settlement Fund. The Settlement Administrator must cause to be timely and properly filed all information and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns must reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund will be paid out of the Settlement Fund.

11.3 Taxes Paid By Administrator. All taxes arising in connection with income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or any of the other Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, will be paid by the Settlement Fund.

11.4 Expenses Paid from Fund. Any expenses reasonably incurred by the Settlement Administrator in carrying out the duties, including fees of tax attorneys and accountants, will be paid from the Settlement Fund.

11.5 Responsibility for Taxes on Distribution. Any person or entity that receives a distribution from the Settlement Fund will be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related

expenses will not be paid from the Settlement Fund.

11.6 Defendants Are Not Responsible. In no event will Defendants or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Representative Plaintiff, Settlement Class Members, Class Counsel or any other person or entity. The Settlement Class Members shall indemnify and hold Defendants and other Released Parties harmless—through the Settlement Fund— for all such taxes and tax-related expenses.

11.7 Each of the Defendants shall timely deliver to the Settlement Administrator a “Section 1.468B-3 Statement” (as provided in Treas. Reg Section 1.468B-3(e)) with respect to any transfers made to the Settlement Fund.

11.8 The Settlement Administrator will engage in reporting to the Internal Revenue Service and such other state and local taxing authorities as may be required by law. The parties acknowledge that the Settlement Administrator will comply with all withholding obligations as required under the applicable provisions of the Internal Revenue Code and such other state and local laws as may be applicable, and the regulations promulgated thereunder. In addition, the Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Settlement Class Member any funds necessary to pay such amounts including the establishment of adequate reserves for any taxes and tax-related expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate with the Settlement Administrator, each other, and their attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section 11.

11.9 Defendants make no representation to Representative Plaintiff, Settlement Class Members, Class Counsel or any other person or entity regarding the appropriate tax treatment of the Settlement Fund, income earned on the Settlement Fund, or any distribution taken from the Settlement Fund.

## **12. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

12.1 The Effective Date of this Agreement shall be the date the Judgment has become Final, as defined in Paragraph 1.1.11.



12.2 Performance of the obligations set forth in this Agreement is subject to all of the following material conditions:

- (A) execution of this Agreement by Defendants, Representative Plaintiff, and Class Counsel.
- (B) the granting of preliminary approval by the Court.
- (C) sending of the notices described herein.
- (D) the granting of final approval by the Court.
- (E) execution and entry of Judgment by the Court.
- (F) the occurrence of all other circumstances necessary for the Effective Date to arise.

12.3 The Parties hereby covenant and agree to cooperate reasonably and in good faith for the purpose of achieving occurrence of the conditions set forth above, including, without limitation, timely filing of all motions, papers and evidence necessary to do so, and refraining from causing or encouraging directly or indirectly any appeal or petition for writ proceedings by third parties seeking review of any order contemplated by this Agreement. Class Counsel represent and warrant that they have authority to take all such actions required of them pursuant to this Agreement, and that by doing so they are not in breach or violation of any agreement with Class Plaintiff or any third party.

12.4 If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of February 5, 2024. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose.

12.5 The Parties agree to request a stay of the Litigation pending approval of the Settlement.

### **13. MISCELLANEOUS PROVISIONS**

13.1 Cooperation of the Parties: The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties agree that they will not solicit, facilitate, or assist in any way, requests for exclusions or objections by putative or actual Settlement Class Members. Class Counsel recognize that they have an obligation to support the

Settlement and to seek the Court's approval of its terms. Class Counsel will abide by all applicable and governing ethical rules, opinions, and obligations precluding their representation of opt-outs. If the Court suggests any modifications to the Settlement Agreement or conditions entry of the Preliminary Approval Order, Final Approval Order, or Judgment on modifications to the Settlement, the Parties shall, working in good faith and consistent with the Settlement, endeavor to address any such concerns identified by the Court.

13.2 Resolution of Dispute without Admission: The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement covers claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.

13.3 Use In Subsequent Proceedings: Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendants; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation may file this Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those 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.

