

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA**

**Case No.: 2024-010619-CA-01**

TRAVIS McCLINTON,  
individually and on behalf of others  
similarly situated,

Plaintiff,

CLASS ACTION

v.

JURY TRIAL DEMANDED

CHOICE HEALTH INSURANCE, LLC,

Defendant.

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**PLAINTIFF’S AGREED MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND SUPPORTING MEMORANDUM**

Plaintiff Travis McClinton, on behalf of himself and all others similarly situated, respectfully request that the Court grant Preliminary Approval<sup>1</sup> of the proposed class action settlement described in detail in the Settlement Agreement, attached hereto as *Exhibit A*.

**I. CONCISE STATEMENT OF THE PRECISE RELIEF REQUESTED**

Plaintiff files this motion requesting for this Court to preliminarily approve a class action settlement, certify a settlement class, and direct that Notice as proposed be sent to the Settlement Class. Plaintiff respectfully requests that the Court enter an order of Preliminary Approval including, in substantially the same form, as the content of the proposed Preliminary Approval Order attached hereto as *Exhibit 5* to the Settlement Agreement.

Plaintiff’s complaint alleges putative class claims that Defendant Choice Health Insurance, LLC has violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, by sending

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<sup>1</sup> All capitalized terms herein shall have the same meaning as those defined in the Settlement Agreement.

prerecorded voice messages. Defendant denies the allegations in the Complaint, but given the risks, uncertainties, and burdens of litigation, has agreed to settle the litigation according to the terms of the Settlement Agreement. As detailed below, the parties have reached a proposed class settlement, where Defendant has agreed make available funding of up to **\$994,799.28** (the “Settlement Sum”) for the benefit of the Settlement Class members. Through the Settlement Agreement, each Class Member may receive up to \$30.00 less a proportional share of Notice and Administration costs, the Fee Award, and any Service Award.

The Parties have agreed to a direct Notice Program designed to afford Settlement Class members due process and advise them of the rights under the Settlement.

As explained below, the Settlement meets all requirements for Preliminary Approval. Therefore, Plaintiff respectfully requests that the Court preliminarily approve this Settlement, approve and appoint A.B. Data, Ltd. as the Settlement Administrator; appoint Plaintiff the Class Representative for the Settlement Class; the firms and attorneys listed in the Settlement Agreement as Class Counsel; order that the proposed Notice be disseminated in the forms presented with this Motion; and schedule a Final Approval Hearing.

## **II. STATEMENT OF THE BASIS FOR THE REQUEST**

Following arms-length negotiations in a mediation conducted by a well-respected third-party mediator, the Parties reached a Settlement Agreement, wherein Defendant agrees to provide to members of a Settlement Class who submit a valid and timely claim a cash payment. Moreover, the Parties have agreed to a Notice plan including direct, individual Notice to all members of the proposed Settlement Class. Thus, the terms of the Settlement are fair and reasonable, and the form of Notice comports with due process requirements. Therefore, Plaintiff respectfully requests that this Court preliminarily approve the Settlement and direct Notice to be issued, thereby allowing

Settlement Class members to evaluate the terms of the Settlement and request exclusion or submit to the Court any reason why any contend the Settlement is not fair or reasonable. The Court should also set the Final Approval Hearing date and time.

### **III. MEMORANDUM OF LEGAL AUTHORITY**

#### **a. Terms of the Settlement**

The Settlement requires Defendant to make available funding of up to **\$994,799.28** pursuant to the terms of the Settlement Agreement for the purpose of payment to all settlement class members who submit a valid claim. Any costs related to Class Notice and Administration will be paid from the Settlement Sum and any attorneys' fees, costs or incentive award that this Court approves will also be paid from the Settlement Sum. *See, generally*, Exhibit A. Defendant is not required to make available any amounts other than the Settlement Sum.

#### **b. Certification of the Settlement Class for Settlement Purposes Is Warranted**

In deciding whether to grant Preliminary Approval, some courts have also made a preliminary inquiry into whether the requirements of Rule 23 for certification of a class for settlement purposes are satisfied. *See, e.g., Legg v. E-Z Rent a Car, Inc.*, 2015 U.S. Dist. LEXIS 178022, at \*3-4 (M.D. Fla. May 28, 2015) (Byron, J.) (addressing Rule 23 factors in preliminary approval Order).<sup>2</sup> Each of those requirements are satisfied here for settlement purposes, for the Settlement Class, defined as:

**All persons in the United States, for the time period beginning four years prior to the filing of the Complaint through the date of preliminary approval who were sent a prerecorded voice call by or on behalf of Choice Health regarding Defendant's property, goods, and/or services where the lead data was provided by Zeeto to Digital Media Services, LLC ("DMS").**

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<sup>2</sup>Florida Rule of Civil Procedure is patterned after Rule 23 of the Federal Rules of Civil Procedure; consequently, Florida courts consider case law interpreting Rule 23 as persuasive. *Broin v. Philip Morris Co.* 641 So.2d 888, n.1 (Fla. 3d DCA 1994).

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) the Settling Parties, as well as any parent, subsidiary, affiliate, or control person of the Settling Parties, and the officers, directors, agents, servants, or employees of the Settling Parties; (3) any of the Released Parties; (4) the immediate family of any such person(s); (5) any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff's Counsel, their employees, and their immediate family.

The instant motion is the first step of the required court approval process to which all proposed class action settlements are subject under Rule 1.220 Fla. R. Civ. P. The Court's scope of inquiry and determination at the preliminary approval stage is limited: "First, the Court must determine whether the proposed settlement terms fall within the range of reasonableness such preliminary approval is warranted." *Holt v. Hhh Motors*, 2015 Fla. Cir. LEXIS 48982, \*2 (Fla. 4th Jud. Cir. April 15, 2015) (citing *Manual for Complex Litigation*, Third, § 30.41, at 236-37 (1995)); *see also Mase v. Archive Am.*, 2015 Fla. Cir. LEXIS 52906, \*5 (Fla. 11th Jud. Cir. March 17, 2015) (Thornton, J.) (entering preliminary approval order where proposed settlement "falls within the range of possibly approvable settlements, appears to be fair, reasonable and adequate, and is therefore hereby preliminarily approved, subject to further consideration at the Fairness Hearing[.]"). After the Court grants preliminary approval, the parties then notify members of the settlement class of the existence and basic terms of the proposed class action settlement, and given the opportunity to opt-out (exclude themselves) from or object to the settlement. Once the class notice process has been completed, the Court proceeds to the final approval stage, where the Court must evaluate whether final approval is warranted. *Holt*, 2015 Fla. Cir. LEXIS 48982 at \*2.

As to Rule 1.220(a), for purposes of certifying the Settlement Class pursuant to the Settlement, there are thousands of Settlement Class members (numerosity), all of which have the

same claim – that Defendant caused marketing prerecorded voice messages to be transmitted to their telephone in violation of the TCPA (commonality), Plaintiff’s claims are the same as the rest of the Settlement Class members’ claims and Plaintiff is not subject to any unique affirmative defenses (typicality), and Plaintiff and Class Counsel have zealously litigated the claim, secured substantial relief, and have no interests antagonistic to the Settlement Class (adequacy). As to Rule 1.220(b)(3), pursuant to the terms of the Settlement, there are no individual issues precluding class treatment (predominance), and class treatment is the best method of adjudication, as seen in the fact that every Settlement Class member shall receive relief without the need for numerous (and duplicative) individual cases (superiority). *See Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 106-07 (Fla. 2011) (outlining requirements for class certification). Thus, certification of the Settlement Class is warranted.

**c. The Proposed Notice Is the Best Practicable Notice and Comports with Due Process Requirements**

The notice requirements of Rule 1.220(c) are designed to provide sufficient due process to class members by sufficiently informing them of the pendency of this action and providing an opportunity to be heard or opt out and must be the “best notice that is practicable under the circumstances.” *Nelson v. Wakulla County*, 985 So. 2d 564, 576 (Fla. 1st DCA 2008). To satisfy this requirement, individual notice should be provided to class members who can be identified through reasonable effort. *See Cordell v. World Ins. Co.*, 355 So. 2d 479, 481 (Fla. 1st DCA 1978) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974)).

Here, the Parties agree to send direct, individual Notice to members of the Settlement Class. Individual, direct notice clearly comports with due process requirements. *See, e.g., Juris v. Inamed Corp.*, 685 F.3d 1294, 1320 (11th Cir. 2012). Moreover, the Notice provides included a clear explanation of the terms of the Settlement, the amount sought in attorneys’ fees and a service

award and informs class members of their right to object to seek exclusion and the method by which to do so. Notice also provides an opportunity to be heard at a Fairness Hearing to be scheduled after the Notice period and before final approval. *See, generally*, Agreement (and Notice exhibits attached thereto); *see also Nolan v. Integrated Real Estate Processing, LP*, 2009 U.S. Dist. LEXIS 136890, at \*20-21 (M.D. Fla. Sep. 9, 2009) (setting forth what should be included in Notice of settlement).

Thus, the Notice provided to the Settlement Class Members constitutes the best notice practicable and comports with due process requirements.

**d. The Terms of the Settlement are Fair and Reasonable**

Preliminary approval of a class action settlement “is not binding, and it is granted unless a proposed settlement is obviously deficient.” *Smith v. Wm. Wrigley Jr. Co.*, 2010 U.S. Dist. LEXIS 67832, \*6 (S.D. Fla. June 15, 2010). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason.” *Id.* at \*7. These requirements are readily satisfied here, as demonstrated above in the Agreement and in the exhibits hereto. *City of L.A. v. Bankrate, Inc.*, 2016 U.S. Dist. LEXIS 115071, \*14-15 (S.D. Fla. Aug. 24, 2016) (granting preliminary approval of proposed class action settlement where “the proposed settlement was made after mediation was conducted,” “[t]he negotiations appear to have been made in good faith and there do not appear to be any obvious deficiencies,” and the settlement amount “appears to be within the range of reasonableness”); *Almanzar v. Select Portfolio Servicing, Inc.*, 2015 U.S. Dist. LEXIS 178149, \*5-6 (S.D. Fla. Oct. 15, 2015) (granting preliminary approval, finding that proposed class action settlement was based on “informed, good-faith, arms-length negotiations

between the Parties and their capable and experienced counsel,” and settlement was “within the range of reasonableness and possible judicial approval”).

As will be set forth in greater detail in the Motion for Final Approval – and as demonstrated by the terms of the Agreement – all nine factors suggested by the Second District Court of Appeals to evaluate the fairness, reasonableness and adequacy of a settlement favor approval here. *Griffith v. Quality Distribution*, 307 So. 3d 791 (Fla. 2d DCA 2018). The relevant factors include (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Id.* *Griffith* notes that Florida courts have also applied the six factors described by the First District in *Nelson*, which similarly favor preliminary approval of the Settlement at hand.<sup>3</sup> 985 So. 2d at 570. The Eleventh Circuit has also identified factors used by Florida Courts to evaluate settlements, which again favor the settlement here. *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 n. 6 (11th Cir. 1994).

Indeed, there was no fraud or collusion in the settlement, which rather was entered into after arms-length negotiations and with the assistance of an experienced and well-respected mediator – Steven R. Jaffe - this litigation is complex and expensive, Plaintiff elicited extensive data demonstrating the contours of the Settlement Class and Defendant’s practices and procedures, and the likelihood of success is uncertain. The Settlement Sum made available to the class here is

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<sup>3</sup> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point over or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of the litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved. *Griffith*, 307 So. 3d at 791 (citing *Nelson*, 985 So. 2d at 570).

more than reasonable, given the complexity of the litigation and the significant risks and barriers that loomed in the absence of settlement including, but not limited to, a motion for class certification, Defendant’s assertion of various legal challenges, a motion for summary judgment, trial as well as appellate review following a final judgment. Plaintiff and her counsel believe that the Settlement is an excellent and reasonable result for the Class in light of factors stated above, and anticipate that members of the Settlement Class will be satisfied with the result as well. In reality, the reaction of the Settlement Class can only be evaluated in considering Final Approval of the Settlement.

For all these reasons, Plaintiff respectfully submits that there are no obvious deficiencies to the Settlement precluding Preliminary Approval and that this Motion should be granted.

For the convenience of the Court, Plaintiff submits the following proposed schedule, which is also reflected in the Proposed Preliminary Approval Order submitted for the Court’s consideration:

**PROPOSED SCHEDULE**

<b><u>Event</u></b>	<b><u>Date</u></b>	<b><u>Timeline</u></b>
Deadline for Completion of Notice		30 days prior to Final Approval Hearing
Deadline for filing Motion for Final Approval of the Settlement and Class Counsel’s Fee Application and expenses, and for Service Awards		15 days before the Final Approval Hearing
Deadline for opting-out of the Settlement and for submission of Objections		20 days before the Final Approval Hearing
Deadline for Responses to Objections		15 days before the Final Approval Hearing
Final Approval Hearing		
Last day Class Claimants may submit a Claim Form		Fifteen days after the Final Approval Hearing



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**CONCLUSION**

Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement, and enter an order of preliminary approval including, in substantially the same form, the content of the proposed order attached hereto as **Exhibit B**.

