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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Amanda K. Horton, et al.,  
10 Plaintiff,  
11 vs.  
12 USAA Casualty Insurance Company, a  
13 foreign insurer, et al.,  
14 Defendant.

No. CV-06-2810-PHX-DGC

**ORDER CONDITIONALLY  
CERTIFYING SETTLEMENT CLASS,  
PRELIMINARILY APPROVING  
SETTLEMENT AND FORM OF  
NOTICE, DIRECTING THAT NOTICE  
BE SENT, AND SETTING FINAL  
APPROVAL HEARING**

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16 Plaintiffs Amanda K. Horton and Keith Alstrin, and Defendants United Services  
17 Automobile Association, USAA Casualty Insurance Company, USAA General Indemnity  
18 Company, USAA County Mutual Insurance Company, and Garrison Insurance Company  
19 (collectively "USAA"), have entered into an amended class action settlement agreement,  
20 dated November 13, 2009 (the "Amended Agreement"), to settle the above-captioned action  
21 ("Lawsuit"). They seek an order conditionally certifying the settlement class, preliminarily  
22 approving the settlement and form of notice, directing that notice be sent, and setting a final  
23 approval hearing (Dkt. #103) (the "motion for preliminary approval"). The Amended  
24 Agreement replaces the class action settlement agreement approved by this Court on July 3,  
25 2006 (the "Original Agreement"). The Amended Agreement sets forth the terms and  
26 conditions of the proposed settlement and dismissal with prejudice of this lawsuit.

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1 **I. Objectors' arguments.**

2 Third Party Rebecca Olson, on behalf of herself and Roman Olson (collectively “the  
3 Objectors”), has filed a response objecting to the motion for preliminary approval.  
4 Dkt. #104. Plaintiffs have replied to the objection. Dkt. #106. Oral argument was held on  
5 November 20, 2009. The Court finds the Objectors' arguments unpersuasive and will grant  
6 the motion for preliminary approval. Dkt. #103.

7 **A. Background.**

8 USAA is an insurance company that offers automobile insurance coverage. Dkt. #103  
9 at 3. Plaintiffs, insureds of USAA, brought a class action against USAA asserting claims for  
10 breach of contract and breach of the covenant of good faith and fair dealing, arguing that  
11 USAA failed to pay them the medical benefits required under their policies. *Id.* at 2-4. In  
12 short, Plaintiffs assert that USAA unfairly refused to pay claims in full when the charge for  
13 the medical procedure was higher than USAA's audit software indicated it should be. *Id.*  
14 To determine whether a charge was too high, USAA used a product called MDR, which  
15 indicated whether a given charge was higher than 80% of the charges for the same procedure  
16 in a given geographical area. *Id.* When MDR indicated that a charge was above the 80th  
17 percentile, USAA would not pay the charge in full. *Id.*

18 In May of 2008, the parties entered into the Original Agreement, which provided for  
19 monetary payments to qualified insureds and which allowed USAA to continue using MDR  
20 if it disclosed the use of MDR to its insureds. *Id.* at 6. The Court preliminarily approved the  
21 Original Agreement. Dkt. #47. In January of 2009, however, UnitedHealth Group, Inc. –  
22 the parent of the company that owns and maintains MDR – entered into a settlement  
23 agreement with the New York Attorney General's Office, agreed to stop maintaining the  
24 MDR product, and agreed to contribute money and resources to help establish a new database  
25 product that would be run by a not-for-profit organization. Dkt. #103 at 6-7. Because MDR  
26 would soon be eliminated, the Original Agreement was no longer viable. As a result, the  
27 parties requested that the Court continue the hearing for final approval of the Original  
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1 Agreement so they could investigate MDR and the issues surrounding UnitedHealth Group,  
2 Inc. *Id.* at 7. The Court granted a continuance and set a deadline of November 6, 2009 for  
3 the parties to file an amended settlement agreement.

4 During the continuance, the parties hired consultants to study MDR, but the results  
5 were inconclusive. *Id.* at 9. The parties filed the Amended Agreement on November 13,  
6 2009. The Amended Agreement allows USAA to continue using MDR until March 31,  
7 2010, and still provides for monetary compensation to qualified insureds. *Id.* at 9-10.

