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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY ALAMEDA

ALESSANDRO N. LATORA, on behalf
of himself and all other similarly situated

Plaintiff,

vs.

UNITRIN DIRECT INSURANCE
COMPANY

Defendant.

Case No. VG 06275384

Hon. Steven A. Brick

**SETTLEMENT AGREEMENT AND
RELEASE**

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1 IT IS HEREBY STIPULATED AND AGREED, as of this ____ day of October 2008, by and
2 between Alessandro N. Latora (“Plaintiff”), in his individual and representative capacities, and Unitrin
3 Direct Insurance Company (“Unitrin”) that this Settlement Agreement and Release settles, compromises
4 and dismisses with prejudice on the merits and on the terms and conditions set forth herein, subject to
5 judicial approval as set forth below, the Action (as defined in Section I below) and all matters raised
6 and encompassed by the Action.

7 **I. DEFINITIONS**

8 A. As used in this Agreement, the following terms have the following meanings, unless a
9 provision of this Agreement expressly provides otherwise:

10 1. “Action” means the lawsuit captioned *Alessandro N. Latora v. Unitrin Direct*
11 *Insurance Company, et al.*, Case No. VG 06275384 (Alameda Super. Ct.).

12 2. “Administrator” means the Garden City Group, located at 815 Western Avenue,
13 Suite 200, Seattle, WA 98104. The Garden City Group has served as class action administrator in over
14 1,000 cases since 1984.

15 3. “Agreement” or “Settlement Agreement” means this Settlement Agreement and
16 Release, including any subsequent amendments thereto and any exhibits to such amendments.

17 4. “Class” or “Class Members” means all California policyholders of Unitrin who
18 filed a claim during the Class Period, where the claim was paid by Unitrin subject to a betterment
19 adjustment, and excludes only each policyholder who would otherwise be a Class Member except for
20 the timely and proper exclusion from the Class pursuant to Section IV of this Agreement.

21 5. “Class Period” means the period from June 20, 2002 through December 31, 2007.

22 6. “Complaint” means the First Amended Complaint filed in the Action on or about
23 October 13, 2006.

24 7. “Court” means the Alameda County Superior Court, Department 17, currently
25 presided over by the Honorable Steven A. Brick, and any subsequent judicial department to which the
26 Action may be assigned.

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1 8. “Effective Date” means the date on which the Final Order and Judgment
2 approving this Agreement becomes final. For purposes of this definition, the Final Order and Judgment
3 shall become final:

4 a. if no appeal is taken from the Final Order and Judgment, on the date on
5 which the time to appeal has expired;

6 b. if any appeal is taken from the Final Order and Judgment, on the date on
7 which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en*
8 *banc* and petitions for *certiorari* or any other form of review, have been finally disposed of in a manner
9 resulting in affirmance of all of the material provisions of the Final Order and Judgment; or

10 c. on a date after entry of the Final Order and Judgment, which date counsel
11 for each of the Parties agrees to in writing.

12 9. “Execution Date” means the date on which the signator who last signs the
13 Agreement affixes his or her signature to the Agreement.

14 10. “Fairness Hearing” means the hearing held at such time as the Court orders to
15 determine whether to enter its Final Order and Judgment.

16 11. “Final Accounting Hearing” means the hearing held at such time as the Court
17 orders to establish a final accounting of Settlement Distributions and the release of any uncashed
18 Settlement Distributions for a cy pres payment to the Katherine and George Alexander Community Law
19 Center, and the release of the 10% holdback of Attorneys’ Fee Award to Plaintiff’s Counsel.

20 12. “Final Order and Judgment” means the final order approving the settlement and
21 this Agreement, and the judgment entered, as contemplated in Section VIII of this Agreement.

22 13. “Motion for Preliminary Approval” means the motion for preliminary approval of
23 this Agreement and its supporting papers.

24 14. “Parties” or “Party” means Plaintiff (in his individual and representative
25 capacity) and/or Unitrin collectively and, where applicable, their respective counsel of record.

26 15. “Plaintiff” means Alessandro N. Latora.

27 16. “Plaintiff’s Counsel” means the Law Offices of William E. Kennedy.

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1 17. “Policy” means each automobile insurance policy issued by Unitrin to a Class
2 Member in effect during the Class Period, and under which a Class Member submitted a claim to
3 Unitrin during the Class Period for which Unitrin applied a betterment adjustment. As used herein,
4 “Policies” means every Policy in the aggregate.

5 18. “Postal Service” means the United States Postal Service.