Dated: June 27, 2024

Respectfully submitted,

**HIRALDO P.A.**

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of June 2024, I electronically filed the foregoing with the Clerk of the Court which will send notice of electronic filing to all counsel of record.

/s/ Michael Eisenband  
Michael Eisenband, Esq.

**EXHIBIT A**

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

TRAVIS MCCLINTON individually and on  
behalf of all others similarly situated

Plaintiff,

v.

CHOICE HEALTH INSURANCE, LLC,

Defendant.

Case No. 2024-010619-CA-01

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is made and entered into between and among Plaintiff Travis McClinton (“Plaintiff” or “Class Representative”), on behalf of himself and the Settlement Class, and Defendant Choice Health Insurance, LLC (“Defendant”). Plaintiff and Defendant will sometimes be referred to together as the “Parties,” or, individually, as a “Party.”

WHEREAS, Plaintiff filed a Class Action Complaint, on behalf of himself and a putative class, in the above-captioned lawsuit styled *Travis McClinton v. Choice Health Insurance, LLC*, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “Action”), which asserts claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”). The Action follows another action that Plaintiff previously filed against Defendant in the United States District Court for the Western District of Texas styled *Travis McClinton v. Choice Health Insurance, LLC*, No. 1:22-cv-762-DII (the “First Action”), which was dismissed without prejudice by joint stipulation on February 27, 2024.

WHEREAS, Plaintiff alleged in the First Action, and alleges in the Action, that Defendant violated the TCPA by allegedly making prerecorded advertisement or telemarketing calls to Plaintiff’s cellular telephone and the cellular telephones of members of a putative class of similarly situated individuals without sufficient written prior express consent.

WHEREAS, Plaintiff alleges that he and other similarly situated individuals are entitled to declaratory and injunctive relief, statutory damages, attorneys’ fees, and costs;

WHEREAS, Defendant denies each and every one of Plaintiff’s allegations of unlawful conduct, damages, or other injuries and maintains that it complied with the TCPA and all applicable laws;

WHEREAS, based upon the investigation and evaluation of the facts and law relating to the matters alleged in the pleadings and discovery to date, plus the risks and uncertainties of

continued litigation and all factors bearing on the merits of settlement, Plaintiff and Defendant have agreed to settle the Action, the First Action, and the Released Claims pursuant to the provisions of this Settlement;

WHEREAS, in an effort to facilitate a resolution of the First Action, Plaintiff and Defendant participated in lengthy, arms' length negotiations, including one mediation session with the Hon. Alan S. Fine of Private Resolutions and a second mediation session with Steven R. Jaffe of Upchurch Watson White & Max, and follow up negotiations;

WHEREAS, Plaintiff and Defendant 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;

WHEREAS, Plaintiff will request that the Court certify the Settlement Class for settlement purposes only, and appoint him as Class Representative and his lawyers—Michael Eisenband of Eisenband Law, P.A. and Manuel S. Hiraldo of Hiraldo, P.A. — as Class Counsel in this case;

WHEREAS, based on their investigation and discovery in the Action and the experience of Class Counsel, Plaintiff and Class Counsel have concluded that the terms and conditions of this Settlement are fair, reasonable, and adequate to, and in the best interest of, the Settlement Class;

WHEREAS, Plaintiff, on behalf of himself and as the representative of the Settlement Class, and Defendant will execute this Agreement solely to compromise and settle protracted, complicated, and expensive litigation; and

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties and their counsel agree that the Action, the First Action, and the

Released Claims shall be settled, compromised, and/or dismissed on the merits and with prejudice on the terms and conditions in this Agreement, and without costs (except as provided herein), subject to Court approval of the Settlement after a hearing and on finding that it is a fair, reasonable, and adequate settlement.

## **I. DEFINITIONS**

In addition to the terms defined above and at other places in this Agreement, the following defined terms have the meaning set forth below:

A. “Administrator” means AB Data, which, subject to Court approval, shall be responsible for administrative tasks, which shall include: (a) arranging for distribution of the Class Notice and Claim Form to Settlement Class Members; (b) forwarding written inquiries from Settlement Class Members to Class Counsel or their designee; (c) establishing and maintaining the Settlement Website; (d) receiving and processing Claim Forms in accordance with the requirements of this Agreement and distributing Claim Settlement Payments to Settlement Class Members; and (e) otherwise assisting with implementing and administering this Agreement, subject in all cases to approval by Class Counsel and Counsel for Defendant. Class Counsel and Counsel for Defendant may, by agreement, substitute a different entity as Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Plaintiff or Defendant may move the Court to substitute a different entity as Administrator on a showing of good cause.

B. “Agreement” means this Settlement Agreement and Release and all attachments and exhibits hereto.

C. “Approved Claim” means a claim submitted by a Settlement Class Member that: (a) is received by the Administrator or postmarked on or before the Claim 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 Administrator pursuant to the provisions of this Agreement as a valid claim eligible to receive payment from the Settlement Sum under the Agreement and the Final Approval Order and Judgment.

D. “Claim Deadline” means the last date by which a Claim Form submitted to the Administrator by a Settlement Class Member must be postmarked or received, which shall occur no later than fifteen (15) days after the Final Approval Hearing. All Claim Forms postmarked or received on or before the Claim Deadline shall be timely, and all Claim Forms (i) postmarked after the Claim Deadline and (ii) those submitted to the Administrator other than by mail and not received by the Administrator before or on the Claim Deadline) shall be untimely and barred from entitlement to any Claim Settlement Payment.

E. “Claim Form” means the form attached as **Exhibit 1** to this Agreement.

F. “Claim Settlement Payment” means the payment to be made to each Settlement Class Member who submits an Approved Claim.

G. “Class Counsel” means: Michael Eisenband, Eisenband Law, P.A., 515 E Las Olas Blvd., Ste 120, Fort Lauderdale FL 33301; and Manuel S. Hiraldo, Hiraldo, P.A., 401 East Las Olas Boulevard Suite 1400, Fort Lauderdale, FL 33301.

H. “Class Notice” means the program of notice described in this Agreement to be provided to Settlement Class Members, which will notify Settlement Class Members about, among other things, the pendency of the Action, the material terms of the proposed Settlement, and their options with respect thereto.

I. “Class Notice Date” means the last date on which Class Notice can be disseminated, which shall be set by the Court in the Preliminary Approval Order.



J. “Confidential Information” means proprietary or commercially sensitive information or personal information subject to state and federal privacy laws that the Parties agree to protect in this Agreement from disclosure and dissemination to the public or any third-party or entity other than the Administrator.

K. “Counsel for Defendant” means: David C. Layden, Jenner & Block LLP, 353 N. Clark St., Chicago, Illinois 60654.

L. “Court” means the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

M. “Days” means calendar days, except that, when computing any period of time under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time under this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

N. “Effective Date” means the first date by which the Final Approval Order and Judgment entered pursuant to the Agreement becomes Final. If the settlement contained in this Settlement Agreement is not approved by the Court and does not result in entry of the Final Approval Order and Judgment, or if the Final Approval Order and Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, this Agreement will never become effective and will be terminated and cancelled and the Parties will be returned to their positions status quo ante with respect to the Action as if this Agreement had not been entered into.

O. “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses that may be awarded by the Court to Class Counsel and that will be paid out of the Settlement Sum.

P. “Final Approval Hearing” means a hearing set by the Court for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable law; and (ii) entering the Final Approval Order and Judgment.

Q. “Final” means one business day following the later of the date that (i) the time has run for any appeals from the Final Approval Order and Judgment or (ii) any such appeals have been dismissed or resolved in favor of approving, or affirming the approval of, this Agreement, and any time period to seek further review has expired.

R. “Final Approval Order and Judgment” means the order and judgment to be entered by the Court, substantially in the form, and without material change to, **Exhibit 2** attached hereto, approving the Settlement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole in accordance with the Florida Rules of Civil Procedure, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of the Settlement, including granting Final Approval to the Settlement and ruling on Class Counsel’s application for the Fee Award and the Service Award for the Class Representative. If the Court enters separate orders addressing the matters constituting the matters set forth in this paragraph, then the Final Approval Order and Judgment includes all such orders.

S. “Long-Form Notice” means the notice that is made available on the Settlement Website and upon request from the Administrator, in substantially the form attached as **Exhibit 3** to this Agreement.

T. “Mail Notice” means the postcard individual notice that will be mailed by the Administrator to those who may be Settlement Class Members, in substantially the form attached as **Exhibit 4** to this Agreement.

U. “Notice and Administrative Costs” means the reasonable costs and expenses authorized by the Court and approved by Class Counsel and Counsel for Defendant of disseminating the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Administrator in administering the Settlement, including, but not limited to, costs and expenses associated with determining mailing addresses for Settlement Class Members, assisting Settlement Class Members, processing claims, escrowing funds, and issuing and mailing Settlement Payments. [Notice and Administrative Costs shall be capped at \$50,000.]

V. “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve a written objection, if any, to the Settlement to be able to object to the Settlement. The Objection Deadline shall be no later than twenty (20) days before the Final Approval Hearing.

W. “Opt-Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be submitted in writing to the Administrator for a Settlement Class Member to be excluded from the Settlement Class. The Opt-Out Deadline shall be no later than twenty (20) before the Final Approval Hearing.

X. “Preliminary Approval Order” means an order to be entered by the Court certifying the Settlement Class and granting preliminary approval to the Settlement, substantially in the form attached hereto as **Exhibit 5** without material change.

Y. “Released Claims” means all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, of every nature and description whatsoever, that arise out of or relate in any way to telephone calls made by or on behalf of Choice Health Insurance, LLC, including but not limited to claims asserting violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the “TCPA”), any corollary or state laws similar to the TCPA and TSR, or enactment of any other statutory, regulatory or common law claim arising thereunder.

Z. “Released Parties” means the Defendant and each of its past, present, and future members, owners, direct and indirect parents, subsidiaries, managers, divisions, predecessors, successors, holding companies, and affiliated companies and corporations, and each of the past, present, and future directors, officers, managers, employees, contractors, general partners, limited partners, investors, controlling persons, owners, trustees, principals, agents, associates, administrators, insurers, reinsurers, shareholders, attorneys, accountants, advisors, consultants, assignors, assignees, representatives, fiduciaries, predecessors, successors, divisions, joint ventures, or related entities of those companies including, but not limited to, the vendors, subvendors, contractors, subcontractors, and service providers retained to make calls (or which were involved in making calls for another of the Released Parties). In the avoidance of doubt, “Released Parties” does not include Digital Media Solutions, LLC or its affiliates (together,

“DMS”), or any person or entity that provided leads to DMS that DMS provided to Choice Health Insurance, LLC or Alight Solutions, LLC. The release of any third parties is limited to any actions taken on behalf of Choice Health Insurance, LLC.

AA. “Request for Exclusion” means a written request from a Settlement Class Member that seeks to exclude the Settlement Class Member from the Settlement Class.

BB. “Service Award” means any Court-approved payment to the Class Representative as provided for in this Agreement.

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

DD. “Settlement Class” means all members of the class of persons in this Action that will be certified by the Court for settlement purposes as follows:

**All persons in the United States, for the time period beginning July 28, 2018 through [date of entry of the Preliminary Approval Order] who were sent a prerecorded voice call by or on behalf of Choice Health Insurance, LLC regarding Choice Health Insurance, LLC’s property, goods, and/or services, where the lead data was provided by ZeetoGroup, LLC to Digital Media Services, LLC.**

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); (5) any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff’s Counsel, their employees, and their immediate family.

EE. “Settlement Class Claimant” means any Settlement Class Member who submits a Claim Form to the Administrator.

FF. “Settlement Class Data” means data relating to approximately 46,573 persons who according to Defendant’s records may be members of the Settlement Class. The Settlement Class Data shall be treated as Confidential Information.

GG. “Settlement Class Member(s)” means any member of the Settlement Class.

HH. “Settlement Class Payment List” means the list of all Settlement Class Members who filed a Claim Form; whether the Administrator has determined each claim to be an Approved Claim or a rejected claim, and, if the Administrator intends to reject the claim, the reason for that rejection; the address to which the Claim Settlement Check shall be sent; and the total amount of Claim Settlement Payments to be made.

II. “Settlement Sum” means the total maximum amount that Defendant has agreed to make available, as described in Section II B.1., to cover the Claim Settlement Payments as well as the Fee Award, Notice and Administration Costs, and any Service Award. The Settlement Sum represents the maximum possible payment by Defendant under this Agreement from which payments for all (a) Claims Settlement Payments, (b) Notice and Administration Costs, (c) the Fee Award, and (d) any Service Award will be made.

JJ. “Settlement Website” means the website prepared by the Administrator in connection with the process of providing Class Notice to Settlement Class Members.