8 **B. Analysis.**

9 When considering whether to grant preliminary approval of a settlement agreement,  
10 the Court must evaluate the fairness, reasonableness, and adequacy of the proposed  
11 settlement. *In re Syncor ERISA Litigation*, 516 F.3d 1095, 1100 (9th Cir. 2008). The Court  
12 should consider whether the proposed settlement “appears to be the product of serious,  
13 informed, non-collusive negotiations, has no obvious-deficiency, does not improperly grant  
14 preferential treatment to class representatives or segments of the class and falls within the  
15 range of possible approval.” *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99,  
16 102 (S.D.N.Y. 1997); *see Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa.  
17 2007).

18 The Objectors argue that the Amended Agreement is unfair and should not be  
19 preliminarily approved. Specifically, the Objectors ask the Court to “exclude Washington  
20 state citizens who are USAA insureds and claimants” from the Amended Agreement or, in  
21 the alternative, to refuse to certify a national settlement class and to award the Objectors their  
22 attorneys’ fees and costs because “their actions have benefitted the class under a common  
23 fund or common benefit principle.” Dkt. #104 at 1-2, 4. For the reasons that follow, the  
24 Court finds the Objectors’ arguments unpersuasive. Dkt. #103.

25 **1. Objector’s Arguments.**

26 The Objectors argue that the Court should not grant preliminary approval of the  
27 Amended Agreement because it allows the continued use of MDR, a system that pays only  
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1 up to the 80th percentile, when other systems are available. Dkt. #104 at 9-10. They further  
2 argue that the Court should not include Washington in the national class because  
3 “Washington law requires ‘all reasonable’ medical expenses to be paid,” meaning “100  
4 percent, not 80 percent.” *Id.* at 10-11. The Original Agreement, they argue, stated that it was  
5 only enforceable in accordance with state law, meaning that Washington law would still be  
6 available to class members in Washington. *Id.* at 11. But since the Amended Agreement  
7 does not include this language, “there is no mechanism to protect Washington Consumers  
8 against Arizona laws which are unenforceable in Washington.” *Id.* at 12.

9  
10 At the preliminary approval stage, the Court must consider only whether the  
11 settlement agreement “appears to be the product of serious, informed, non-collusive  
12 negotiations,” is fair, and has no obvious deficiency. *In re NASDAQ*, 176 F.R.D. at 102. The  
13 Amended Agreement appears to be fair and the result of non-collusive negotiations between  
14 the parties, and the Court cannot conclude that it suffers from an obvious deficiency.

15 The Objectors argue that the Amended Agreement will impose Arizona’s insurance  
16 law on a nationwide class, including class members in Washington – the state where  
17 Objectors wish to pursue their own class action. But Objectors identify no provision of the  
18 Amended Agreement that would apply Arizona insurance law, and the Court has found none.  
19 The Amended Agreement establishes a negotiated amount qualified class members will  
20 receive, regardless of their State’s insurance law. This may provide a basis for arguing that  
21 the settlement is not reasonable, but it does not constitute the imposition of Arizona law on  
22 the national class.

23 The Objectors argue that Washington law requires the payment of all reasonable  
24 medical expenses, and then asserts that this “means 100 percent.” Dkt. #104 at 11. As  
25 quoted by Objectors, however, Washington law does not require the payment of 100% of all  
26 medical expenses. It requires that 100% of all “reasonable” medical expenses be paid. The  
27 Objectors have provided no evidence that a system which pays 100% of all expenses up to  
28 the 80th percentile of a geographical region’s accepted expenses does not pay 100% of all

1 reasonable expenses. Stated differently, the Objectors provide no evidence that expenses  
2 higher than 80% of the expenses charged in the same geographical region for the same  
3 service or procedure are reasonable charges for that service or procedure.

4 Citing an Illinois state case, Objectors argue that this Court lacks jurisdiction to certify  
5 a nationwide class. This argument is frivolous. A federal court applying Rule 23 of the  
6 Federal Rules of Civil Procedure may certify a nationwide class if the requirements for  
7 certification are satisfied.