13.4 Confidential Information: All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Agreement.

13.5 Destruction of Confidential Documents. It is agreed that, consistent with Section 6 of the Stipulated Protective Order entered in this Litigation, the originals and all copies of all confidential documents and/or information subject to all confidentiality agreements and the Stipulated Protective Order ("Confidential Information") shall be returned to the producing party within 60 days after the Effective Date, unless the document has been offered into evidence or filed

without restriction as to disclosure. The Parties may agree in writing that certain Confidential Information may be destroyed in lieu of being returned. Nothing in the Agreement shall require attorney work product or pleading files to be returned or destroyed; however, any party or attorney retaining such work product or pleading files shall continue to treat such as Confidential Information pursuant to the terms of the Stipulated Protected Order.

13.6 Incorporation of Exhibits: Any and all Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

13.7 Modification: This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

13.8 Integration: This Agreement and any Exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

13.9 Class Counsel's Authority: Class Counsel, on behalf of the Settlement Class, are expressly authorized by Representative Plaintiff to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Settlement Class.

13.10 Parties' Authority: Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

13.11 Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases. Each Party to this Agreement warrants that he, she, or it is acting upon his, her, or its independent judgment and upon the advice of his, her, or its own counsel and not in

reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

13.12 Counterparts: This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

13.13 No Prior Assignments. Representative Plaintiff and Class Counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

13.14 Binding on Assigns: This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties and the Settlement Class Members.

13.15 Interpretation: None of the Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

13.16 Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by written agreement of Class Counsel and Defense Counsel and as approved by the Court, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

13.17 Governing Law: This Agreement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of North Carolina without giving effect to that State's choice-of-law principles.

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

13.19 No Waiver: The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

13.20 Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision, hereunder. Provided, however, that the terms of this Section shall not apply should any court or tribunal find any part, term, or provision of the release to be illegal or invalid.

13.21 Publicity and Confidentiality. Neither the Parties nor their counsel will initiate any public statement intended to be disseminated through the press, internet, television, radio, or other media that includes an opinion or editorial comment about the effect of the Settlement or the merits of any Parties' positions in the Litigation. This provision does not apply to any communications between any Settlement Class member and Class Counsel or any communications with the Court.

13.22 Notices. All notices to counsel provided for herein shall be sent by email with a hard copy sent by overnight mail to:

*As to Representative Plaintiff and the Settlement Class:*

KAUFMAN P.A.  
Avi R. Kaufman  
kaufman@kaufmanpa.com  
237 S Dixie Hwy, 4th Floor  
Coral Gables, FL 33133

*As to Change Healthcare:*

HOGAN LOVELLS US LLP  
Carolyn A. DeLone  
carrie.delone@hoganlovells.com  
555 Thirteenth Street, NW  
Washington, DC 20004

*As to Blue Cross Blue Shield of North Carolina*

ALSTON & BIRD  
David B. Carpenter  
David.Carpenter@alston.com  
[INSERT]

IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of May 31,  
2024.

Melissa K. Kaluzny  
Melissa K. Kaluzny (May 31, 2024 17:24 EDT)

Defendant Blue Cross Blue Shield of North Carolina  
VP of Legal Services, Deputy General Counsel

Defendant Change Healthcare Resources, LLC

Alexandra Stark

Class Counsel

IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of May \_\_\_\_,  
2024.

\_\_\_\_\_  
Defendant Blue Cross Blue Shield of North Carolina

  
\_\_\_\_\_  
Defendant Change Healthcare Resources, LLC  
By: William J. Otteson, Chief Litigation Counsel, Optum

\_\_\_\_\_  
Alexandra Stark

\_\_\_\_\_  
Class Counsel

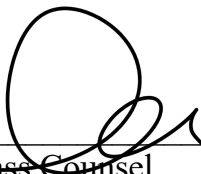
IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of May \_\_\_\_,  
2024.

\_\_\_\_\_  
Defendant Blue Cross Blue Shield of North Carolina

\_\_\_\_\_  
Defendant Change Healthcare Resources, LLC



\_\_\_\_\_  
Alexandra Stark



\_\_\_\_\_  
Class Counsel