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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHARLES K. SMITH, individually and on behalf of all others similarly situated,)	
)	
)	
<i>Plaintiff,</i>)	Case No. 1:24-cv-7908
)	
v.)	Hon. Edmond E. Chang
)	
U.G.N., Inc.,)	
)	
<i>Defendant.</i>)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Class Action Settlement Agreement and Release of Claims (the “Agreement”) is entered into by and between Charles K. Smith (the “Named Plaintiff”), individually and on behalf of the proposed settlement class (as defined herein), and Defendant U.G.N., Inc. (“Defendant”) (together the “Parties” or, individually, a “Party”).

RECITALS

Whereas, on August 30, 2024, Named Plaintiff filed a Class Action Complaint (the “Complaint”) in the United States District Court for the Northern District of Illinois, in the case captioned *Smith v. U.G.N., Inc.*, Case No. 1:24-cv-7908, asserting, *inter alia*, claims individually and on behalf of a putative class, against Defendant for alleged violations of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.*, applied to medical plans by the Affordable Care Act, 124 Stat. 119, Public Law 111-148, and implementing regulations (the “Litigation”);

Whereas, Defendant denies all of the allegations made by Named Plaintiff in the Complaint and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Complaint;

Whereas, the Parties engaged in informal discovery efforts and arms-length negotiations, resulting in the Parties reaching the resolution described in this Agreement;

Whereas, the Litigation is still pending;

Whereas, to avoid the expense, risk, inconvenience and uncertainty of litigation, the Parties have agreed to make a complete settlement of the claims asserted in the Litigation as set forth herein;

Now, therefore, in consideration of the foregoing, the mutual promises, covenants, representations, and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to a full and complete settlement of the Litigation on the following terms and conditions.

I. Definitions

Unless otherwise defined here, the defined terms set forth in this Agreement have the meanings ascribed to them below.

1.1 “Administrative Costs” shall mean any costs or expenses incurred by any person in connection with the Settlement, including but not limited to: (a) fees or costs from the current or any former service provider; (b) the costs and expenses associated with the production and dissemination of the Notice; (c) all reasonable costs and expenses incurred by the Settlement Administrator in administering and effectuating this Settlement, which costs and expenses are necessitated by performance and implementation of this Agreement and any Court orders relating thereto; (d) all reasonable fees charged by the Settlement Administrator; and (e) all Independent Fiduciary fees.

1.2 “Attorneys’ Fees and Expenses” shall mean the reasonable attorneys’ fees, costs (including expert costs) and expenses of Class Counsel for their past, present, and future work, efforts, and expenditures in connection with this Litigation and resulting Settlement.

1.3 “Class Counsel” shall mean Hassler Kondras Miller LLP and Walcheske & Luzi, LLC.

1.4 “Class Period” shall mean the period between August 31, 2018 and December 31, 2024.

1.5 “Class Representative Service Award” shall have the meaning ascribed to it in Section 4.1 below.

1.6 “Court” shall mean the United States District Court for the Northern District of Illinois.

1.7 “Defendant Released Parties” shall mean U.G.N., Inc. and the U.G.N., Inc. Employee Health Care Plan and all of their respective past and present predecessors, successors, parents, subsidiaries, affiliates, members, employees, officers, directors, trustees, auditors, consultants, attorneys, insurers, recordkeepers, benefit plans, and benefit plan representatives, service providers, and fiduciaries.

1.8 “Defendant” shall mean U.G.N., Inc.

1.9 “Defendant’s Counsel” shall mean Michael Best & Friedrich LLP.

1.10 “Distributable Settlement Amount” shall have the meaning ascribed to it in Section 3.2(a) below.