8 Finally, the Objectors make a few class certification arguments suggesting that the  
9 commonality and predominance requirements of Rule 23 cannot be satisfied because each  
10 State has different insurance laws. As noted above, however, the Amended Agreement and  
11 the settlement it embodies do not purport to adjudicate any claim under any State's law.  
12 Rather, it sets forth a negotiated settlement that will apply to claimants in all States. If the  
13 Objectors think that is an unreasonable or unfair settlement, they can opt out of the settlement  
14 class or oppose final approval of the settlement.

15 **2. Request for attorneys' fees.**

16 The Objectors ask the Court to grant attorneys' fees and costs because, "[w]ithout  
17 Objector's efforts, there would have been no disclosure of the fraudulent data base and no  
18 trigger for the USAA study." Dkt. #104 at 16. Courts have the authority to award attorneys'  
19 fees to objectors who confer a benefit upon the class. *Wininger v. SI Management, L.P.*, 301  
20 F.3d 1115, 1120 (9th Cir. 2002).

21 The Objectors here fail to show that they substantially benefitted the class. Although  
22 they assert that without their participation the Original Agreement would not have been  
23 modified and there would have "been no disclosure of the fraudulent data base and no trigger  
24 for the USAA study," they provide no evidence. Dkt. #104 at 16-17. Given that the Original  
25 Agreement relied heavily on the continued use of the MDR database, the parties would have  
26 been forced to renegotiate the Original Agreement, regardless of the intervention of the  
27 Objectors, once the future of the MDR data base was called into doubt by the New York  
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1 settlement. Moreover, the parties themselves asked the Court to vacate the final settlement  
2 hearing and to allow them to conduct the USAA study, knowing that this was necessary  
3 given the Original Agreement’s heavy reliance on continued use of MDR. Dkt. #90.  
4 Moreover, the Amended Agreement creates no pool of funds from which to award attorneys’  
5 fees to the Objectors.<sup>1</sup>

6 **II. Rule 23.**

7 In determining whether to approve a proposed settlement class, the Court must  
8 consider whether the proposed class will meet the requirements of Rule 23(a) and 23(b) of  
9 the Federal Rules of Civil Procedure. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 619-  
10 20 (1997). Under Rule 23(a), a district court may certify a class only if the class is so  
11 numerous that joinder of all members is impracticable, there are questions of law or fact  
12 common to the class, the claims of the representative parties are typical of the claims of the  
13 class, and the representatives will fairly and adequately protect the interests of the class. Fed.  
14 R. Civ. P. 23(a)(1)-(4). Under Rule 23(b)(3), the district court must also find that questions  
15 of law or fact common to the class predominate over any questions affecting only individual  
16 class members, and that a class action is superior to other available methods for resolving the  
17 controversy. Fed. R. Civ. P. 23(b)(3). The party seeking class certification “bears the burden  
18 of showing that each of the four requirements of Rule 23(a) and at least one requirement of  
19 Rule 23(b) have been met.” *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1176 (9th Cir. 2007)  
20 (citation omitted).

21 **A. Rule 23(a).**

22 Plaintiffs have shown that the four requirements of Rule 23(a) – numerosity,  
23 commonality, typicality, and adequacy – are met. A proposed class generally satisfies the  
24 numerosity requirement if the class has 40 or more members. *See Garrison v. Asotin County*,

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26 <sup>1</sup> The attorneys’ fees to be paid to class counsel have been negotiated and agreed to by USAA  
27 as part of the Amended Agreement. The Court must still approve the settlement, but it  
28 contains no provision for USAA to pay the Objectors’ fees.

1 251 F.R.D. 566, 569 (E.D. Wash. 2008); *Wamboldt v. Safety-Kleen Sys., Inc.*, 2007 WL  
2 2409200, \*11 (N.D. Cal. Aug. 21, 2007); *see also Jordan v. L.A. County*, 669 F.2d 1311,  
3 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982). Plaintiffs allege, and  
4 USAA does not disagree, that the proposed class includes thousands of members from across  
5 the United States. *See Cohen v. Chicago Title Ins. Co.*, 242 F.R.D. 295, 299 (E.D. Pa. 2007)  
6 (courts “are permitted to ‘accept common sense assumptions’ about the numerosity  
7 requirement”) (citation omitted); *Garrison*, 251 F.R.D. at 569.