6 19. “Preliminary Approval Hearing” means the hearing to be conducted by the Court
7 to determine whether to grant the Motion for Preliminary Approval.

8 20. “Released Claims” means any and all claims, actions, causes of action, rights,
9 demands, suits, debts, liens, contracts, agreements, offsets, or liabilities, including, but not limited to,
10 any claims arising from alleged breaches of contract, breaches of the duty of good faith and fair dealing,
11 violation of the Unfair Competition Law, negligence, bad faith, breach of statutory duties, actual or
12 constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of
13 fiduciary duty, unfair business or trade or insurance acts or practices, insurance premium overcharges or
14 a refund or rebate of premiums, restitution, rescission, compensatory and punitive damages, bodily
15 injury, mental or emotional distress, injunctive or declaratory relief, attorneys’ fees, interests, costs,
16 penalties, and any other claims, whether known or unknown, alleged or not alleged in the Complaint,
17 suspected or unsuspected, contingent or matured, under federal, state, or local law, which the Plaintiff
18 or any member of the Settlement Class had, now has, or may in the future have with respect to any
19 conduct, act, omissions, facts, matters, transactions, or oral or written statements or occurrences prior to
20 the Effective Date of this Agreement involving, based on, relating to, arising out of, or in any way
21 connected with, directly or indirectly, Unitrin’s practice of applying betterment adjustments.

22 21. “Released Parties” means Unitrin, its past, present and future parent, affiliated
23 and subsidiary entities (including attorneys-in-fact, intermediate parents and ultimate parents),
24 predecessors, successors and assigns, and each of their respective past, present and future officers,
25 directors, governors, employees, counsel, agents, general agents, branch managers, producers, brokers,
26 solicitors, representatives, heirs, administrators, executors, insurers, reinsurers, successors and assigns,
27 or any of them, including any person or entity acting on behalf of, or at the direction of, any of them.

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1 22. “Settlement Distribution” means the amount paid to each Class Member based
2 upon the following formula: ninety-five percent of the betterment adjustment reflected in the repair
3 estimate provided by Unitrin for each Class Member.

4 23. “Unfair Competition Law” refers to California’s Business and Professions Code
5 § 17200, *et. seq.*

6 24. “Unitrin” means Unitrin Direct Insurance Company.

7 25. “Unitrin’s Counsel” means Sonnenschein Nath & Rosenthal LLP.

8 B. Capitalized terms used in this Agreement but not defined above shall have the meaning
9 ascribed to them in this Agreement.

10 **II. RECITALS**

11 A. WHEREAS, the Plaintiff purchased a Policy from Unitrin that included a “betterment”
12 provision; and

13 B. WHEREAS, Unitrin contends “betterment” is a term the insurance industry uses to
14 describe adjustments that reflect depreciation and the actual physical condition of a vehicle prior to the
15 loss; and

16 C. WHEREAS, the Plaintiff commenced the above-captioned Action by filing a Complaint
17 on behalf of himself and a class of California policyholders of Unitrin who filed a claim between June
18 20, 2002 and December 31, 2007, where the claim was paid by Unitrin subject to a betterment
19 adjustment; and

20 D. WHEREAS, the Complaint asserts claims relating to Unitrin’s application of betterment
21 adjustments, and alleges that Unitrin’s application of betterment adjustments constitute a: (1) breach of
22 contract; (2) breach of the covenant of good faith and fair dealing; and (3) a violation of the Unfair
23 Competition Law; and

24 E. WHEREAS, Unitrin denies the Complaint’s allegations; denies that it has engaged in
25 any wrongdoing and maintains that it has consistently acted in accordance with its insurance policies
26 and all governing laws and regulations; and

27 F. WHEREAS, Plaintiff’s Counsel represents that: (i) throughout this litigation, he has
28 conducted an examination and evaluation of the relevant law and facts to assess the merits of Plaintiff’s

1 claims and potential claims to determine how best to serve the interests of Plaintiff and the Class; (ii) in
2 the course of his examination, Plaintiff's Counsel undertook an investigation concerning Unitrin's
3 practice of applying betterment adjustments; and (iii) Plaintiff's Counsel also deposed multiple persons
4 and conducted formal discovery of Unitrin; and

5 G. WHEREAS, Unitrin's Counsel represents that after commencement of the Action and
6 during litigation and settlement negotiations, Unitrin's Counsel conducted an examination and
7 evaluation of the relevant law, facts and allegations to assess the merits of Plaintiff's claims and
8 potential claims and to vigorously defend the Action filed by Plaintiff; and

9 H. WHEREAS, based upon their discovery, investigation, evaluation of the facts and law
10 relating to all of the matters alleged in the pleadings, and the discussions undertaken at a mediation
11 before an independent neutral party, the Parties have agreed to settle the Action pursuant to the
12 provisions of this Agreement after considering, among other things: (i) the substantial benefits
13 available to Plaintiff and Class Members under the terms of this Agreement, (ii) the attendant risks and
14 uncertainty of further litigation, especially in a complex action such as this, and (iii) the difficulties and
15 delays inherent in such litigation and the desirability of consummating this Agreement promptly.