## **II. SETTLEMENT TERMS**

### **A. Certification of Settlement Class and Conditional Nature of Agreement**

For settlement purposes only, Defendant conditionally agrees and consents to certification of the Settlement Class. Defendant’s conditional agreement is contingent on (i) the Parties’ execution of this Agreement, (ii) the Court’s entry of the Final Approval Order and Judgment, and (iii) the Final Approval Order and Judgment becoming Final. Except as provided below, if the

Final Approval Order and Judgment does not become Final or if the Settlement is otherwise terminated, it shall be null and void, it shall be of no force or effect whatsoever, it shall not be referred to or used for any purpose whatsoever, and the negotiation, terms, and entry of the Agreement shall remain inadmissible under the Florida Rules of Civil Procedure, Florida Rules of Evidence, and any applicable state law or rule of civil procedure or evidence.

Defendant denies all claims, liability, damages, losses, penalties, interest, fees, restitution, and all other forms of relief that were or could have been sought in the Action and the First Action, as well as all class action allegations asserted in the Action and the First Action. Defendant has agreed to resolve this Action and the First Action through this Agreement, but if this Agreement is deemed void or if the Final Approval Order and Judgment does not become Final, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action and the First Action on all procedural, evidentiary, and factual grounds, including, without limitation, the ability to challenge on any grounds whether any class can be certified and to assert any and all defenses or privileges. The Class Representative and Class Counsel agree that Defendant retains and reserves all of these rights and agree not to take a position to the contrary.

**B. Settlement Class Relief**

**1. Claim Settlement Payments to Settlement Class**

In consideration for the Releases set forth in this Agreement, Defendant shall provide the following relief:

Defendant shall make available up to \$994,799.28 (the “Settlement Sum”) available for the funding of Claim Settlement Payments, the Fee Award, Notice and Administration Costs, and any Service Award.

Settlement Class Members must submit a timely, valid, and verified Claim Form, by the Claim Deadline in the manner required by this Agreement, to receive a Claim Settlement Payment.

Each Settlement Class Member who submits a timely, valid, correct and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Payment by the Administrator in the amount up to \$30.00 less a proportional share of Notice and Administration costs, the Fee Award, and any Service Award. In the event that the total amount of Claim Settlement Payments plus the amounts required to pay Fee Award, Notice and Administration Costs, and any Service Award would exceed the Settlement Sum, the amount of each Claim Settlement Payment shall be reduced *pro rata* so that the Settlement Sum is sufficient to pay Claim Settlement Payments, the Fee Award, Notice and Administration Costs, and any Service Award. Each Settlement Class Member shall be entitled to submit one Claim Form for each telephone number on the Class List that is associated with their name. Only one Claim Form associated with a telephone number on the Class List can be an Approved Claim under the Settlement.

Adequate and customary procedures and standards will be used by the Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims, including, but not limited to, verifying claimed calls with information provided by the Defendant. No fraudulent claim or other claim except a claim containing all required components—including the signature of a valid Settlement Class Member and a claim ID— shall be an Approved Claim.

Within ten (10) business days after the Claims Deadline, the Administrator will submit to Class Counsel and Defendant's Counsel a report listing all initially approved and initially rejected Claim Forms and making available to Class Counsel and Defendant's Counsel all of the Claim



Forms at issue, and any other information that the Administrator utilized to approve or reject such Claim Forms.

Class Counsel and Defendant's Counsel shall each have ten (10) business days after the date they receive the Administrator's report listing the initially approved and initially rejected claims to audit and challenge any initially approved or initially rejected claims, and to submit any such challenge in writing to the Administrator and the other counsel. Counsel shall meet and confer in an effort to resolve any disputes or disagreements over any initially approved or rejected claims.

Thirty (30) days after it submits to Class Counsel and Defendant's Counsel the initial report described above, the Administrator shall submit to Counsel for the Parties a final report listing all Approved Claims and rejected claims.

Within sixty (60) days after the Effective Date, the Administrator shall send, by first-class mail, a Claim Settlement Payment to each Settlement Class Member who submits an Approved Claim. Checks will be valid for one hundred and eighty (180) days from the date on the check.

The Fee Award, all Notice and Administration Costs, and any Service Award will be paid by Defendant through the Settlement Sum. Any funds not necessary to pay Claim Settlement Payments, the Fee Award, Notice and Administration Costs, and any Service Award, shall remain with Defendant. Uncashed checks shall revert to Defendant.

Except as provided in this Section, Defendant shall have no obligation to make any other or further payments to Plaintiff or to any Settlement Class Member, Class Counsel, or the Administrator.

**C. Settlement Approval**

Concurrent with submission of this Agreement for the Court's consideration, Class Counsel shall submit to the Court a motion for preliminary approval of this Agreement. The motion

shall seek entry of a Preliminary Approval Order, which shall be in a form agreed upon by Class Counsel and Defendant.

**D. Service Award and Fee Award**

**1. Service Award**

Plaintiff may petition the Court for a Service Award which will be paid by Defendant through the Settlement Sum in an amount not to exceed \$7,500.00. To the extent the Court does not approve an incentive award or does not award the entirety of the requested amount, the monies will remain with Defendant. The non-approval of the amount requested by Plaintiff shall not be a basis to terminate the settlement.

**2. Fee Award**

Class Counsel shall apply to the Court for an award of attorneys' fees and reimbursement of expenses of up to 31% of the Settlement Sum, equaling \$308,387.77. Any Fee Award approved by the Court shall be paid solely out of the Settlement Sum and shall not increase Defendant's total financial liability with respect to this Agreement or Settlement. The non-approval of the amount requested by Class Counsel shall not be a basis to terminate the settlement. Class Counsel shall be responsible for allocating and shall allocate among Class Counsel any Fee Award, and Defendant shall have no responsibility, role, or liability in connection with such allocation. The Fee Award shall be paid to Class Counsel within ten (10) business days of the Effective Date.

**III. CLAIMS ADMINISTRATION**

**A. Administrator**

The Parties have agreed on AB Data as the Administrator. The Administrator shall administer the Settlement in a cost-effective and timely manner. Without limiting any of its other obligations as stated herein, the Administrator shall be responsible for, among other things and if and as necessary, for the implementation and effectuation of Class Notice, processing Claim

Forms, receiving and maintaining on behalf of the Court any correspondence regarding requests for exclusion and/or objections to the Settlement, administering Claim Settlement Payments, and providing all other related support, reporting, and administration as further stated in this Agreement. The Parties may direct the Administrator to assist with various additional administrative tasks in implementing the Settlement as the Parties agree is appropriate.

The Parties will coordinate with the Administrator to provide Class Notice to the Settlement Class, as provided in this Agreement. The Administrator shall administer the Settlement in accordance with the terms of this Agreement and shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as Confidential Information except as provided for in this Agreement or by court order.

All Notice and Administrative Costs shall be paid by Defendant out of the Settlement Sum. Defendant shall not be obligated to compute, estimate, or pay any taxes on behalf of Plaintiff, any Settlement Class Member, Class Counsel, or the Administrator. The Administrator will invoice Defendant directly for start-up and initial Class Notice costs at any time after entry of the Preliminary Approval Order and will bill Defendant monthly for incurred fees and expenses thereafter. The Administrator will complete and provide to Defendant any W9 forms necessary for Defendant to pay for the Notice and Administrative Costs.

**B. Notice**

**1. Notice to the Settlement Class**

Class Counsel and Defendant shall insert the correct dates and deadlines in the Mail Notice and the Long-Form Notice before Class Notice commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. The Mail Notice and the Long-Form Notice shall not bear or include the Defendant's logo or trademarks or the return address of Defendant, or

otherwise be styled to appear to originate from Defendant. At Defendant's request, ownership of the Settlement Website URL shall be transferred to Defendant within ten (10) days of the date on which operation of the Settlement Website ceases, which shall be three months following distribution of the Claim Settlement Payments to Settlement Class Members, or such other date as Class Counsel and Defendant may agree upon in writing.

## **2. Settlement Class Data**

Within fifteen (15) days after entry of the Preliminary Approval Order, Defendant—if it has not already done so—will provide to the Administrator the Settlement Class Data in electronic format. Using the Settlement Class Data, the Administrator will confirm and/or determine the current mailing address associated with each of the telephone numbers in the Settlement Class Data.

## **3. Notice**

The Administrator shall send Mail Notice to Settlement Class Members. By the Class Notice Date, the Administrator shall by first class U.S. Mail send one copy of the postcard Mail Notice in the form set forth in **Exhibit 4**. After posting of the Mail Notice by the Administrator with the United States Postal Service, for any Mail Notices returned as undeliverable, the Administrator shall use the National Change of Address database (the "NCOA") or skip-tracing in an attempt to obtain better addresses for such returned Mail Notices, and should the NCOA or skip-tracing show a more current address, the Administrator shall post the returned Mail Notice to the more current address. The Administrator shall provide Class Counsel and Counsel for Defendant a sworn declaration that confirms that the Mail Notice was completed in a timely manner and in accordance with this Agreement and the Preliminary Approval Order.

#### **4. Long-Form Notice**

Mail Notice will contain the address for the Settlement Website, www. [REDACTED].com. On the website, Settlement Class members will find important documents and court filings, including the Long-Form Notice, which will contain more detail than the Mail Notice. The Long Form Notice will be sent to all Settlement Class members who contact the Administrator by telephone or email and request a copy.

#### **5. Settlement Website**

By the Class Notice Date, the Administrator shall establish and maintain the Settlement Website, which, among other things: (i) enables Settlement Class Members to access and download a Claim Form, (ii) provides contact information for Class Counsel, and (iii) provides access to relevant documents concerning the Action. Such documents shall include this Agreement and Class Notice; the Long-Form Notice, the Preliminary Approval Order; the Complaint; and, when filed, the Final Approval Order and Judgment. The Class Notice shall include the address (URL) of www. \_\_\_\_\_ .com for the Settlement Website. The Administrator shall maintain the Settlement Website until at least sixty (60) days following the Claim Deadline. The Settlement Website shall have a portal where Claim Forms can be submitted.

#### **6. IVR**

By the Class Notice Date, the Administrator shall establish and maintain a toll-free number that maintains an IVR (or similar) system to answer questions about the Settlement. The Administrator shall maintain the IVR (or similar) system until at least sixty (60) days following the Claim Deadline.

**C. Claim Filing, Review, and Approval Process**

**1. Claim Form**

To submit a claim, Settlement Class Members must correctly provide the information required by the Claim Form. The Claim Form shall require any Settlement Class Member who submits a claim to provide the following documentation and information: (a) Settlement Class Claimant's name, current address, telephone number, and e-mail address (if any); and (b) Settlement Class Claimant's telephone number that received a prerecorded voice message/call from or on behalf of Defendant.

**2. Claim Filing Process**

Class Members must timely submit, by mail or online, a valid Claim Form substantially in the form attached as Exhibit 1, as approved by the Court, by the Claims Deadline. All Claim Forms must be postmarked or submitted to the Administrator, either in hard copy form or electronically via the Settlement Website, by the Claims Deadline and contain a valid Claim ID. Regardless of the manner in which it is submitted, a valid Claim Form means a Claim Form containing all required information, including a valid, unique claim identification number to be assigned by the Administrator, which is signed by a Class Member and is timely submitted. Any Claim Form which is not timely submitted shall be denied. In the event a Class Member submits a Claim Form by the Claims Deadline but the Claim Form is not complete, then the Administrator shall give such Class Member a reasonable opportunity to provide any requested missing information. For any Class Member who submits a Claim Form determined by the Administrator to be incomplete, the Administrator may mail a notice directly to such Class Member, notifying him or her of the missing information and providing him or her with an opportunity to cure (the "Cure Notice"). Class Members must cure incomplete claims on or before the Effective Date. Any Settlement Class Member who does not submit an accurate and fully completed Claim Form by the Claim Deadline

shall be deemed to have waived any Claim and any such Claim will be rejected. Only one Claim Form may be submitted per telephone number that was sent a prerecorded voice message by or on behalf of Defendant, regardless of how many messages were received by the Settlement Class Member. Claim Forms can also be submitted via email to the Administrator or by mail to the Administrator.

### **3. Invalid Claims**

Any Settlement Class Member who fails to submit a timely, accurate, and fully completed and correct, valid Claim Form shall not be entitled to receive a Settlement Claim Payment, but shall otherwise be bound by all of the terms in this Agreement, including the terms of the Final Approval Order and Judgment and the Releases in this Agreement, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

### **4. Claim Review Process**

The Administrator shall confirm that each Claim Form submitted is in the form required; that each Claim Form includes the required affirmations and information; that the provided information sufficiently corresponds with the information in the Settlement Class Data; that each Claim Form was submitted in a timely fashion; and that the person submitting the Claim Form is a member of the Settlement Class. Any Settlement Class Claimant's failure to provide any of the required affirmations or information shall result in the Claim Form being deemed invalid, and Defendant shall not have any further obligation to process or make any Claim Settlement Payment on such invalid claim. The Administrator shall not receive any incentive for denying claims.

**D. Opt-Out Rights**

**1. Opt-Out Requirements**

A Settlement Class Member who wishes to opt-out of the Settlement Class must do so in writing. To opt-out, a Settlement Class Member must complete and send to the Administrator, at the address listed in the Class Notice, a Request for Exclusion that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice (or as the Court otherwise requires). The Request for Exclusion must: (a) identify the case name; (b) identify the name, address, and telephone number of the Settlement Class Member; (c) identify the telephone number at which the person received a prerecorded voice message from Defendant; (d) be personally signed by the Settlement Class Member requesting exclusion; and (e) contain a statement that indicates a desire to be excluded from the Settlement Class in the Action, such as: “I hereby request that I be excluded from the proposed Settlement Class.”