8 A proposed class satisfies the commonality requirement if there is at least one  
9 question of fact or law common to the class. Fed R. Civ. P. 23(a)(2); *see Chesner v. Stewart*  
10 *Title Guar. Co.*, 2008 WL 553773, \*5 (N.D. Ohio Jan. 23, 2008). This requirement is  
11 construed permissively. *Garrison*, 251 F.R.D. at 569. This case presents such a common  
12 question – whether USAA breached its insurance contracts by underpaying Plaintiffs’ claims  
13 as a result of using the MDR system. *See* Dkt. #43 at 8-9.

14 The Ninth Circuit has noted that “‘the commonality and typicality requirements of  
15 Rule 23(a) tend to merge’” because a plaintiff’s claim “is typical if it arises from the same  
16 event or practice or course of conduct that gives rise to the claims of the other class members  
17 and his or her claims are based on the same legal theory.” *Hunt v. Check Recovery Sys., Inc.*,  
18 241 F.R.D. 505, 510-11 (N.D. Cal. 2007) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957  
19 (9th Cir. 2003)). Here, the alleged facts underlying Plaintiffs’ claims, and the legal theories  
20 supporting them, are typical of the putative class members’ claims. Plaintiffs’ claims sound  
21 in contract and are based on allegations that, as a result of USAA’s use of MDR, USAA  
22 failed to pay the entire amounts required under the policies. Dkt. #43 at 6-8. These claims  
23 are the same as those of the putative class members and will differ only in the amount that  
24 USAA allegedly failed to pay.

25 The requirement of adequacy is satisfied if the representative parties will fairly and  
26 adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). The Court finds that  
27 Plaintiffs’ “interest in this litigation is coextensive with that of the unnamed class members,  
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1 and they are perfectly capable of vigorously prosecuting this action through their well-  
2 qualified counsel.” *Chesner*, 2008 WL 553773 at \*10. As a result, all four requirements of  
3 Rule 23(a) are satisfied.

4 **B. Rule 23(b)(3).**

5 A class may be maintained under Rule 23(b)(3) where questions of law or fact  
6 common to the class predominate over questions affecting only individual members, and a  
7 class action is superior to other available methods for resolving the controversy. Moreover,  
8 where a class is to be certified for settlement purposes, the Court “need not inquire whether  
9 the case, if tried, would present intractable management problems, for the proposal is that  
10 there be no trial.” *Amchem Products*, 521 U.S. at 620 (internal citations omitted).

11 Given the relatively small size of each class member’s potential claim and the  
12 common elements among the claims of class members, the Court finds that individual class  
13 members would not have a strong interest in controlling the prosecution of this litigation.  
14 For the same reasons, the Court finds that a class action is superior to other available methods  
15 for resolving the controversy.

16 Other than the Washington action, the Court is not aware of litigation by individual  
17 class members. Class members who are presently litigating this dispute in another forum  
18 will, however, have the opportunity to opt out of the class or object to final approval of the  
19 settlement. Moreover, it is desirable to concentrate the litigation in this forum given that the  
20 named Plaintiffs are residents of Arizona. Dkt. #43 at 1.

21 The Court finds, based on the facts currently before it, Plaintiffs have met the  
22 requirements of Rule 23(b)(3).

23 **III. Conclusion.**

24 Having reviewed the proposed settlement agreement and the supporting memorandum,  
25 and having considered the relevant factors and the Objectors’ arguments, *see Linney v.*  
26 *Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998), the Court finds that the  
27 proposed settlement appears to be fundamentally fair, adequate, and reasonable. The Court  
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1 further finds that the class warrants conditional certification pursuant to Rule 23 of the  
2 Federal Rules of Civil Procedure. The Court will grant the motion for preliminary approval  
3 and conditional class certification. Dkt. #103. Terms and phrases used in this Order shall  
4 have the same meaning ascribed to them in the Amended Agreement.

5 This Order supersedes and replaces this court's Order conditionally certifying the  
6 settlement class entered on July 3, 2008 (Dkt. #47).