16 I. NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth
17 herein, the Parties agree as follows, subject to preliminary and final approval of the Court:

18 **III. PRELIMINARY CERTIFICATION OF THE CLASS**

19 A. The Parties stipulate to certification, for settlement purposes only, of the Settlement
20 Class defined as follows: "All California policyholders of Unitrin who filed a claim between June 20,
21 2002 and December 31, 2007, where the claim was paid by Unitrin subject to a betterment adjustment."
22 Excluded from this Settlement Class is each policyholder who would otherwise be a Class Member
23 except for the timely and proper exclusion from the Class pursuant to Section IV of this Agreement.

24 B. Solely for the purpose of implementing and effectuating this Agreement, Unitrin
25 stipulates that the Court may enter an Order preliminary certifying the Settlement Class, appointing the
26 Plaintiff as representative of the Settlement Class, and appointing Plaintiff's Counsel as class counsel
27 for the Settlement Class.

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1 C. Solely for the purpose of implementing and effectuating this Agreement, Unitrin
2 stipulates that Plaintiff and Plaintiff's Counsel are adequate representatives of the Settlement Class.

3 D. After execution of this Agreement, the Parties shall promptly move the Court to enter an
4 order (the "Preliminary Approval Order") that is without material alteration from Exhibit 1 hereto,
5 which:

6 1. preliminarily approves this Agreement;

7 2. certifies the Settlement Class (the Court expressly reserving the rights to
8 determine, should the occasion arise, whether the Action may be certified as a class action for purposes
9 other than settlement, and Unitrin hereby retaining all rights to assert that the Action may not be
10 certified as a class action except for settlement purposes);

11 3. schedules a Fairness Hearing on final approval of this Agreement to consider the
12 fairness, reasonableness, and adequacy of the proposed settlement and whether it should be approved by
13 the Court;

14 4. approves the notice (the "Mailed Notice"), the content of which is without
15 material alteration from Exhibit 2 hereto, to be sent to the persons described in Paragraph IV.A below
16 and directs its mailing by first class mail to the last known address for each such person, and, for notices
17 returned, directs the Administrator to follow the procedures set forth in Paragraph IV.D;

18 5. determines that the Mailed Notice (i) is the best practicable notice, (ii) is
19 reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the
20 pendency of the Action and of their right to object or to exclude themselves from the proposed
21 settlement, (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled
22 to receive notice, and (iv) meets all applicable requirements of Due Process and California law;

23 6. requires the filing of a proof of mailing of the Mailed Notice, at or before the
24 Fairness Hearing;

25 7. requires each member of the Settlement Class who wishes to exclude himself or
26 herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no
27 later than ten (10) court days before the Fairness Hearing to the Administrator at the address in the
28 Mailed Notice;

1 8. rules that any member of the Settlement Class who does not submit a timely,
2 written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and
3 judgments in the Action, even if such member of the Settlement Class has previously initiated or
4 subsequently initiates individual litigation or other proceedings encompassed by the Release (as set
5 forth in Paragraphs VIII.B-C);

6 10. requires each member of the Settlement Class who has not submitted a timely
7 request for exclusion from the Settlement Class and who wishes to object to the fairness,
8 reasonableness, or adequacy of this Agreement or the proposed settlement, or to the Attorneys' Fee
9 Award (as provided in Paragraphs VII.A-B), to provide to the Administrator (who shall forward it to
10 Plaintiff's Counsel and Unitrin's Counsel) and to file with the Court no later than ten (10) court days
11 before the Fairness Hearing or, a statement of the objection, as well as the specific reasons, if any, for
12 each objection, including any legal support the member of the Settlement Class wishes to bring to the
13 Court's attention and all evidence the member of the Settlement Class wishes to introduce in support of
14 his or her objection, or be forever barred from objection;

15 11. requires any attorney hired by a member of the Settlement Class at the Settlement
16 Class member's expense for the purpose of objecting to this Agreement or to the proposed settlement,
17 or to the Attorneys' Fee Award, to provide to the Administrator (who shall forward it to Class
18 Plaintiff's Counsel and Unitrin's Counsel) and to file with the Clerk of the Court a notice of appearance
19 no later than ten (10) court days before the Fairness Hearing;