Any Settlement Class Member who does not opt-out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class, and shall be bound by all subsequent proceedings, orders, and judgments, including the Final Approval Order and Judgment.

A Settlement Class Member who desires to opt-out must take timely affirmative written action in accordance with this Section, even if the Settlement Class Member desiring to opt-out (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Parties.

**2. Opt-Outs Not Bound**

Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement.



### **3. List of Requests for Exclusion**

At least ten (10) days before the Final Approval Hearing, the Administrator shall provide Class Counsel and Counsel for Defendant with a list of all timely Requests for Exclusion along with copies of such Requests for Exclusion.

### **4. All Settlement Class Members Bound By Settlement**

Except for those Settlement Class Members who timely and properly file a Request for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms.

#### **E. Objections**

Any Settlement Class Member who does not opt-out of the Settlement may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement.

#### **1. Process**

Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Court and mailed (with the requisite postmark) to Class Counsel and Counsel for Defendant, no later than the Objection Deadline.

#### **2. Requirements**

The requirements to assert a valid written objection shall be set forth in the Class Notice. To be valid, the written objection must include:

- a. the name of the Action;
- b. the objector's full name, address, and telephone number;
- c. an explanation of the basis on which the objector claims to be a Settlement Class Member;

- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling on the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g. a copy of any orders related to or ruling on counsel's or the counsel's law firm's prior objections made by individuals or organizations represented by that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years the objector's counsel;
- h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
- i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- k. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and

1. the objector's signature (an attorney's signature is not sufficient).

Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

### **3. Appearance**

Subject to approval by the Court, any Settlement Class Member who files and serves a written objection in accordance with this Section may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline ("Notice of Intention to Appear"); and (b) serves the Notice of Intention to Appear on Class Counsel and Counsel for Defendant by the Objection Deadline.

The Notice of Intention to Appear must include: (a) the case name and number; (b) the Settlement Class Member's name, address, telephone number, and signature, and, if represented by counsel, their contact information; (c) the telephone number where he or she received a prerecorded voice message from Defendant; and (d) copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Class Notice and this Agreement shall not be entitled to appear at the Final Approval Hearing and raise any objections.

**4. Discovery From Settlement Class Members Who Object To The Settlement**

The Parties shall have the right to take discovery from any person who claims to be a Settlement Class Member who objects to the Settlement without further leave of court. If the person who objects to the Settlement is represented by counsel, the Parties shall also have the right to take discovery from the Settlement Class Member's counsel without further leave of court.

**F. Non-Approval of Agreement**

This Agreement is conditioned on the Final Approval Order and Judgment being entered and coming Final, without material modification by the Court. If the Settlement is not so approved, the Parties shall have the right to withdraw from the Agreement and return to the status quo ante as if no settlement or this Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses, and shall not be deemed to have waived any substantive, evidentiary, procedural, or other rights of any kind that they may have as to each other or any member of the Settlement Class. If the Agreement is approved without material modification by the Court, but is later reversed or vacated on appeal, each of the Parties shall have a right to withdraw from the Agreement and return to the status quo ante, for all litigation purposes, as if no Agreement had been negotiated or entered into, and shall not be deemed to have waived any substantive, evidentiary, procedural, or rights of any kind that they may have as to each other or any member of the Settlement Class.

**G. Termination of Agreement**

Either Party shall have the right in his or its sole discretion to terminate this Agreement, declare it null and void, and have no further obligations under this Agreement if any of the following conditions occurs: (1) the Court, after the motion for preliminary approval is filed, fails or declines to grant preliminary approval in accordance with the terms of the Preliminary Approval

Order; (2) the Court, after granting preliminary approval in accordance with the terms of the Preliminary Approval Order, fails or declines to enter the Final Approval Order and Judgment; or (3) an appellate court vacates or reverses the Final Approval Order and Judgment.

**H. Retention of Records**

The Administrator shall retain all records relating to payment of claims under this Agreement for a period of five (5) years from the Effective Date. Those records shall be maintained in accordance with this Agreement as Confidential Information.

**IV. EXCLUSIVE REMEDY/DISMISSAL OF CLAIMS/JURISDICTION**

**C. Exclusive Remedy; Permanent Injunction**

Upon entry of the Final Approval Order and Judgment: (i) the Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (ii) the Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s); (iii) Settlement Class Members who have not opted out shall be permanently barred and enjoined from asserting any Released Claims in any action or from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action based on or relating to any of the Released Claims or the facts and circumstances relating thereto; and (iv) Settlement Class Members who have not opted out shall be permanently barred and precluded from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to any of the Released Claims or the facts and circumstances relating thereto.

**D. Dismissal of Claims**

The Parties agree that upon entry of the Final Approval Order and Judgment, the Action shall be dismissed with prejudice and judgment shall be entered.

**E. Continuing Jurisdiction of Court**

The Court shall retain exclusive and continuing jurisdiction over this Action, the Parties, and this Agreement with respect to the performance of its terms and conditions (and disputes arising out of or relating to this Agreement), the proper provision of all benefits, and the implementation and enforcement of its terms, conditions, and obligations.

**V. RELEASES**

Upon entry of the Final Approval Order and Judgment, Plaintiff, each Settlement Class Member, and the other Releasing Parties will be deemed to have, and by operation of the Final Approval Order and Judgment will have, fully, finally, and forever released, relinquished, and discharged each of the Released Parties from all Released Claims, including Unknown Claims.

“Unknown Claims” means claims that could have been raised in the Action and that Plaintiff or any or all other Releasing Parties, or any of them, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties pursuant to the provisions of this Agreement, or might affect his, her, or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiff and all other Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST

HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR.

Upon the Effective Date, Plaintiff and all other Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Plaintiff and the other Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever to settle and release the Released Claims pursuant to the provisions of this Agreement, notwithstanding any Unknown Claims they may have, as that term is defined in this paragraph.

This Settlement Agreement shall be given full force and effect according to each and all of its terms and provisions, including those related to any unknown or unsuspected claims, liabilities, demands, or causes of action which are based on, arise from, or are in any way connected with the Released Claims.

Upon entry of the Final Approval Order and Judgment, Plaintiff, any Class Member who does not Opt Out as set forth in **Section D** above and all other Releasing Parties are hereby barred against continuing or bringing any action against any of the Released Parties for any of the Released Claims, regardless of whether such action was commenced prior to the Final Approval Order and Judgment. Additionally, Plaintiff and 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.

This Agreement and the Releases herein do not affect the rights of Settlement Class Members who timely and properly submit a Request for Exclusion from the Settlement.

**VI. COVENANTS, REPRESENTATIONS, AND WARRANTIES**

Plaintiff and the Settlement Class Members covenant and agree: (a) not to assert any of the Released Claims in any action or proceeding and not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action or proceeding based on any of the Released Claims against any of the Released Parties; (b) not to organize or solicit the participation of Settlement Class Members in a separate class for purposes of pursuing any action or proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending or future action or proceeding) based on or relating to any of the Released Claims; and (c) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Released Parties.

**VII. MISCELLANEOUS PROVISIONS**

**C. Receipt of Advice of Counsel**

Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement, received independent legal advice with respect to the advisability of entering into this Agreement and the legal effects of this Agreement, and fully understands the effect of this Agreement.

**D. Cooperation to Facilitate this Settlement**

The Parties agree that they shall work together in good faith to facilitate this Agreement, as well as undertake any required steps to effectuate the purposes and intent of this Agreement.

**E. Representation by Counsel**



The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.

**F. No Admission of Liability**

Nothing in this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any person or entity, of any liability or wrongdoing of any Party, or of the truth of any allegations made by the Class Representative, on behalf of herself or the Settlement Class, against Defendant. Defendant expressly denies and disclaim any liability or wrongdoing. The existence, contents, and terms of Agreement, and any negotiations, statements, or proceedings in connection therewith, shall not be admissible as evidence for any purpose in any proceeding, except solely for purposes of enforcement of the Agreement's terms; however, this Agreement may be used by either Party and pleaded as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted with respect to any of the Released Claims, and may be filed, offered, and received into evidence, and otherwise used for such defense.

**G. Contractual Agreement**

The Parties understand and agree that all terms of this Agreement are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

**H. 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 Counsel for Defendant, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to Court approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

**I. Integration**

This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement supersedes all prior representations, agreements, understandings, both written and oral, among the Parties, or any of them, with respect to the subject matter of this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein, and no Party is relying on any prior oral or written representations, agreements, understandings, or undertakings with respect to the subject matter of this Agreement.

**J. Costs**

Except as otherwise provided herein, each Party shall bear its own legal and other costs incurred in connection with the Released Claims, including the preparation and performance of this Agreement.

**K. Modification or Amendment**

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their successors-in-interest.

**L. No Waiver**

The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this

Agreement. In addition, the waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

**M. 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 in any manner.

**N. No Violation of Law or Agreement**

The execution, delivery, and performance of this Agreement by the Parties hereto does not and will not, conflict with, violate, result in a breach of, or cause a default under, (a) any applicable provision of any federal, state, or local law or regulation, (b) any provision of any order, arbitration award, judgment, or decree, or (c) any provision of any agreement or instrument applicable to the Parties.

**O. Successors**

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties hereto.

**P. Choice of Law**

All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of Florida, without reference to its conflict of law provisions. The adequacy of the settlement, any determination regarding Class Counsel's fees and expenses, and any Service Award shall be governed by Florida law.

**Q. Fair and Reasonable**

The Parties and their counsel believe that this Agreement is a fair and reasonable compromise of the disputed claims, it is in the best interests of the Parties, and have arrived at this Agreement as a result of extensive arms-length negotiations.

**R. Headings**

All headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

**S. Exhibits**

The Exhibits to this Agreement are expressly incorporated and made part of the terms and conditions set forth herein.

**T. Counterparts**

This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

**U. Facsimile and Electronic Mail**

Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.

**V. Warranty of Signature**

Each signer of this Agreement represents and warrants that he or she is authorized to execute this Agreement in his or her official capacity on behalf of the Party to this Agreement for which he or she is signing and that this Agreement is binding on the principal represented by that signatory.

**W. No Assignment**

Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title, or interest in or to any claims, causes of action, or demands which were or could have been, or ever could be asserted against any Party and that are released in this Agreement, or which were, could have been, or ever could be asserted against any Party. Any Party that breaches the representations and warranties set forth in this Section shall indemnify and hold harmless each other Party, its parents, subsidiaries, and affiliates, and their respective owners, agents, attorneys, successors, heirs, assigns, administrators, officers, directors, employees, and all other persons acting in concert with them from any and every claim or demand of every kind or character arising out of a breach by any such breaching Party of its representations and warranties in this Section.

**X. Confidentiality; Communications to Media and Public**

The Parties agree that the terms of this Settlement shall remain confidential and not be disclosed by any Party until the Agreement is filed in connection with the Preliminary Approval Application.

The Parties also agree that before the Effective Date, neither Plaintiff nor Class Counsel shall not publish a press release or otherwise publicize the Settlement without the prior written review and approval of Defendant.

For the avoidance of any doubt, nothing in this Agreement prevents the Parties from making any disclosures required to effectuate this Agreement or from making any disclosures required by law.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

Dated: 06/20/24

By: *Travis McClinton*  
Travis McClinton (Jun 20, 2024 23:41 CDT)  
**TRAVIS MCCLINTON**

Dated: 06/20/24

By: *Manuel Hiraldo*  
Manuel Hiraldo (Jun 20, 2024 16:05 EDT)  
**Counsel for Plaintiff and the Settlement Class**

Dated: 6/6/2024 | 5:28 AM CDT

**CHOICE HEALTH INSURANCE, LLC**  
DocuSigned by:  
*Katie J. Rooney*  
3DA5E0392588406  
**Katie J. Rooney**  
Name: \_\_\_\_\_  
Title: CFO

**EXHIBIT 1**

# CLAIM FORM

Case No. **XXX-XXXX-XXX**

Return this Claim Form to: Claim Administrator, PO Box xxxx, Portland, OR xxxxx-xxxx. Questions, visit [www.XXXXXXXXXX](http://www.XXXXXXXXXX) or call 1-xxx-xxx-xxxx.

**DEADLINE: THIS CLAIM FORM MUST BE SUBMITTED BY [MONTH DAY, YEAR] BE FULLY COMPLETED, BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.**

**YOU MUST SUBMIT THIS CLAIM FORM TO BE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.**

Please note that this Claim Form will be examined and verified by the Claim Administrator.

## YOUR CONTACT INFORMATION

Name: \_\_\_\_\_  
(First) (Middle) (Last)

Current Address: \_\_\_\_\_  
(City) (State) (ZIP Code)

Telephone Number for which you were the regular user or subscriber from July 28, 2018 through [date of Preliminary Approval Order]:

( ) \_\_\_\_-\_\_\_\_  
Email address (if any): \_\_\_\_\_

Current Phone Number: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_ or  check if same as above  
(Please provide a phone number where you can be reached if further information is required.)