1.11 “Effective Date” shall mean: (a) the date upon which the applicable period to appeal the Final Approval Order has expired, if no appeal on any issue is taken during such period; or (b) if, during the aforesaid appeals period, an appeal is taken in this case, the date upon which all appeals, including petitions for review, rehearing, or certiorari, and any proceedings resulting therefrom, have been finally disposed of, or the date of the expiration of the time to initiate such petitions or proceedings. The Parties shall agree by written communication when the Effective Date has occurred; and any dispute shall be resolved by the Court. It is expressly agreed upon by the Parties and their counsel that no Party intends that this provision or any other part of this Agreement establishes or acknowledges that anyone is entitled to or has the right to appeal from any such orders which may be entered in connection herewith.

1.12 “Escrow Account” shall mean an account at an established financial institution, selected by Class Counsel with Defendant’s consent (which consent shall not be unreasonably withheld) that is established for the deposit of certain amounts relating to the Settlement.

1.13 “Escrow Agent” shall mean Analytics Consulting, LLC (“Analytics”), or whatever person or other entity is selected by Class Counsel with Defendant’s consent (which consent shall not be unreasonably withheld) to act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Agreement.

1.14 “Escrow Taxes” shall have the meaning ascribed to it in Section 3.1(i).

1.15 “Escrow Tax-Related Costs” shall have the meaning ascribed to it in Section 3.1(i).

1.16 “Fee and Expense Application” shall mean the motion, to be filed by Class Counsel, seeking approval of an award of Attorneys’ Fees and Expenses, Administrative Costs, and the Class Representative Service Award.

1.17 “Final Approval” shall mean the entry of the Final Approval Order.

1.18 “Final Approval Hearing” shall mean the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Agreement should receive Final Approval by the Court. The Parties will request that the Final Approval Hearing be scheduled for a date no earlier than one hundred twenty (120) days after the entry of the Preliminary Approval Order.

1.19 “Final Approval Order” shall mean a final order entered by the Court after the Final Approval Hearing, substantially the same in all material respects to the order attached hereto as Exhibit A, granting its approval of the Settlement, provided that the Parties may agree to additions or modifications to the form of the Final Approval Order as they agree are appropriate at the time that it is submitted to the Court for final approval of the Settlement.

1.20 “Independent Fiduciary” means the person or entity selected by Defendant to serve as an independent fiduciary to the Plan with respect to the Agreement as defined in Section 2.4.

1.21 “Notice” shall mean the notice, identical in all material respects to that attached

hereto as Exhibit B, to be delivered to Settlement Class Members pursuant to Section 2.8 and made available on the Settlement Website.

1.22 “Parties” shall mean Named Plaintiff, the Settlement Class, and Defendant.

1.23 “Named Plaintiff” shall mean Charles K. Smith individually and as a representative of the Settlement Class.

1.24 “Plan” shall mean the U.G.N., Inc. Employee Health Care Plan.

1.25 “Plan of Allocation” shall mean the formula for allocation of the Distributable Settlement Amount as approved by the Court, which formula shall govern the distribution of the Distributable Settlement Amount and is set forth in Section 3.2(c).

1.26 “Preliminary Approval Order” shall mean an order entered by the Court preliminarily approving the Settlement, that is substantially the same in all material respects to that attached hereto as Exhibit C.

1.27 “Released Claims” shall mean any and all actual or potential claims (including any Unknown Claims), actions, causes of action, demands, rights, obligations, damages, and liabilities (including claims for attorneys’ fees, expenses, or costs), whether arising under federal, state, or local law, whether by statute, contract, tort, equity, or otherwise, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, matured or unmatured, potential or contingent, for monetary, injunctive, equitable, and any other relief (collectively “Claims”) against the Defendant Released Parties through the date the Court enters the Final Approval Order that were asserted in the Litigation, or that arise out of, relate to, are based on, or have any connection with any of the allegations, acts, omissions, representations, misrepresentations, facts, events, matters, transactions, occurrences or the conduct alleged or asserted in the Litigation or could have been alleged or asserted in the Litigation, whether or not pleaded in the Complaint, or that arise out of, relate to, are based on, or have any connection with tobacco or nicotine surcharges.