20 12. requires any member of the Settlement Class who files and serves a timely
21 written objection and who intends to make an appearance at the Fairness Hearing, either in person or
22 through personal counsel hired at the Settlement Class member's expense, to provide to the
23 Administrator (who shall forward it to Plaintiff's Counsel and Unitrin's Counsel) and to file with the
24 Court no later than ten (10) court days before the Fairness Hearing, or as the Court otherwise may
25 direct, a notice of intention to appear;

26 13. directs the Administrator promptly to furnish Plaintiff's Counsel, Unitrin's
27 Counsel and any counsel for members of the Settlement Class with copies of any and all
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1 objections, written requests for exclusion, notices of intention to appear, or other communications
2 that come into its possession (except as expressly provided in this Agreement); and

3 14. contains any additional provisions agreeable to the Parties that might be
4 necessary to implement the terms of this Agreement and the proposed settlement.

5 **IV. CLASS NOTICE AND OPT-OUT PROCEDURES**

6 A. The persons entitled to receive the Mailed Notice referred to in Paragraph III.D.4 are
7 all persons whose names and last known addresses are reasonably and reliably ascertainable from
8 Unitrin's computer or electronic databases as persons who fall within the definition of the
9 Settlement Class set forth in Paragraph III.A.

10 B. The Administrator shall assist with various administrative tasks, including, without
11 limitation: (i) mailing or arranging for the mailing of Mailed Notice set forth in Paragraphs III.D.4
12 and IV.C; (ii) handling returned mail not delivered and making any additional mailings required
13 under the terms of the Agreement; (iii) responding, as necessary, to inquiries from members of the
14 Settlement Class and potential members of the Settlement Class; (iv) forwarding to Plaintiff's
15 Counsel and Unitrin's Counsel inquiries or other communications by members of the Settlement
16 Class, and forwarding to members of the Settlement Class any replies to such communications; (v)
17 providing to Plaintiff's Counsel and Unitrin's Counsel within five (5) business days of receipt
18 copies of all objections, notices of intention to appear, and requests for exclusion from the
19 Settlement Class; (vi) preparing a list of all persons who timely requested exclusion from the
20 Settlement Class and submitting an affidavit attesting to the accuracy of that list (the "Opt-Out
21 List"); and (vii) preparing a list of all persons who submitted objections to the settlement and
22 submitting an affidavit testifying to the accuracy of that list. Unitrin will supply the Administrator
23 with all information and data reasonably available and necessary to implement its responsibilities
24 under this Agreement. Unitrin will supply the Administrator with the list of persons entitled to
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1 receive the Mailed Notice, including their current or last known addresses, within fifteen (15) days
2 of the date of entry by the Court of the Preliminary Approval Order. The Administrator will retain a
3 record of the information included in Paragraphs IV.B-D, and shall make it available to counsel for
4 the Parties, upon request, solely for the purpose of verifying compliance with this Agreement. The
5 Administrator shall update the list of names and addresses by running a National Change of Address
6 Registry check.
7

8 C. Within thirty (30) days of receiving the listing of persons entitled to receive the Mailed
9 Notice, the Administrator shall mail to each person on the list by first class mail a copy of the Mailed
10 Notice. The date that said mailing is completed is the "Mailed Notice Date" as that term is used herein.

11 D. The Administrator shall promptly remain any notices returned by the Postal Service with
12 forwarding addresses that are received by the Administrator. If a Settlement Class member cannot be
13 located by the Administrator through reasonably practical means, within one hundred twenty (120) days
14 after the Mailed Notice Date or if a Settlement Distribution is not cashed within six (6) months after
15 issuance, and after the Court convenes a Final Accounting Hearing, any such remaining Settlement
16 Distribution shall be distributed cy pres to the Katherine and George Alexander Community Law Center
17 in San Jose, California . Upon making the cy pres payment, Unitrin's obligation with respect to all
18 Settlement Distributions shall be fully satisfied, and Unitrin shall have no further obligation to make
19 any payment to any Class Member.

20 E. All potential members of the Settlement Class shall have up until ten (10) court days
21 before the Fairness Hearing to submit requests for exclusion from the Settlement Class prepared and
22 directed in the manner set forth in the proposed Mailed Notice.

23 F. Plaintiff Alessandro N. Latora will not request exclusion from the Settlement Class, and
24 Plaintiff will not object to the proposed settlement.