7 **IT IS HEREBY ORDERED, ADJUDGED, DECREED AS FOLLOWS:**

8 I. Pursuant to Fed. R. Civ. P. 23(e)(1) and (2), the Court conditionally certifies for  
9 settlement purposes the following amended Settlement Class:

10 (1) All insureds under automobile policies with Medical Payments,  
11 Personal Injury Protection, First Party Benefit, Medical Expense Benefits,  
12 Automobile Death and Disability, or any other first-party medical coverage  
13 (collectively referred to as "Medpay") issued by USAA and its affiliates, who were  
14 injured in covered automobile accidents, and

15 (a) who submitted, or whose providers submitted, charges for health care  
16 services for payment under the Medpay coverage issued by USAA; and

17 (b) who had charges for the health care services submitted to a medical/fee  
18 review audit ("Audit") through Concentra Integrated Services, Inc., doing  
19 business as Auto Injury Solutions, or its parents, subsidiaries or affiliates  
20 ("AIS") during the period June 27, 2005 through March 31, 2010, which  
21 recommended payment of less than the full amount of those submitted charges;  
22 and

23 (c) USAA paid less than the full amount of those submitted health care  
24 charges based on:

25 I) AIS payment recommendations based, in whole or in part, on the  
26 Ingenix MDR® Payment System, or

27 ii) in whole or in part, the application by AIS of a PPO or PPN  
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- agreement determined by AIS to be applicable to the submitted charge,
- or
- iii) the resolution of the submitted charge by negotiation between USAA, or AIS on behalf of USAA, and the provider or the insured; and
- (d) USAA paid an amount less than the limits of coverage for Medpay benefits under the applicable auto insurance policy; and
- (2) Health care providers with valid written assignments of any of the claims identified above.

Excluded from this Settlement Class are the following persons:

- (1) Officers, directors, and employees of USAA and Class Counsel;
- (2) Members of the judiciary and staff of the United States District Court for the District of Arizona and their immediate families;
- (3) All persons who timely elect to opt out of or to exclude themselves from the Settlement Class in accordance with this Order; and
- (4) All persons who previously resolved all of their claims by settlement, release, judgment, or arbitration.

The Court expressly reserves the right to determine, should the occasion arise, whether the above-captioned Lawsuit may continue to be certified as a class action for purposes other than settlement, and USAA retains all rights to assert that the Lawsuit may not be certified as a class action except for purposes of this settlement.

II. The Court hereby appoints the following attorneys to act as Class Counsel representing the amended Settlement Class:

Charles J. Surrano III  
John N. Wilborn  
Surrano Law Offices  
3200 North Central Avenue, Suite 2500

1 Phoenix, Arizona 85012

2 Telephone: (602) 264-1077

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4 III. The Court appoints as Settlement Administrator:

5 Rust Consulting, Inc.

6 625 Marquette Avenue, Suite 880

7 Minneapolis, MN 55402-2469

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9 IV. The Court preliminarily approves the proposed amended settlement as  
10 sufficiently fair, reasonable, and adequate to allow the dissemination of notice of the  
11 proposed settlement to the members of the Settlement Class. This determination permitting  
12 notice to the Settlement Class is not a final finding, but a determination that there is sufficient  
13 cause to submit the Amended Agreement and proposed settlement to the Settlement Class  
14 members and to hold a Final Approval Hearing to consider the fairness, reasonableness, and  
15 adequacy of the proposed amended settlement.

16 V. The Court makes the following orders regarding Notice to Settlement Class  
17 members:

18 A. The Court approves the following forms:

19 1. The Notice of Proposed Amended Class Action Settlement and  
20 Release of Claims (the "Mailed Notice") not materially different from  
21 Exhibit 1.

22 2. The Notice of Proposed Amended Class Action Settlement and  
23 Release of Claims to be sent to health care providers upon request (the  
24 "Provider Notice"), not materially different from Exhibit 2.

25 3. The Summary Notice of Proposed Amended Class Action  
26 Settlement ("Published Notice") not materially different from Exhibit  
27 3.