## Settlement Class Member Verification

By signing below and submitting this Claim Form, I attest that the information in this Claim Form is true and correct to the best of my knowledge, and that I received a Prerecorded Voice Message from Choice Health Insurance, LLC. I understand that my Claim Form may be subject to audit, verification, and Court review. I am aware that I can obtain a copy of the full notice and Settlement Agreement at [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) or by writing the Administrator at [email address] or [postal address].

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

If you have questions, you may call the Claim Administrator at 1-xxx-xxx-xxxx.



**EXHIBIT 2**

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

TRAVIS MCCLINTON individually and on  
behalf of all others similarly situated

Plaintiff,

v.

CHOICE HEALTH INSURANCE, LLC,

Defendant.

Case No.

**[PROPOSED] AGREED FINAL APPROVAL ORDER ON CLASS ACTION  
SETTLEMENT AND JUDGMENT**

On \_\_\_\_\_, 2024, the Court granted preliminary approval to the proposed class action settlement set forth in the Settlement Agreement and Release between Plaintiff Travis McClinton, on behalf of himself and all members of the Settlement Class, and Defendant Choice Health Insurance, LLC (“Defendant”) (collectively, the “Parties”). The Court also provisionally certified the Settlement Class for settlement purposes, approved the procedure for giving Class Notice to the members of the Settlement Class, and set a Final Approval Hearing to take place on \_\_\_\_\_.

On \_\_\_\_\_, the Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing the Plaintiff’s Complaint on the merits and with prejudice in favor of Defendant and against all persons or entities who are Settlement Class Members herein who have not requested exclusion from the Settlement Class;

and (3) whether and in what amount to award counsel for the Settlement Class as Attorneys' Fees and Expenses and whether and in what amount to award Service Award to Plaintiff.

Unless otherwise noted, all capitalized terms in this Final Approval Order and Judgment shall have the same meaning ascribed to them in the Parties' Settlement Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

**I. JURISDICTION OF THE COURT**

1. The Court has personal jurisdiction over the parties and the Settlement Class Members, venue is proper, and the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto, and to enter this Final Approval Order and Judgment. Without in any way affecting the finality of this Final Approval Order and Judgment, this Court hereby retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Approval Order and Judgment, and for any other necessary purpose.

2. The Settlement Agreement was negotiated at arm's length by experienced counsel who were fully informed of the facts and circumstances of this Action and the First Action and of the strengths and weaknesses of their respective positions. The Settlement Agreement was reached after the Parties had engaged in mediations and extensive settlement discussions and after the exchange of information, including information about the size and scope of the Settlement Class. Counsel for the Parties were therefore well positioned to evaluate the benefits of the Settlement Agreement, taking into account the expense, risk, and uncertainty of protracted litigation.

3. The Court finds that the prerequisites for a class action under Fla. R. Civ. P. 1.220 have been satisfied for settlement purposes for each Settlement Class Member in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is

impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiff are typical of the claims of the Settlement Class he seeks to represent; (d) Plaintiff has and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (f) the Settlement Class is ascertainable; and (g) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy

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

4. Pursuant to Fla. R. Civ. P. 1.220, this Court hereby finally certifies the Settlement Class, as identified in the Settlement Agreement: “All persons in the United States, for the time period beginning July 28, 2018 through [date of entry of the Preliminary Approval Order] who were sent a prerecorded voice call by or on behalf of Choice Health Insurance, LLC regarding Choice Health Insurance, LLC’s property, goods, and/or services, where the lead data was provided by ZeetoGroup, LLC to Digital Media Services, LLC.” The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff’s Counsel, their employees, and their immediate family.

## **III. APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL**

5. The Court finally appoints Michael Eisenband of Eisenband Law, P.A. and Manuel S. Hiraldo of Hiraldo, P.A. as Class Counsel for the Settlement Class.

6. The Court finally designates Plaintiff Travis McClinton as the Class Representative.

#### **IV. NOTICE AND CLAIMS PROCESS**

7. The Court makes the following findings on notice to the Settlement Class:

(a) The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fla. R. Civ. P. 1.220, the United States Constitution, the Rules of this Court, and any other applicable law.

(b) The Court finds that the Class Notice and methodology set forth in the Settlement Agreement and the Preliminary Approval Order (i) constitute the most effective and practicable notice of the Final Approval Order and Judgment, the relief available to Settlement Class Members pursuant to the Final Approval Order and Judgment, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fla. R. Civ. P. 1.220, the United States Constitution, the Rules of this Court, and any other applicable laws.

#### **V. FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT**

8. The Settlement Agreement is finally approved in all respects as fair, reasonable and adequate. The terms and provisions of the Settlement Agreement, including all Exhibits thereto,

have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members.

## **VI. ADMINISTRATION OF THE SETTLEMENT**

9. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions. The Administrator is directed to provide Claim Settlement Payments to those Settlement Class Members who submit valid, timely, and complete Claims.

10. The Court hereby approves Class Counsel's request for attorney fees, costs, and expenses, and awards Class Counsel \$308,387.77 (the "Fee Award") as reasonable attorneys' fees in this Action payable from Defendant pursuant to the terms of the Settlement Agreement. The Court has concluded that: (a) Class Counsel achieved a favorable result for the Settlement Class by obtaining Defendant's agreement to make significant funds available to Settlement Class Members, subject to submission of valid claims by eligible Settlement Class Members; (b) Class Counsel devoted substantial effort to pre- and post-filing investigation, legal analysis, and litigation; (c) Class Counsel prosecuted the Settlement Class's claims on a contingent fee basis, investing significant time and accumulating costs with no guarantee that they would receive compensation for their services or recover their expenses; (d) Class Counsel employed their knowledge of and experience with class action litigation in achieving a valuable settlement for the Settlement Class, in spite of Defendant's possible legal defenses and its experienced and capable counsel; (e) Class Counsel have standard contingent fee agreements with Plaintiff, who has reviewed the Settlement Agreement and been informed of Class Counsel's fee request and have approved; and (f) the Notice informed Settlement Class Members of the amount and nature of Class Counsel's fee and cost request under the Settlement Agreement, Class Counsel filed and

posted their Petition in time for Settlement Class Members to make a meaningful decision whether to object to the Class Counsel's fee request, and \_\_\_\_ Settlement Class Member(s) objected.

11. The Court awards a Service Award in the amount of \$7,500.00 to Plaintiff payable from Defendant pursuant to the terms of the Settlement Agreement.

## **VII. RELEASE OF CLAIMS**

12. Upon entry of this Final Approval Order and Judgment, all members of the Settlement Class who did not validly and timely submit Requests for Exclusion in the manner provided in the Agreement shall, by operation of this Final Approval Order and Judgment, have fully, finally and forever released, relinquished and discharged Defendant and the Released Parties from the Released Claims as set forth in the Settlement Agreement.

13. As used in this Final Approval Order and Judgment:

a. "Released Claims" means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown (including Unknown Claims), suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, of every nature and description whatsoever, that arise out of or relate in any way to telephone calls made by or on behalf of Choice Health Insurance, LLC, including but not limited to claims asserting violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the "TCPA"), any corollary or state laws similar to the TCPA and TSR, or enactment of any other statutory, regulatory or common law claim arising thereunder.

b. “Released Parties” means the Defendant and each of its past, present, and future members, owners, direct and indirect parents, subsidiaries, managers, divisions, predecessors, successors, holding companies, and affiliated companies and corporations, and each of the past, present, and future directors, officers, managers, employees, contractors, general partners, limited partners, investors, controlling persons, owners, trustees, principals, agents, associates, administrators, insurers, reinsurers, shareholders, attorneys, accountants, advisors, consultants, assignors, assignees, representatives, fiduciaries, predecessors, successors, divisions, joint ventures, or related entities of those companies including, but not limited to, the vendors, subvendors, contractors, subcontractors, and service providers retained to make calls (or which were involved in making calls for another of the Released Parties). In the avoidance of doubt, “Released Parties” does not include Digital Media Solutions, LLC or of its affiliates (together, “DMS”), or any person or entity that provided leads to DMS that DMS provided to Choice Health Insurance, LLC or Alight Solutions, LLC. The release of any third parties is limited to any actions taken on behalf of Choice Health Insurance, LLC.

c. “Releasing Parties” means Plaintiff and the Settlement Class Members (whether or not such Settlement Class Members submit Claim Forms), and their respective assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, and employees (each solely in their respective capacity as such), and all those who claim through them or who assert claims (or could assert claims) on their behalf.

d. “Unknown Claims” means claims that could have been raised in the Action or the First Action and that Plaintiff or any or all other Releasing Parties, or any of them, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement



to release the Released Parties pursuant to the provisions of this Agreement, or might affect his, her, or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiff and all other Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

Upon the Effective Date, Plaintiff and all other Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Plaintiff and the other Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever to settle and release the Released Claims pursuant to the provisions of this Agreement, notwithstanding any Unknown Claims they may have, as that term is defined in this paragraph.

14. Furthermore, all members of the Settlement Class who did not validly and timely submit Requests for Exclusion in the manner provided in the Agreement are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, either individually or as a class, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an

award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action or the First Action or that could have been brought in the Action or the First Action and/or as a result of or in addition to those provided by the Settlement Agreement.

15. The terms of the Settlement Agreement and of this Final Approval Order and Judgment, including all Exhibits thereto, shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits maintained by Plaintiff and all other Settlement Class Members, as well as their heirs, executors and administrators, successors, and assigns.

16. The Releases, which are set forth in the Settlement Agreement and which are also set forth above, are expressly incorporated herein in all respects and are effective as of the date of this Final Approval Order and Judgment; and the Released Parties (as that term is defined above and in the Settlement Agreement) are forever released, relinquished, and discharged by the Releasing Parties (as that term is defined above and in the Settlement Agreement) from all Released Claims (as that term is defined above and in the Settlement Agreement).

(a) The Settlement Agreement and Releases do not affect the rights of Settlement Class Members who timely and properly submit a Request for Exclusion from the Settlement in accordance with the requirements of the Settlement Agreement.

(b) The administration and consummation of the Settlement as embodied in the Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, enforcement of the Releases. The Court expressly retains jurisdiction in order to enter such further

orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

(c) The Settlement Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out), and the Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s).

(d) The Releases shall not preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein. The Releases set forth herein and in the Settlement Agreement are not intended to include the release of any rights or duties of the Parties arising out of the Settlement Agreement, including the express warranties and covenants contained therein.

17. Plaintiff and all Settlement Class Members who did not timely exclude themselves from the Settlement Class are, from this day forward, hereby permanently barred and enjoined from directly or indirectly: (i) asserting any Released Claims in any action or proceeding; (ii) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit based on or relating to any the Released Claims or the facts and circumstances relating thereto; or (iii) organizing any Settlement Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to any of the Released Claims.

#### **VIII. NO ADMISSION OF LIABILITY**

18. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred

to therein, nor this Final Approval Order and Judgment, nor any of its terms and provisions, shall be:

(a) offered by any person or received against Defendant or any Released Party as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by Defendant of the truth of the facts alleged by any person, the validity of any claim that has been or could have been asserted in the Action or the First Action or in any other litigation or judicial or administrative proceeding, the deficiency of any defense that has been or could have been asserted in the Action or the First Action or in any litigation, or of any liability, negligence, fault, or wrongdoing by Defendant or any Released Party;

(b) offered by any person or received against Defendant or any Released Party as evidence of a presumption, concession, or admission of any fault or violation of any law by Defendant or any Released Party; or

(c) offered by any person or received against Defendant or any Released Party as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing in any civil, criminal, or administrative action or proceeding.

## **IX. OTHER PROVISIONS**

19. This Final Approval Order and Judgment and the Settlement Agreement (including the Exhibits thereto) may be filed in any action against or by any Released Party (as that term is defined herein and the Settlement Agreement) to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

20. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

21. In the event that the Effective Date does not occur, this Final Approval Order and Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and released delivered in connection herewith shall be null and void. In the event that the Effective Date does not occur, the Settlement Agreement shall become null and void and be of no further force and effect, neither the Settlement Agreement nor the Court's Orders, including this Final Approval Order and Judgment, shall be used or referred to for any purpose whatsoever, and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification, including the right to argue that no class should be certified for any purpose, and with respect to any claims or allegations in this Action.

22. This Action, including all individual claims and class claims presented herein, is hereby dismissed on the merits and with prejudice against Plaintiff and all other Settlement Class Members, without fees or costs to any party except as otherwise provided herein. Finding that there is no just reason for delay, the Court orders that this Final Approval Order and Judgment shall constitute a final judgment.