25 G. Plaintiff, Plaintiff's Counsel and Unitrin's Counsel hereby agree not to initiate any
26 communications with the media or press, orally or in writing, that relate to this settlement, the Action
27 or the Complaint. The foregoing parties retain the right to communicate about the Action or the
28 Complaint upon inquiry by any Class Member, counsel for any Class Member or the Court.

1 **V. SETTLEMENT ADMINISTRATION PROCEDURES**

2 A. Unitrin shall pay for all costs of settlement administration, including the Mailed Notice
3 via first class mail, mailing of settlement checks via first class mail, and all other costs of the
4 Administrator. The content of any cover letter included with the mailing of settlement checks shall be
5 sent to Plaintiff's Counsel for review and, to the extent that a dispute arises between Plaintiff's Counsel
6 and Unitrin regarding the cover letter, such dispute shall be submitted to the Court for resolution.

7 Any disputes relating to the Administrator's ability and need to perform its duties shall be
8 referred to the Court if they cannot be resolved by the Parties. The Administrator shall regularly report
9 to Plaintiff's Counsel and Unitrin's Counsel, in written form when requested or required, the substance
10 of the work performed.

11 **VI. BENEFITS ACHIEVED UNDER THE SETTLEMENT AGREEMENT**

12 A. Not later than forty-five (45) days after the Effective Date of this Agreement, the
13 Administrator shall send, to each member of the Settlement Class to whom it mails a copy of the Mailed
14 Notice pursuant to Paragraph IV.C, a payment from Unitrin in the amount of ninety-five percent (95%)
15 of the betterment adjustment reflected in the repair estimate of each Class Member during the Class
16 Period. Unitrin represents that according to its database, there are 1,146 members in the Settlement
17 Class and the value of the class settlement is \$168,366.36.

18 B. Not later than fifteen (15) days after the Effective Date of this Agreement, Unitrin shall
19 provide payment of \$7,500.00 to Alessandro Latora by delivering a check to the Law Offices of
20 William E. Kennedy. This payment is in consideration of Mr. Latora's claim for damages, as well as
21 his service to the Settlement Class.

22 **VII. ATTORNEYS' FEES AND EXPENSES**

23 A. In addition to the Settlement Distribution to Class Members, Unitrin agrees to pay an
24 award of Plaintiff's attorneys' fees, costs and expenses in the amount of \$155,000.00 (the "Attorneys'
25 Fee Award"), subject to approval by the Court. There is no other agreement between the Parties as to
26 Plaintiff's attorneys' fee, costs and expenses except as set forth in this Agreement.

27 B. Should the Court decline to approve all material aspects of this Agreement, fail to
28 provide for dismissal with prejudice of the Action, or if for any reason a determination is made that

1 Unitrin is not entitled to a dismissal with prejudice of the Action, Unitrin shall have no obligation to
2 make any payment, including payment of the Settlement, or Plaintiff's Attorneys' Fee Award.

3 C. Ninety (90%) percent of any Attorneys' Fee Award shall be paid by Unitrin within
4 fifteen (15) days of the Effective Date of this Agreement. The remaining ten (10%) percent of any
5 Attorneys' Fee Award shall be held in trust by the Administrator until the Court orders the release of
6 such funds at the Final Accounting Hearing. Upon making this payment, Unitrin's obligation with
7 respect to Plaintiff's Attorneys' Fees and Expenses shall be fully satisfied.

8 **VIII. FINAL APPROVAL, DISMISSAL OF CLAIMS, AND RELEASES**

9 A. If this Agreement (including any modification thereto made with the consent of the
10 Parties as provided for herein) is approved by the Court following the Fairness Hearing scheduled by
11 the Court in its Preliminary Approval Order, the Parties shall request the Court to enter the Final Order
12 and Judgment, without material alteration from that attached hereto as Exhibit 3 hereto, that, among
13 other things:

14 1. gives final approval to this Agreement as being fair, reasonable, and adequate as
15 to each of the Parties, and consistent and in compliance with all requirements of Due Process and
16 California law, as to, and in the best interests of, each of the Parties and the members of the Settlement
17 Class, and directs the Parties and their counsel to implement and consummate this Agreement in
18 accordance with its terms and provisions;

19 2. declares this Agreement and the Final Order and Judgment to be binding on, and
20 have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings
21 encompassed by the Release (as set forth in Paragraphs VIII.B-C) maintained by or on behalf of
22 Plaintiff and all other members of the Settlement Class, as well as their heirs, executors and
23 administrators, successors, and assigns;