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1           B.     The Court directs that by April 30, 2010 USAA shall deliver to Class  
2 Counsel an affidavit providing what USAA believes, after a reasonable and good-faith  
3 search, to be a listing of USAA's non-decedent insureds whose names and last known  
4 addresses are reasonably and reliably ascertainable from computer or electronic databases  
5 maintained by AIS of USAA's insureds who may fall within the definition of the amended  
6 Settlement Class.

7           C.     The Court further directs the Settlement Administrator to mail the  
8 Mailed Notice on or before May 30, 2010 unless the date is extended by Order of this Court,  
9 to all persons whose names and last known addresses appear on the listing of USAA's  
10 insureds provided pursuant to Paragraph V(B) above.

11           D.     The Court further directs the Settlement Administrator promptly to re-  
12 mail any notices returned by the Postal Service with forwarding addresses, if any, that are  
13 obtained by the Settlement Administrator after a reasonable search.

14           E.     The Court directs that the Published Notice shall be published on or  
15 before the Mailed Notice Date (as defined in the Amended Agreement) in the publications  
16 listed in Exhibit 4.

17           F.     The Court directs the Settlement Administrator to maintain the Internet  
18 website [www.medpaysettlement.com](http://www.medpaysettlement.com) for thirty (30) days after the Effective Date (as defined  
19 in the Amended Agreement) that shall include, at a minimum, downloadable copies of the  
20 Amended Agreement (including exhibits), the Mailed Notice, the Health Care Provider  
21 Notice, and the Published Notice (collectively referred to as the "Notices"), and the Insured  
22 and Health Care Provider Claim Forms for the Amended Agreement.

23           G.     The Court finds that dissemination of the notices in the manner set forth  
24 herein and in the Amended Agreement meets the requirements of Due Process. The Court  
25 further finds that the notice is reasonable, and constitutes due, adequate, and sufficient notice  
26 to all persons entitled to receive notice; is the best practicable notice; and is reasonably  
27 calculated, under the circumstances, to apprise members of the amended Settlement Class  
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1 of the pendency of the Lawsuit and of their right to object or to exclude themselves from the  
2 proposed settlement in the Amended Agreement.

3 H. The Court orders the Settlement Administrator to file proof of mailing  
4 of the Mailed Notice and publication of the Published Notice at or before the Final Approval  
5 Hearing.

6 VI. The Court makes the following orders regarding the claim forms for the  
7 Settlement Class members.

8 A. The Court approves the following forms:

9 1. The Insured Claim Form not materially different from the form  
10 of Exhibit 5.

11 2. The Health Care Provider Claim Form not materially different  
12 from the form of Exhibit 6.

13 B. The Court directs that the Insured Claim Form shall be distributed with  
14 the Mailed Notice.

15 C. The Court further orders that any Claim Form postmarked more than  
16 thirty (30) days after the Final Approval Hearing shall be untimely and invalid.

17 VII. Any member of the Settlement Class (including those members who previously  
18 requested exclusion from the settlement in the Original Agreement) who wishes to be  
19 excluded from the Settlement Class must comply with the terms set forth in Paragraph 4b of  
20 the Notices and submit an appropriate and timely request for exclusion received by the  
21 Settlement Administrator and postmarked no later than June 29, 2010. Any Settlement Class  
22 member who complies with the terms set forth in Paragraph 4b of the Notices and who timely  
23 requests exclusion from the Settlement Class in accordance with the Notices shall not be  
24 bound by any orders or judgments entered in this action and shall not be entitled to receive  
25 any benefits provided by the settlement in the event it is finally approved by the Court.