**DONE and ORDERED** at Miami-Dade, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
HON.  
CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record

**EXHIBIT 3**

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

**If You Received a Prerecorded Voice Message from Choice Health Insurance, You May Be Entitled to a Payment from a Class Action Settlement**

*A court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.*

- Call records indicate that you may be affected by a Settlement<sup>1</sup> in a class action lawsuit about whether Choice Health Insurance, LLC (“Defendant”) sent prerecorded voice messages in violation of the Telephone Consumer Protection Act (“TCPA”). Defendant denies the allegations and any wrongdoing. The Court has not decided who is right.
- The Settlement offers payments to Settlement Class Members who file valid Claims.
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	If you are a member of the Settlement Class, you must submit a completed Claim Form to receive a payment. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class and submit an Approved Claim, you will receive your payment by check.
<b>EXCLUDE YOURSELF</b>	You may request to be excluded from the Settlement and, if you do, you will receive no benefits from the Settlement.
<b>OBJECT</b>	Write to the Court and appear at a hearing if you do not like the Settlement.
<b>DO NOTHING</b>	You will not receive a payment if you fail to timely submit a completed Claim Form, and you will give up your right to bring your own lawsuit against Defendant and the other Released Parties about the Released Claims.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are resolved, benefits will be distributed to those who submit qualifying Claim Forms. Please be patient.

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION.....PAGE 3**

1. Why is there a Notice?
2. What is this litigation about?
3. What is the TCPA?

<sup>1</sup> Capitalized terms herein have the same meanings as those defined in the Settlement Agreement, a copy of which may be found online at the Settlement Website.

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT [www.XXXX.com](http://www.XXXX.com)**

- 4. Why is this a class action?
- 5. Why is there a settlement?

**WHO IS PART OF THE SETTLEMENT.....PAGE 4**

- 6. Who is included in the Settlement?
- 7. What if I am not sure whether I am included in the Settlement?

**THE SETTLEMENT BENEFITS.....PAGE 4**

- 8. What does the Settlement provide?
- 9. How do I file a Claim?
- 10. When will I receive my check?

**EXCLUDING YOURSELF FROM THE SETTLEMENT.....PAGE 5**

- 11. How do I get out of the Settlement?
- 12. If I do not exclude myself, can I sue Defendants for the same thing later?
- 13. What am I giving up to stay in the Settlement Class?
- 14. If I exclude myself, can I still get a payment?

**THE LAWYERS REPRESENTING YOU.....PAGE 6**

- 15. Do I have a lawyer in the case?
- 16. How will the lawyers be paid?

**OBJECTING TO THE SETTLEMENT.....PAGE 6**

- 17. How do I tell the Court I do not like the Settlement?
- 18. What is the difference between objecting and asking to be excluded?

**THE FINAL APPROVAL HEARING.....PAGE 7**

- 19. When and where will the Court decide whether to approve the Settlement?
- 20. Do I have to attend the hearing?
- 21. May I speak at the hearing?

**IF YOU DO NOTHING.....PAGE 8**

- 22. What happens if I do nothing at all?

**GETTING MORE INFORMATION.....PAGE 8**

- 23. How do I get more information?



## BASIC INFORMATION

### 1. Why is there a Notice?

A court authorized this Notice because you have a right to know about a proposed Settlement of a class action lawsuit known as *McClinton v. Choice Health Insurance, LLC* in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, and about all of your options before the Court decides whether to give Final Approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Hon. \_\_\_\_\_ a Judge of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida is overseeing this case. The person who sued, Travis McClinton, is called the “Plaintiff.” Choice Health Insurance, LLC is called the “Defendant”.

### 2. What is this litigation about?

The lawsuit alleges that Defendant sent prerecorded voice message calls to Plaintiff’s wireless telephone number in violation of the Telephone Consumer Protection Act, and seeks actual and statutory damages under the TCPA on behalf of the named Plaintiff and a class of similarly-situated individuals in the United States.

Defendant denies each and every allegation of wrongdoing, liability, and damages that were or could have been asserted in the litigation and that the claims in the litigation would be appropriate for class treatment if the litigation were to proceed through trial.

The Plaintiff’s Complaint, Settlement Agreement, and other case-related documents are posted on the Settlement Website, [www.XXXXX.com](http://www.XXXXX.com). The Settlement resolves the lawsuit. The Court has not decided who is right.

### 3. What is the TCPA?

The Telephone Consumer Protection Act (commonly referred to as the “TCPA”) is a federal law that restricts the use of marketing related prerecorded voice message calls without prior express consent.

### 4. Why is this a class action?

In a class action, one person called the “Class Representative” (in this case, Plaintiff) sue on behalf of themselves and other people with similar claims.

All of the people who have claims similar to the Plaintiffs are Settlement Class Members, except for those who exclude themselves from the class, among others.

### 5. Why is there a settlement?

The Court has not found in favor of either Plaintiff or Defendant. Instead, both sides have agreed to a settlement. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Claimants will receive the benefits described in this Notice. Defendant denies all legal claims in this case. Plaintiff and his lawyers think the proposed Settlement is best for everyone who is affected.

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT [www.XXXX.com](http://www.XXXX.com)**

## WHO IS PART OF THE SETTLEMENT?

### 6. Who is included in the Settlement?

The Settlement includes all persons who received a prerecorded voice message on their telephone from Defendant. Specifically, the Settlement Class is defined as:

**All persons in the United States, for the time period beginning July 28, 2018 through [date of entry of the Preliminary Approval Order] who were sent a prerecorded voice call by or on behalf of Choice Health Insurance, LLC regarding Choice Health Insurance, LLC's property, goods, and/or services, where the lead data was provided by ZeetoGroup, LLC to Digital Media Services, LLC.**

Persons meeting this definition are referred to collectively as the "Settlement Class" and, individually, as "Settlement Class Members."

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff's Counsel, their employees, and their immediate family.

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

If you are not sure whether you are in the Settlement Class or have any other questions about the Settlement, visit the Settlement Website at [www.XXXX.com](http://www.XXXX.com) or call the toll-free number, 1-xxx-xxx-xxxx. You also may send questions to the Settlement Administrator at XXXX TCPASettlement Administrator, P.O. Box XXXX, XXXX, XX XXXX.

## THE SETTLEMENT BENEFITS

### 8. What does the Settlement provide?

To fully settle and release claims of the Settlement Class Members, Defendant has agreed to make \$994,799.28 (the "Settlement Sum") available to pay Approved Claims by Settlement Class Members, notice and administration costs of the Settlement, attorneys' fees and expenses incurred by counsel for the Settlement Class, and a service award for Plaintiff. Each Settlement Class Member who submits a timely, valid, correct and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Check by the Administrator in an amount \$30.00 less a proportional share of Notice and Administration costs, the Fee Award, and any Service Award. Class Claimants will be sent their Claim Settlement Payments to the address they submitted on their Claim Form within 60 days following the Effective Date.

### 9. How do I file a Claim?

If you qualify for a payment, you must complete and submit a valid Claim Form. You may download a Claim Form at the Settlement Website, [www.XXXX.com](http://www.XXXX.com), or request a Claim Form by calling the Settlement Administrator at the toll-free number below. To be valid, a Claim Form must be completed fully and accurately and submitted timely. Class Members shall be entitled to submit one Claim Form

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT [www.XXXX.com](http://www.XXXX.com)**

for each telephone number on the Class List that is associated with their name. Only one Claim Form associated with a telephone number on the Class List can be an Approved Claim under the Settlement.

You must submit a Claim Form by U.S. mail or through the Settlement Website, and it must be postmarked by [DATE].

Please read the Claim Form carefully and provide all the information required.

#### 10. When will I receive my check?

Payments in the form of a check to Settlement Class Members will be made only after the Court grants Final Approval to the Settlement and after any appeals are resolved (*see* “Final Approval Hearing” below). If there are appeals, resolving them can take time. Please be patient.

### EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Defendant on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement Class.

#### 11. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a timely letter by mail to:

XXXXX Settlement Administrator  
P.O. Box XXXX  
XXXX, XX XXXX

Your request to be excluded from the Settlement must be personally signed by you under penalty of perjury and contain a statement that indicates your desire to be “excluded from the Settlement Class” and that, absent of excluding yourself or “opting out,” you are “otherwise a member of the Settlement Class.”

Your exclusion request must be postmarked no later than xxxxxxxxxx. You cannot ask to be excluded on the phone, by email, or at the Settlement Website.

You may opt out of the Settlement Class only for yourself.

#### 12. If I do not exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to pursue your own lawsuit.

#### 13. What am I giving up to stay in the Settlement Class?

Unless you opt out of the Settlement, you cannot sue or be part of any other lawsuit against Defendant or the other Released Parties about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions and judgments by the Court will bind you.

The Settlement Agreement is available at [www.XXXX.com](http://www.XXXX.com). The Settlement Agreement provides more detail regarding the Releases and describes the Released Claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firms representing the Settlement

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT [www.XXXX.com](http://www.XXXX.com)**

Class listed in Question 15 at no charge to you, or you can, at your own expense, talk to your own lawyer if you have any questions about the Released Claims or what they mean.

**14. If I exclude myself, can I still get a payment?**

No. You will not get a payment from the Settlement Fund if you exclude yourself from the Settlement.

**THE LAWYERS REPRESENTING YOU**

**15. Do I have a lawyer in the case?**

The Court has appointed the following lawyers as “Class Counsel” to represent all members of the Settlement Class.

Michael Eisenband, Esq.  
Eisenband Law, P.A.  
515 E Las Olas Blvd. Suite 120  
Fort Lauderdale, Florida 33301

Manuel S. Hiraldo, Esq.  
Hiraldo P.A.  
401 E. Las Olas Boulevard, Suite 1400  
Ft. Lauderdale, Florida 33301

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

**16. How will the lawyers be paid?**

Class Counsel intend to request up to \$308,387.77 in attorneys’ fees and out-of-pocket expenses incurred in the litigation. The fees and expenses awarded by the Court will be paid by Defendant from the Settlement Sum. The Court will decide the amount of fees and expenses to award.

Class Counsel will also request that Service Award of up to \$7,500.00 for Plaintiff for his service as Class Representative on behalf of the whole Settlement Class. Any Service Award will be paid by Defendant from the Settlement Sum.

**OBJECTING TO THE SETTLEMENT**

**17. How do I tell the Court if I do not like the Settlement?**

If you are a Settlement Class Member (and do not exclude yourself from the Settlement Class), you can object to any part of the Settlement. To object, you must timely submit a letter that includes the following:

- 1) A heading that includes the case name and case number—*McClinton v. Choice Health Insurance LLC*. – Case Number \_\_\_\_\_
- 2) Your name, address, telephone number, the telephone number at which you received prerecorded voice messages from Defendant and if represented by counsel, the name, bar number, address, and telephone number of your counsel;

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT [www.XXXX.com](http://www.XXXX.com)**

- 3) A signed statement stating, under penalty of perjury, that you received one or more prerecorded voice messages from Defendant and are a member of the Settlement Class;
- 4) A statement of all your objections to the Settlement including your legal and factual basis for each objection;
- 5) A statement of whether you intend to appear at the Final Approval Hearing, either with or without counsel, and if with counsel, the name of your counsel who will attend;
- 6) The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case;
- 7) A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- 8) Any and all agreements that relate to the objection or the process of objecting—whether written or verbal—between you or your counsel and any other person or entity.

If you wish to object, you must file your objection with the Court (using the Court's electronic filing system or in any manner in which the Court accepts filings) and mail your objection to each of the following three (3) addresses, and your objection must be postmarked by **XXXXXXXXXX**.

Clerk of the Court	Class Counsel	Defendants' Counsel
Eleventh Judicial Circuit Miami-Dade County 73 W. Flagler St. Miami, FL 33130	Manuel Hiraldo, Esq. Hiraldo, PA 401 East Las Olas Boulevard Suite 1400, Fort Lauderdale, FL 33301	

**18. What is the difference between objecting and asking to be excluded?**

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

**THE FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses ("Final Approval Hearing").

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

The Court has scheduled a Final Approval Hearing on **xxxxxxx at xxx a.m. at the xxxxxxxxxxxxxxxx**. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.XXXX.com](http://www.XXXX.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees and expenses and for Service Award to the Class Representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long these decisions will take.

**20. Do I have to attend the hearing?**

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT [www.XXXX.com](http://www.XXXX.com)**

No. Class Counsel will answer any questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time to the proper addresses and it complies with all the other requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend the hearing, but it is not necessary.

#### 21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, your timely filed objection must include a statement of whether you intend to appear at the Final Approval Hearing (see Question 17 above).

You cannot speak at the hearing if you exclude yourself from the Settlement.

### IF YOU DO NOTHING

#### 22. What happens if I do nothing at all?

If you are a Settlement Class member and do nothing, meaning you do not file a timely Claim, you will not get benefits from the Settlement. Further, unless you exclude yourself, you will be bound by the Final Approval Order and Judgment entered by the Court.

### GETTING MORE INFORMATION

#### 23. How do I get more information?

This Notice summarizes the proposed Settlement. You are urged to review more details in the Settlement Agreement. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at [www.XXXX.com](http://www.XXXX.com). You also may write with questions to the Settlement Administrator at XXXX, P.O. Box XXXX, XXXX, XX XXXXX or call the toll-free number, 1-xxx-xxx-xxxx.