24 3. finds that the Mailed Notice and the notice methodology implemented pursuant
25 to this Agreement (i) constitute the best practicable notice; (ii) constitute notice that is reasonably
26 calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the
27 Action, their right to object or exclude themselves from the proposed settlement and to appear at the
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1 Fairness Hearing, and their right to seek monetary and other relief; (iii) are reasonable and constitute
2 due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable
3 requirements of Due Process and California law;

4 4. finds that Plaintiff's Counsel and Plaintiff adequately represented the Settlement
5 Class in this litigation for the purpose of entering into and implementing the Agreement;

6 5. dismisses the Complaint (including all individual and class claims presented
7 thereby) as to Unitrin and with prejudice and without fees or costs except as provided herein;

8 6. adjudges that Plaintiff and the Settlement Class have conclusively compromised,
9 settled, discharged, dismissed, and released any and all Released Claims against Unitrin;

10 7. approves the payment of the Attorneys' Fee Award to Plaintiff's Counsel as set
11 forth in Paragraphs VII.A-B;

12 8. without affecting the finality of the Final Order and Judgment for purposes of
13 appeal, reserves jurisdiction over Unitrin, the Plaintiff, and the Settlement Class as to all matters
14 relating to the administration, consummation, enforcement, and interpretation of the terms of the
15 settlement and the Final Order and Judgment, including, without limitation, to convene the Final
16 Accounting Hearing, and for any other necessary purposes;

17 9. schedules a Final Accounting hearing to: (i) determine a final accounting of all
18 Settlement Distributions; (ii) release any uncashed Settlement Distributions for a cy pres payment to the
19 Katherine and George Alexander Community Law Center; and (iii) release the 10% holdback of
20 Attorneys' Fee Award;

21 10. provides that, upon the Effective Date, all members of the Settlement Class and
22 Plaintiff who have not been excluded from the Settlement Class shall be barred from asserting any
23 Released Claims against the Released Parties, and any such members of the Settlement Class shall have
24 released any and all Released Claims as against the Released Parties;

25 11. determines that the Agreement and the settlement provided for herein, and any
26 proceedings taken pursuant thereto, are not, and should not in any event be offered or received as
27 evidence of, a presumption, concession, or an admission of liability or of any misrepresentation or
28 omission in any statement or written document approved or made by Unitrin; provided, however, that

1 reference may be made to this Agreement and the settlement provided for herein in such proceedings as
2 may be necessary to effectuate the provisions of this Agreement;

3 12. bars and enjoins all members of the Settlement Class who have not timely
4 excluded themselves from the Settlement Class from (i) filing, commencing, prosecuting, intervening
5 in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory,
6 arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and
7 causes of action, or the facts and circumstances relating thereto, in the Action, Complaint and/or the
8 Released Claims and (ii) organizing members of the Settlement Class who have not been excluded from
9 the class into a separate class for purposes of pursuing as a purported class action any lawsuit or
10 administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending
11 complaint to include class allegations, or seeking class certification in a pending action) based on,
12 relating to, or arising out of the claims and causes of action, or the facts and circumstances relating
13 thereto, in the Action, Complaint and/or the Released Claims;

14 13. approves the Opt-Out List and determines that the Opt-Out List is a complete list
15 of all members of the Settlement Class who have timely requested exclusion from the Settlement Class
16 and accordingly, shall neither share in nor be bound by the Final Order and Judgment; and

17 14. authorizes the Parties, without further approval from the Court, to agree to and
18 adopt such amendments, modifications, and expansions of this Agreement and all exhibits hereto as (i)
19 shall be consistent in all material respects with the Final Order and Judgment and (ii) do not limit the
20 rights of members of the Settlement Class.

21 B. As of the Effective Date of this Agreement, the Plaintiff, and other members of the
22 Settlement Class who have not timely excluded themselves from the Settlement Class, hereby expressly
23 agree that they shall release and discharge the Released Parties of and from all Released Claims and
24 shall not now or hereafter initiate, maintain, or assert against the Released Parties any and all causes of
25 action, claims, rights, demands, actions, damages, equitable, legal and administrative relief, interest,
26 demands, or rights, including without limitation, claims for all damages of any kind, including those in
27 excess of actual damages, and claims for bodily injury, mental anguish, whether based on federal, state,
28 or local law, statute, ordinance, regulation, contract, common law, or any other sources, that have been,

1 could have been, may be, or could be alleged or asserted now or in the future by the Plaintiff or any
2 member of the Settlement Class against the Released Parties or any of them in the Action, Complaint or
3 in any other court action or before any administrative body (including any state department of insurance
4 or other regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body on the
5 basis of, connected with, arising out of, or related to the Released Claims.