26 VIII. Any member of the Settlement Class (including those members who previously  
27 requested exclusion from the settlement in the Original Agreement) who does not timely  
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1 request exclusion as set forth in the Notices shall be bound by all proceedings, orders, and  
2 judgments in the Lawsuit, even if such member of the Settlement Class has previously  
3 initiated or subsequently initiates individual litigation or other proceedings encompassed by  
4 the Released Claims, as defined in Paragraphs 41 through 43 of the Amended Agreement.  
5 Members of the Settlement Class who do not timely request exclusion as set forth in the  
6 Notices are also preliminarily enjoined: (I) from filing, commencing, prosecuting,  
7 intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit  
8 or administrative, regulatory, arbitration, or other proceeding against USAA in any  
9 jurisdiction based on, relating to, or arising out of the claims and causes of action, or the facts  
10 and circumstances, in the Lawsuit and/or the Released Claims; (ii) from filing, commencing,  
11 or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding against  
12 USAA as a class action on behalf of any members of the Settlement Class who have not  
13 timely excluded themselves (including by seeking to amend a pending complaint to include  
14 class allegations or seeking class certification in a pending action), based on, relating to, or  
15 arising out of the claims and causes of action, or the facts and circumstances, in the Lawsuit  
16 and/or the Released Claims; and (iii) from attempting to effect an opt-out of a class of  
17 individuals in any lawsuit or administrative, regulatory, arbitration, or, other proceeding  
18 against USAA based on, relating to, or arising out of the claims and causes of action, or the  
19 facts and circumstances, in the Lawsuit and/or the Released Claims.

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21 IX. Any member of the Settlement Class who does not timely request exclusion  
22 as set forth in the Notices, and who wishes to object to the fairness, reasonableness, or  
23 adequacy of the proposed amended settlement or to the Attorney Fee Award, (including those  
24 members who previously filed an objection to the settlement in the Original Agreement or  
25 to the request for an Attorneys' Fee Award pursuant to the Original Agreement) must submit  
26 an objection no later than June 29, 2010 that complies with the requirements for objections  
27 as set forth in Paragraph 4c of the Notices. Failure to adhere to these requirements bars the  
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1 objection. The Parties may file responses to any objections no later than seven (7) days prior  
2 to the Final Approval Hearing.

3 X. Any member of the Settlement Class who timely serves a written objection may  
4 appear at the Final Approval Hearing, either in person or through an attorney if a Notice of  
5 Intention to Appear, as set forth in Paragraph 4c of the Notices, is timely filed with the Clerk  
6 of the Court. Failure to adhere to these requirements will bar the Settlement Class members  
7 from being heard at the Final Approval Hearing.

8 XI. USAA shall maintain the post office box in the name of the Settlement  
9 Administrator to be used for receiving requests for exclusion, objections, notices of intention  
10 to appear, and any other communications from the Settlement Class members. Only the  
11 Settlement Administrator, Class Counsel, USAA, the Court, the Clerk of the Court, and their  
12 designated agents shall have access to this post office box, except as otherwise provided in  
13 the Amended Agreement.

14 XII. The Settlement Administrator shall, within five (5) business days of receipt,  
15 furnish Class Counsel, counsel for USAA, and any counsel for Named Plaintiffs with copies  
16 of any and all written objections, requests for exclusion, notices of intention to appear, or  
17 other communications from Settlement Class members that come into its possession, except  
18 as otherwise provided in the Amended Agreement.

19 XIII. Any petition for award of attorneys' fees or reimbursement of litigation costs  
20 and expenses, as described in Paragraph 37 of the Amended Agreement, shall be filed no  
21 later than April 30, 2010. Any response or objection to that petition shall be filed no later  
22 than June 29, 2010.

23 XIV. A Final Approval hearing shall be held on **August 25, 2010 at 3:30 p.m.** for  
24 the purpose of determining (a) whether the proposed settlement is fair, reasonable, and  
25 adequate and should be finally approved by the Court; (b) whether to issue a final judgment  
26 without material alteration from the form in Exhibit 12 to the Amended Agreement; and (c)  
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1 ruling on any petition for award and approval of attorneys' fees or reimbursement of  
2 litigation costs and expenses.

3           XV. The Court reserves the right to adjourn or to continue the Final Approval  
4 Hearing, or any further adjournment or continuance thereof, without further notice other than  
5 announcement at the Final Approval Hearing or at any adjournment or continuance thereof;  
6 and to approve the settlement with modifications, if any, consented to by Class Counsel and  
7 USAA without further notice.

8           XVI. All pretrial proceedings and deadlines in this lawsuit, including the deadlines  
9 in the Amended Case Management Order, are stayed and suspended until further order of this  
10 Court.

11           DATED this 16th day of December, 2009.

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16           David G. Campbell  
17           United States District Judge  
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