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT [www.XXXX.com](http://www.XXXX.com)**

**EXHIBIT 4**

XXXXX Settlement Administrator

PO Box XXXX

XXXXX, XX XXXX

FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID  
Portland, OR  
PERMIT NO. 2882

## Legal Notice about a Class Action Settlement

<<BARCODE>>

<<NAME1>>

<<NAME2>>

<<ADDRESS1>>

<<ADDRESS2>>

<<CITY, ST, ZIP>>

<<COUNTRY>>

<<Mail ID>>

### Claim Form

To submit a Claim for a payment from the Settlement Sum, please fill out the Claim Form below and submit it online at [URL] or by U.S. mail. The deadline to file a claim online is **11:59 p.m. EST on XX/XX/XXXX**. If you send in a Claim Form by regular mail, it must be postmarked on or before **XX/XX/XXXX**.

\*First Name:

\*MI:

\*Last Name:

\*Address:

\*City:

\*State:

\*ZIP Code:

\*Cellular Telephone Number for which you were the subscriber or customary user

Telephone Number where you can be reached if different from above:

Your Email Address:

\*I declare under penalty of perjury that the facts set forth above are true to the best of my knowledge and that I received a prerecorded voice message from Choice Health Insurance, LLC

\*Signature:

\*Date (MM/DD/YY):

**\*Denotes Information You Must Provide To Have A Valid Claim**

Questions? Visit [www.XXXXX.com](http://www.XXXXX.com) or call 1-xxx-xxx-xxxx



**If You Received a Prerecorded Message from Choice Health Insurance  
You May Be Entitled to a Payment from a Class Action Settlement.**

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

Call records indicate that you may be affected by a Settlement in a class action lawsuit claiming that Choice Health Insurance, LLC ("Defendant") left prerecorded voice messages on cellular telephone numbers without consent of the recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227. Defendant denies the allegations in the lawsuit, and the Court has not decided who is right.

The Settlement offers payments to Class Members who file valid Claims. Your legal rights are affected whether you act or do not act. Read this notice carefully.

**Who's Included?** The Settlement includes all persons in the United States, for the time period beginning July 28, 2018 through **[date of entry of the Preliminary Approval Order]** who were sent a prerecorded voice call by or on behalf of Choice Health Insurance, LLC regarding Choice Health Insurance, LLC's property, goods, and/or services, where the lead data was provided by ZeetoGroup, LLC to Digital Media Services, LLC.

**What Are the Settlement Terms?** Defendant has agreed to make up to \$994,799.28 available, which will be used to pay Settlement Class Members who submit valid Claims, attorneys' fees to Class Counsel, and a Service Award to the Class Representative. If the Settlement is finally approved by the Court, the payments to Settlement Class Members who submit valid Claims will be in an amount up to \$30.00 less a proportional share of Notice and Administration costs, the Fee Award, and any Service Award.

**How Can I Get a Payment?** To get a payment, you must submit a valid Claim Form by U.S. mail or online at [www.XXXXX.com](http://www.XXXXX.com). A Claim Form is attached to this notice. You may also download a Claim Form online at [www.XXXXX.com](http://www.XXXXX.com) or call the Settlement Administrator at the toll-free number below to request a Claim Form. To be valid, a Claim Form must be completed fully and accurately, signed under penalty of perjury, and submitted timely. If you send in a Claim Form by regular mail, it must be postmarked on or before XX/XX/XXXX. The deadline to file a Claim online or is 11:59 pm. EST on XX/XX/XXXX.

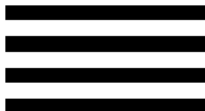
**Your Other Options.** If you do not want to be legally bound by the Settlement, you must exclude yourself by XX/XX/XXXX. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website. You may object to the Settlement by XX/XX/XXXX. The Long Form Notice available on the Settlement Website listed below explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on [www.XXXXX.com](http://www.XXXXX.com) to consider whether to approve the Settlement, a request for attorneys' fees and costs of up to \$308,387.77 and a Service Award of \$7,500 to the Class Representative. You may appear at the hearing, either yourself or through an attorney you hire, but you don't have to. For more information, call or visit the Settlement Website.

[www.XXXXXX.com](http://www.XXXXXX.com)

1-XXX-XXX-XXXX



NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



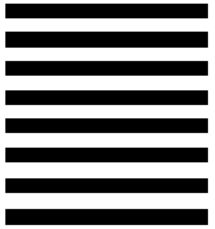
# BUSINESS REPLY MAIL

FIRST-CLASS MAIL

PERMIT NO 581

PORTLAND OR

POSTAGE WILL BE PAID BY ADDRESSEE



XXXXX SETTLEMENT ADMINISTRATOR XXXX

SETTLEMENT ADMINISTRATOR

PO BOX XXXX

XXXXXX XX XXXXX



**EXHIBIT 5**

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

TRAVIS MCCLINTON individually and on  
behalf of all others similarly situated

Plaintiff,

v.

CHOICE HEALTH INSURANCE, LLC,

Defendant.

Case No.

**[PROPOSED] AGREED PRELIMINARY APPROVAL ORDER ON CLASS ACTION  
SETTLEMENT**

Plaintiff Travis McClinton, and Defendant Choice Health Insurance, LLC have agreed to settle this Action pursuant to the terms and conditions set forth in an executed Settlement Agreement and Release. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class will fully, finally, and forever resolve, discharge, and release the Released Claims.

The Settlement has been filed with the Court, and Plaintiff and Class Counsel have filed an Unopposed Motion for Preliminary Approval of Class Settlement. Upon considering the Motion, the Settlement and all exhibits thereto, the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to this Action; (2) the proposed Settlement Class meets the requirements of Florida Rule of Civil Procedure 1.220 and should be certified for settlement purposes only; (3) the persons and entities identified below should be appointed Class

Representative and Class Counsel; (4) the Settlement is the result of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel, and is not the result of collusion; (5) the Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice program and proposed forms of Notice satisfy Florida Rule of Civil Procedure 1.220 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel's application for an award of attorneys' fees and expenses and request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement, Class Counsel's application for a Fee Award, and/or the request for Service Award for Plaintiff; (7) good cause exists to schedule and conduct a Final Approval Hearing, to assist the Court in determining whether to grant Final Approval of the Settlement and enter the Final Approval Order and Judgment, and whether to grant Class Counsel's application for a Fee Award and request for a Service Award for Plaintiff; and (8) the other related matters pertinent to the Preliminary Approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. As used in this Preliminary Approval Order, unless otherwise noted, capitalized terms shall have the definitions and meanings accorded to them in the Settlement.
2. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2).
3. Venue is proper in this Court.

Provisional Class Certification and Appointment of Class Representative and Class Counsel

4. It is well established that “[a] class may be certified solely for purposes of

settlement [if] a settlement is reached before a litigated determination of the class certification issue.” *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (internal quotation marks omitted). In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class – *i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied – except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Id.*; *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

5. The Court finds, for settlement purposes, that the Florida Rule of Civil Procedure 1.220 factors are present and that certification of the proposed Settlement Class is appropriate under Rule 1.220. The Court therefore provisionally certifies the following Settlement Class.

**All persons in the United States, for the time period beginning July 28, 2018 through [date of entry of the Preliminary Approval Order] who were sent a prerecorded voice call by or on behalf of Choice Health regarding Defendant’s property, goods, and/or services where the lead data was provided by Zeeto to Digital Media Services, LLC.**

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff’s Counsel, their employees, and their immediate family.

6. Specifically, the Court finds, for settlement purposes and conditioned on final certification of the proposed class and on the entry of the Final Approval Order and Judgment, that the Settlement Class satisfies the following factors of Florida Rule of Civil Procedure 1.220:

(a) Numerosity: In the Action, approximately 46,573 individuals are members of the proposed Settlement Class. The proposed Settlement Class is thus so numerous that joinder

of all members is impracticable.

(b) Commonality: “[C]ommonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citation omitted). Here, the commonality requirement is satisfied. Multiple questions of law and fact centering on Defendant’s alleged class-wide practices are common to the Plaintiff and the Settlement Class, are alleged to have injured all members of the Settlement Class in the same way, and would generate common answers central to the viability of the claims were this case to proceed to trial.

(c) Typicality: The Plaintiff’s claims are typical of the Settlement Class because they concern the same alleged Defendant’s practices, arise from the same legal theories, and allege the same types of harm and entitlement to relief. Rule 23(a)(3) is therefore satisfied. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims “arise from the same event or pattern or practice and are based on the same legal theory”); *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they “possess the same interest and suffer the same injury as the class members”).

(d) Adequacy: Adequacy under Rule 1.220 relates to: (1) whether the proposed class representative has interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake the litigation at issue. *See Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 314 (S.D. Fla. 2001). Here, adequacy is satisfied because there are no conflicts of interest between the Plaintiff and the Settlement Class, and Plaintiff

has retained competent counsel to represent them and the Settlement Class. Class Counsel regularly engage in consumer class litigation, complex litigation, and other litigation similar to this Action, and have dedicated substantial resources to the prosecution of the Action and the First Action. Moreover, the Plaintiff and Class Counsel have vigorously and competently represented the Settlement Class in the Action and in the First Action. *See Lyons v. Georgia-Pacific Corp. Salaried Employees Rel. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000).

(e) Predominance and Superiority: Rule 1.220 is satisfied because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for the members of the Settlement Class in a single, coordinated proceeding is superior to thousands of individual lawsuits addressing the same legal and factual issues. With respect to predominance, Rule 23(b)(3) requires that “[c]ommon issues of fact and law . . . ha[ve] a direct impact on every class member’s effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010) (internal quotation marks omitted). Here, common questions present a significant aspect of the case and can be resolved for all members of the Settlement Class in a single adjudication. In a liability determination, those common issues would predominate over any issues that are unique to individual members of the Settlement Class. Moreover, each member of the Settlement Class has claims that arise from the same or similar alleged Defendant’s practices as well as the same legal theories.

7. The Court appoints Plaintiff Travis McClinton, as the Class Representative.

8. The Court appoints the following attorneys and firms as Class Counsel: Michael Eisenband of Eisenband Law, P.A. and Manuel S. Hiraldo of Hiraldo, P.A.



9. The Court recognizes that Defendant reserves all of its defenses and objections against and rights to oppose any request for class certification in the event that the proposed Settlement does not become Final for any reason. Defendant also reserves its defenses to the merits of the claims asserted in the event the Settlement does not become Final for any reason.

Preliminary Approval of the Settlement

10. At the preliminary approval stage, the Court’s task is to evaluate whether the Settlement is within the “range of reasonableness.” 4 *Newberg on Class Actions* § 11.26. “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at \*2 (S.D. Fla. Jun. 15, 2010). Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation*, Third, § 30.42 (West 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted).

11. The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds that the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arm’s-length negotiations between the Parties and their capable and experienced counsel. The Court further finds that the Settlement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist

the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order and Judgment.

Approval of Class Notice and the Claims Process

12. The Court approves the form and content of the Class Notice, substantially in the forms attached to the Settlement, as well as the Claim Form attached thereto. The Court further finds that the Class Notice program described in the Settlement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's application for a Fee Award and the request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class Notice and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class Notice and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Florida Rule of Civil Procedure 1.220 and the Constitutional requirement of Due Process.

13. \_\_\_\_\_ shall serve as the Administrator.

14. The Administrator shall implement the Class Notice program, as set forth below and in the Settlement, using the Class Notice substantially in the forms attached to the Settlement and approved by this Preliminary Approval Order. Notice shall be provided to the members of the Settlement Class pursuant to the Class Notice program, as specified in the Settlement and approved by this Preliminary Approval Order. The Class Notice program shall include, to the extent necessary, mail Notice and Long-Form Notice on the Settlement Website, as set forth in the Settlement and below.

*Notice*

19. The Administrator shall administer Notice as set forth in the Settlement. The Notice shall be completed no later than 30 days prior to the Final Approval Hearing.

*Settlement Website*

24. The Administrator shall establish a Settlement Website as a means for Settlement Class members to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Class Notice program. The Settlement Website shall include to the Settlement, the Long-Form Notice, the Preliminary Approval Order, and other such documents as Class Counsel and counsel for Defendant agree to include. These documents shall remain on the Settlement Website until at least 60 days following the Claim Deadline.

25. The Administrator is directed to perform all substantive responsibilities with respect to effectuating the Class Notice program, as set forth in the Settlement.

Final Approval Hearing, Opt-Outs, and Objections

26. **A Final Approval Hearing shall be held before this Court on \_\_\_\_\_, 2024 at \_\_\_\_\_.m through Zoom or other video conferencing equipment** to determine whether to grant Final Approval to the Settlement and to enter a Final Approval Order and Judgment, and whether Class Counsel's application for a Fee Award and request for a Service Award for the Class Representative should be granted.

27. Any person within the Settlement Class who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Settlement and in the Notices at any time during the Opt-Out Period. To be valid and timely, opt-out requests must be received by all those listed in the Long-Form Notice on or before the last day of the Opt-out Period, which is 20 days before the Final Approval

Hearing (“Opt-Out Deadline”), and mailed to the addresses indicated in the Long Form Notice.