6 1. Without in any way limiting the scope of the Release, this Release covers,
7 without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Plaintiff's
8 Counsel or any other counsel representing the Plaintiff or members of the Settlement Class, or by the
9 Plaintiff or members of the Settlement Class, or any of them, in connection with or related in any
10 manner to the Action or the Complaint, the settlement of the Action or the Complaint, the
11 administration of such settlement, and/or the Released Claims except to the extent otherwise specified
12 in the Agreement.

13 2. With respect to the releases contained herein, it is the intention of the parties
14 hereto that, subject to the terms and conditions of this Agreement, Plaintiff and Class Members hereby
15 expressly waive and relinquish said claims, and to the fullest extent permitted by law, the provisions,
16 rights, and benefits of section 1542 of the California Civil Code, which provides:

17 “A general release does not extend to claims which the creditor does not know or
18 suspect to exist in his or her favor at the time of executing the release, which if known
19 by him or her must have materially affected his or her settlement with the debtor,”

20 and any and all provisions, rights, and benefits of any similar statute or law of California or of any other
21 jurisdiction. Plaintiff and Class Members each further acknowledge hereby that they are aware that
22 they may hereafter discover facts in addition to or different from those that they now know or believe to
23 be true with respect to the subject matter of this Release, but it is the intention of Plaintiff and Class
24 Members to, and each of them does hereby, fully, finally and forever settle and release any and all
25 Released Claims, known or unknown, suspected or unsuspected, that may now exist, may hereafter
26 exist, or heretofore have existed, and without regard to the subsequent discovery or existence of such
27 different or additional facts. This is not a mere recital but a knowing and intentional waiver which
28 Plaintiff and Class Members make, and, concerning Plaintiff, was made after consultation with counsel.

1 3. Nothing in this Release shall preclude any action to enforce the terms of this
2 Agreement, including participation in any of the processes detailed therein.

3 4. Plaintiff and Class Members hereby agree and acknowledge that the provisions of
4 this Release together constitute an essential term of this Agreement.

5 C. Subject to Court approval, all members of the Settlement Class who do not timely
6 exclude themselves from the Settlement Class shall be bound by this Agreement and all of their claims
7 shall be dismissed with prejudice and released, even if they never received actual notice of the
8 Complaint or its settlement.

9 **IX. ADDITIONAL PROVISIONS**

10 A. This Agreement sets forth the entire agreement among the Parties with respect to its
11 subject matter, and it may not be altered or modified except by written instrument executed by
12 Plaintiff's Counsel and Unitrin's Counsel. The Parties expressly acknowledge that no other
13 agreements, arrangements or understandings not expressed in this Agreement exist among or between
14 them.

15 B. This Agreement and any ancillary agreements shall be governed by and interpreted
16 according to the laws of the State of California.

17 C. Any action to enforce this Agreement shall be commenced and maintained only in the
18 Court and the Court shall have continuing jurisdiction.

19 D. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the
20 other, notice shall be provided by facsimile and/or next-day (excluding Sunday) express delivery
21 service as follows:

22 1. If to Unitrin, then to:

23 Thomas E. McDonald
24 Sonnenschein Nath & Rosenthal LLP
25 525 Market Street, 26th Floor
26 San Francisco, CA 94105-2708
27 Telephone: 415/882-5000
28 Facsimile: 415/882-0300

 and

 2. If to Plaintiff, then to:

1 William E. Kennedy
2 Law Office of William E. Kennedy
3 297 Park Avenue, Suite 201
4 Santa Clara, CA 95050
5 Telephone: 408/241-1000
6 Facsimile: 408/241-1500

7 A. All time periods set forth herein shall be computed in calendar days unless otherwise
8 expressly provided. In computing any period of time prescribed or allowed by this Agreement or by
9 order of court, the day of the act, event, or default from which the designated period of time begins to
10 run shall not be included. The last day of the period so computed shall be included, unless it is a
11 Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day
12 on which weather or other conditions have made the office of the clerk of the court inaccessible, in
13 which event the period shall run until the end of the next day that is not one of the aforementioned days.
14 As used in this Section, "legal holiday" means any day observed as a holiday by the Courts of the State
15 of California.

16 B. All Parties agree that this Agreement was drafted by counsel for the Parties at arm's
17 length, and that no parol or other evidence may be offered to explain, construe, contradict or clarify its
18 terms, the intent of the Parties or their counsel, or the circumstances under which the Agreement was
19 made or executed.