28. Any Settlement Class Member may object to the Settlement, Class Counsel’s application for a Fee Award, or the request for a Service Award for Plaintiff. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and Defendant’s Counsel, at the addresses indicated in the Long-Form Notice. For an objection to be considered by the Court, the objection must be postmarked no later than 20 days before the Final Approval Hearing, as set forth in the Notice. To be valid, an objection must include the following information:

- a. the name of the Action;
- b. the objector’s full name, address, and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling upon the objector’s prior such objections that were issued by the trial and appellate courts in each listed case;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or Fee Application;
- g. any and all agreements that relate to the objection or the process of objecting— whether written or oral—between objector or objector’s counsel and any other person or entity;

- h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- i. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- k. the objector's signature (an attorney's signature is not sufficient).

Further Papers in Support of Settlement and Attorney's Fee Application

29. Plaintiff and Class Counsel shall file their Motion for Final Approval of the Settlement, application for a Fee Award and request for a Service Award for Plaintiff, no later than 15 days before the Final Approval Hearing.

30. Plaintiffs and Class Counsel shall file their responses to timely filed objections to the Motion for Final Approval of the Settlement, the application for a Fee Award and/or request a Service Award for Plaintiff no later than 15 days before the Final Approval Hearing.

Effect of Failure to Approve Settlement

31. If the Settlement is not finally approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order and Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

(a) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purpose whatsoever, and shall not be admissible or discoverable in any other proceeding;

(b) Nothing in this Preliminary Approval Order is, or may be construed as, any admission or concession by or against Defendant or Plaintiff on any point of fact or law; and

(c) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement and/or any objections or interventions may be used as evidence.

Stay/Bar of Other Proceedings

32. All proceedings in the Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

37. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must take place before and after it:

<b><u>Event</u></b>	<b><u>Date</u></b>	<b><u>Timeline</u></b>
Deadline for Completion of Notice		30 days prior to Final Approval Hearing
Deadline for filing Motion for Final Approval of the Settlement and Class Counsel's Application for a Fee Award and for a Service Award		15 days before the Final Approval Hearing
Deadline for opting-out of the Settlement and for submission of Objections		20 days before the Final Approval Hearing
Deadline for Responses to Objections		15 days before the Final Approval Hearing
<b>Final Approval Hearing</b>		

Last day Class Claimants may submit a Claim Form		Fifteen days after the Final Approval Hearing

**DONE and ORDERED** at Miami-Dade County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
HON. \_\_\_\_\_  
CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record

**EXHIBIT B**



IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

TRAVIS MCCLINTON individually and on  
behalf of all others similarly situated

Plaintiff,

v.

CHOICE HEALTH INSURANCE, LLC,

Defendant.

Case No. 2024-010619-CA-01

**[PROPOSED] AGREED PRELIMINARY APPROVAL ORDER ON CLASS ACTION  
SETTLEMENT**

Plaintiff Travis McClinton, and Defendant Choice Health Insurance, LLC have agreed to settle this Action pursuant to the terms and conditions set forth in an executed Settlement Agreement and Release. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class will fully, finally, and forever resolve, discharge, and release the Released Claims.

The Settlement has been filed with the Court, and Plaintiff and Class Counsel have filed an Unopposed Motion for Preliminary Approval of Class Settlement. Upon considering the Motion, the Settlement and all exhibits thereto, the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to this Action; (2) the proposed Settlement Class meets the requirements of Florida Rule of Civil Procedure 1.220 and should be certified for settlement purposes only; (3) the persons and entities identified below should be appointed Class

Representative and Class Counsel; (4) the Settlement is the result of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel, and is not the result of collusion; (5) the Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice program and proposed forms of Notice satisfy Florida Rule of Civil Procedure 1.220 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel's application for an award of attorneys' fees and expenses and request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement, Class Counsel's application for a Fee Award, and/or the request for Service Award for Plaintiff; (7) good cause exists to schedule and conduct a Final Approval Hearing, to assist the Court in determining whether to grant Final Approval of the Settlement and enter the Final Approval Order and Judgment, and whether to grant Class Counsel's application for a Fee Award and request for a Service Award for Plaintiff; and (8) the other related matters pertinent to the Preliminary Approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. As used in this Preliminary Approval Order, unless otherwise noted, capitalized terms shall have the definitions and meanings accorded to them in the Settlement.
2. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2).
3. Venue is proper in this Court.

Provisional Class Certification and Appointment of Class Representative and Class Counsel

4. It is well established that “[a] class may be certified solely for purposes of

settlement [if] a settlement is reached before a litigated determination of the class certification issue.” *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (internal quotation marks omitted). In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class – *i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied – except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Id.*; *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

5. The Court finds, for settlement purposes, that the Florida Rule of Civil Procedure 1.220 factors are present and that certification of the proposed Settlement Class is appropriate under Rule 1.220. The Court therefore provisionally certifies the following Settlement Class.

**All persons in the United States, for the time period beginning July 28, 2018 through [date of entry of the Preliminary Approval Order] who were sent a prerecorded voice call by or on behalf of Choice Health regarding Defendant’s property, goods, and/or services where the lead data was provided by Zeeto to Digital Media Services, LLC.**

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff’s Counsel, their employees, and their immediate family.

6. Specifically, the Court finds, for settlement purposes and conditioned on final certification of the proposed class and on the entry of the Final Approval Order and Judgment, that the Settlement Class satisfies the following factors of Florida Rule of Civil Procedure 1.220:

(a) Numerosity: In the Action, approximately 46,573 individuals are members of the proposed Settlement Class. The proposed Settlement Class is thus so numerous that joinder

of all members is impracticable.

(b) Commonality: “[C]ommonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citation omitted). Here, the commonality requirement is satisfied. Multiple questions of law and fact centering on Defendant’s alleged class-wide practices are common to the Plaintiff and the Settlement Class, are alleged to have injured all members of the Settlement Class in the same way, and would generate common answers central to the viability of the claims were this case to proceed to trial.

(c) Typicality: The Plaintiff’s claims are typical of the Settlement Class because they concern the same alleged Defendant’s practices, arise from the same legal theories, and allege the same types of harm and entitlement to relief. Rule 23(a)(3) is therefore satisfied. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims “arise from the same event or pattern or practice and are based on the same legal theory”); *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they “possess the same interest and suffer the same injury as the class members”).

(d) Adequacy: Adequacy under Rule 1.220 relates to: (1) whether the proposed class representative has interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake the litigation at issue. *See Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 314 (S.D. Fla. 2001). Here, adequacy is satisfied because there are no conflicts of interest between the Plaintiff and the Settlement Class, and Plaintiff

has retained competent counsel to represent them and the Settlement Class. Class Counsel regularly engage in consumer class litigation, complex litigation, and other litigation similar to this Action, and have dedicated substantial resources to the prosecution of the Action and the First Action. Moreover, the Plaintiff and Class Counsel have vigorously and competently represented the Settlement Class in the Action and in the First Action. *See Lyons v. Georgia-Pacific Corp. Salaried Employees Rel. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000).

(e) Predominance and Superiority: Rule 1.220 is satisfied because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for the members of the Settlement Class in a single, coordinated proceeding is superior to thousands of individual lawsuits addressing the same legal and factual issues. With respect to predominance, Rule 23(b)(3) requires that “[c]ommon issues of fact and law . . . ha[ve] a direct impact on every class member’s effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010) (internal quotation marks omitted). Here, common questions present a significant aspect of the case and can be resolved for all members of the Settlement Class in a single adjudication. In a liability determination, those common issues would predominate over any issues that are unique to individual members of the Settlement Class. Moreover, each member of the Settlement Class has claims that arise from the same or similar alleged Defendant’s practices as well as the same legal theories.

7. The Court appoints Plaintiff Travis McClinton, as the Class Representative.

8. The Court appoints the following attorneys and firms as Class Counsel: Michael Eisenband of Eisenband Law, P.A. and Manuel S. Hiraldo of Hiraldo, P.A.

9. The Court recognizes that Defendant reserves all of its defenses and objections against and rights to oppose any request for class certification in the event that the proposed Settlement does not become Final for any reason. Defendant also reserves its defenses to the merits of the claims asserted in the event the Settlement does not become Final for any reason.

Preliminary Approval of the Settlement

10. At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the "range of reasonableness." 4 *Newberg on Class Actions* § 11.26. "Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason." *Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at \*2 (S.D. Fla. Jun. 15, 2010). Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation*, Third, § 30.42 (West 1995) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.") (internal quotation marks omitted).

11. The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds that the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel. The Court further finds that the Settlement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist

the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order and Judgment.

Approval of Class Notice and the Claims Process

12. The Court approves the form and content of the Class Notice, substantially in the forms attached to the Settlement, as well as the Claim Form attached thereto. The Court further finds that the Class Notice program described in the Settlement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's application for a Fee Award and the request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class Notice and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class Notice and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Florida Rule of Civil Procedure 1.220 and the Constitutional requirement of Due Process.

13. A.B. Data, Ltd. shall serve as the Administrator.

14. The Administrator shall implement the Class Notice program, as set forth below and in the Settlement, using the Class Notice substantially in the forms attached to the Settlement and approved by this Preliminary Approval Order. Notice shall be provided to the members of the Settlement Class pursuant to the Class Notice program, as specified in the Settlement and approved by this Preliminary Approval Order. The Class Notice program shall include, to the extent necessary, mail Notice and Long-Form Notice on the Settlement Website, as set forth in the Settlement and below.

*Notice*

15. The Administrator shall administer Notice as set forth in the Settlement. The Notice shall be completed no later than 30 days prior to the Final Approval Hearing.

*Settlement Website*

16. The Administrator shall establish a Settlement Website as a means for Settlement Class members to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Class Notice program. The Settlement Website shall include to the Settlement, the Long-Form Notice, the Preliminary Approval Order, and other such documents as Class Counsel and counsel for Defendant agree to include. These documents shall remain on the Settlement Website until at least 60 days following the Claim Deadline.

17. The Administrator is directed to perform all substantive responsibilities with respect to effectuating the Class Notice program, as set forth in the Settlement.

Final Approval Hearing, Opt-Outs, and Objections

18. **A Final Approval Hearing shall be held before this Court on \_\_\_\_\_, 2024 at \_\_\_\_\_.m through Zoom or other video conferencing equipment** to determine whether to grant Final Approval to the Settlement and to enter a Final Approval Order and Judgment, and whether Class Counsel's application for a Fee Award and request for a Service Award for the Class Representative should be granted.

19. Any person within the Settlement Class who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Settlement and in the Notices at any time during the Opt-Out Period. To be valid and timely, opt-out requests must be received by all those listed in the Long-Form Notice on or before the last day of the Opt-out Period, which is 20 days before the Final Approval



Hearing (“Opt-Out Deadline”), and mailed to the addresses indicated in the Long Form Notice.

20. Any Settlement Class Member may object to the Settlement, Class Counsel’s application for a Fee Award, or the request for a Service Award for Plaintiff. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and Defendant’s Counsel, at the addresses indicated in the Long-Form Notice. For an objection to be considered by the Court, the objection must be postmarked no later than 20 days before the Final Approval Hearing, as set forth in the Notice. To be valid, an objection must include the following information:

- (a) the name of the Action;
- (b) the objector’s full name, address, and telephone number;
- (c) an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- (d) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- (e) the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling upon the objector’s prior such objections that were issued by the trial and appellate courts in each listed case;
- (f) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or Fee Application;
- (g) any and all agreements that relate to the objection or the process of objecting—

- whether written or oral—between objector or objector’s counsel and any other person or entity;
- (h) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
  - (i) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
  - (j) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
  - (k) the objector’s signature (an attorney’s signature is not sufficient).

Further Papers in Support of Settlement and Attorney’s Fee Application

21. Plaintiff and Class Counsel shall file their Motion for Final Approval of the Settlement, application for a Fee Award and request for a Service Award for Plaintiff, no later than 15 days before the Final Approval Hearing.

22. Plaintiffs and Class Counsel shall file their responses to timely filed objections to the Motion for Final Approval of the Settlement, the application for a Fee Award and/or request a Service Award for Plaintiff no later than 15 days before the Final Approval Hearing.

Effect of Failure to Approve Settlement

23. If the Settlement is not finally approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order and Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- (a) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purpose whatsoever, and shall not be admissible or discoverable in

any other proceeding;

- (b) Nothing in this Preliminary Approval Order is, or may be construed as, any admission or concession by or against Defendant or Plaintiff on any point of fact or law; and
- (c) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement and/or any objections or interventions may be used as evidence.

Stay/Bar of Other Proceedings

24. All proceedings in the Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

25. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must take place before and after it:

<b><u>Event</u></b>	<b><u>Date</u></b>	<b><u>Timeline</u></b>
Deadline for Completion of Notice		30 days prior to Final Approval Hearing
Deadline for filing Motion for Final Approval of the Settlement and Class		15 days before the Final Approval Hearing

Counsel's Application for a Fee Award and for a Service Award		
Deadline for opting-out of the Settlement and for submission of Objections		20 days before the Final Approval Hearing
Deadline for Responses to Objections		15 days before the Final Approval Hearing
<b>Final Approval Hearing</b>	_____	
Last day Class Claimants may submit a Claim Form		Fifteen days after the Final Approval Hearing

**DONE and ORDERED** at Miami-Dade County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
HON. \_\_\_\_\_  
CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record