20 C. In no event shall this Agreement, any of its provisions or any negotiations, statements or
21 court proceedings relating to its provisions in any way be construed as, offered as, received as, used as
22 or deemed to be evidence of any kind in the Action, any other action, or any judicial, administrative,
23 regulatory or other proceeding, except a proceeding to enforce this Agreement. Without limiting the
24 foregoing, neither this Agreement nor any related negotiations, statements or court proceedings shall be
25 construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of
26 any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to,
27 Unitrin, or as a waiver by Unitrin of any applicable defense, including, without limitation, any
28 applicable statute of limitations or statute of frauds, or as a waiver by Plaintiff or the Class of any
claims, causes of action or remedies.

1 D. Plaintiff expressly affirms that the allegations contained in the Complaint were made in
2 good faith and that Plaintiff contends that there is a substantial basis in fact that Unitrin improperly
3 applied betterment adjustment to claims submitted by Class Members.

4 E. Unitrin denies all of the Plaintiff's allegations. Unitrin expressly denies any wrongdoing
5 alleged in the Action. Unitrin does not admit or concede any actual or potential fault, wrongdoing or
6 liability in connection with any facts or claims that have been or could have been alleged against it in
7 the Action, but considers it desirable for the Action to be settled and dismissed because this settlement
8 will (1) avoid the substantial expense and the further disruption of the management and operation of
9 Unitrin's business due to the pendency and defense of the Action, and (2) resolve with finality
10 Plaintiff's claims.

11 F. Neither this Agreement nor any of the relief to be offered under the proposed settlement
12 shall be interpreted to alter in any way the contractual terms of any Policy, or to constitute a novation of
13 any Policy.

14 G. No opinion concerning the tax consequences, if any, of this Agreement as to individual
15 Class Members is being given or will be given by Unitrin, Unitrin's Counsel or Plaintiff's Counsel; nor
16 is any representation or warranty in this regard made by virtue of this Agreement. The Class Notice
17 will direct Class Members to consult their own tax advisor(s) regarding the tax consequences of the
18 proposed settlement, including any payments, contributions or credits provided hereunder, and any tax
19 reporting obligations they may have with respect thereto. Each Class Member's tax obligations, and the
20 determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax
21 consequences may vary depending on the particular circumstances of each individual Class Member.

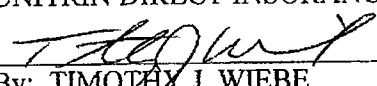
22 H. The Parties, their successors and assigns, and their attorneys undertake to implement the
23 terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in
24 the implementation of the terms of this Agreement.

25 I. The Parties, their successors and assigns, and their attorneys agree to cooperate fully
26 with one another in seeking court approval of this Agreement and to use their best efforts to effect the
27 prompt consummation of this Agreement and the proposed settlement.

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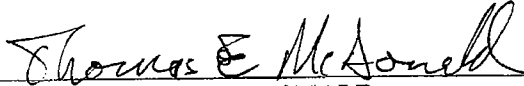
1 J. This Agreement may be signed via facsimile and in counterparts, each of which shall
2 constitute a duplicate original.

3 Approved and agreed to:

4 UNITRIN DIRECT INSURANCE COMPANY
5 DATED: October 8, 2008 
6 By: TIMOTHY J. WIEBE
7 TREASURER

8 DATED: October , 2008
9 ALESSANDRO N. LATORA

10 DATED: October , 2008
11 By: WILLIAM E. KENNEDY
12 LAW OFFICES OF WILLIAM E. KENNEDY
13 COUNSEL FOR PLAINTIFF

14 DATED: October 8, 2008 
15 By: THOMAS E. MCDONALD
16 MARK L. HANOVER
17 SONNENSCHN NATH & ROSENTHAL LLP
18 COUNSEL FOR DEFENDANT UNITRIN DIRECT
19 INSURANCE COMPANY
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4 UNITRIN DIRECT INSURANCE COMPANY
5 DATED: October __, 2008

By: TIMOTHY J. WIEBE
TREASURER

6
7
8 DATED: October 8, 2008


ALESSANDRO N. LATORA

9
10 DATED: October __, 2008


By: WILLIAM E. KENNEDY
LAW OFFICES OF WILLIAM E. KENNEDY
COUNSEL FOR PLAINTIFF

11
12
13 DATED: October __, 2008

By: THOMAS E. MCDONALD
MARK L. HANOVER
SONNENSCHN NATH & ROSENTHAL LLP
COUNSEL FOR DEFENDANT UNITRIN DIRECT
INSURANCE COMPANY

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