1.28 “Settlement” shall mean the compromise and settlement embodied in this Agreement.

1.29 “Settlement Administrator” shall mean Analytics Consulting LLC (“Analytics”).

1.30 “Settlement Amount” shall have the meaning ascribed to it in Section 3.1(a).

1.31 “Settlement Class” shall mean all participants and beneficiaries of the Plan who incurred tobacco or nicotine surcharges in relation to the Plan from August 31, 2018 through August 30, 2024.

1.32 “Settlement Class Member” shall mean a member of the Settlement Class, including such member’s successors-in-interest.

1.33 “Settlement Fund” shall have the meaning set forth in Section 3.1(h).

1.34 “Settlement Website” shall have the meaning ascribed to it in Section 2.11.

1.35 “Unknown Claims” shall mean any Claims that Named Plaintiff, any Settlement Class Member, and/or any of the other Parties do not know or suspect to exist in their favor at the time of the release of the Defendant Released Parties.

II. Procedures in Connection with Settlement

The procedures set forth in this Section II shall apply in connection with this Settlement.

2.1 ***Motion for Preliminary Approval and Certification of Settlement Class.*** On or before January 27, 2025, Named Plaintiff shall file a motion with the Court (to which Defendant will not object) seeking: (a) preliminary approval of the Settlement, including entry of an order identical in all material respects to the form of the Preliminary Approval Order; and (b) for purposes of this Settlement only, preliminary certification of the Settlement Class.

2.2 ***Basis for Certification of Settlement Class.*** Named Plaintiff will seek certification of the Settlement Class under Federal Rule of Civil Procedure 23(b)(1).

2.3 ***Certification for Settlement Purposes Only.*** Defendant shall not take any position with respect to certification of the Settlement Class only for the limited purpose of effectuating this Agreement. The certification of the Settlement Class shall be binding only with respect to the Settlement of the Litigation.

2.4 ***Approval of Settlement by Independent Fiduciary.*** The Independent Fiduciary selected by Defendant on behalf of the Plan shall have the responsibilities listed below on behalf of the Plan. The Independent Fiduciary Fees shall be paid from the Settlement Amount and such payment shall be considered an Administrative Cost. The Parties agree as follows as to the Independent Fiduciary:

a. The Independent Fiduciary shall determine whether to approve and authorize the settlement of Released Claims on behalf of the Plan;

b. The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003 by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in making its determination, for the purpose of Defendant’s reliance on PTE 2003-39;

c. The Independent Fiduciary shall notify Class Counsel and Defendant’s Counsel of its determination in writing and in accordance with PTE 2003-39, which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing;

d. Defendant, Defendant’s Counsel, Named Plaintiff, and Class Counsel shall cooperate with the Independent Fiduciary and provide it with sufficient information so that it can review and evaluate the Settlement; and

e. Should the Independent Fiduciary fail to approve and authorize the Settlement on behalf of the Plan, the Agreement shall be terminable at the election of either Named Plaintiff or Defendant, pursuant to Section 9.1 below.

2.5 ***Final Approval Hearing.*** On or after the date set by the Court for the final hearing pursuant to Federal Rule of Civil Procedure 23(e), the Court will determine: (a) whether to enter a judgment finally approving the Settlement; and (b) what legal fees, compensation, and expenses should be awarded to Class Counsel and to Named Plaintiff as contemplated by Sections 4.1 and 4.2 of this Agreement.

2.6 ***Motion for Attorney's Fees and Costs.*** No later than twenty-eight (28) days before the Final Approval Hearing, Class Counsel shall submit to the Court a Fee and Expense Application.

2.7 ***Motion for Final Approval of Settlement.*** No later than fourteen (14) days before the Final Approval Hearing, Class Counsel shall submit to the Court a motion for entry of the Final Approval Order (Exhibit A) in the form approved by Class Counsel and Defendant, which shall request approval by the Court of the terms of this Agreement and entry of the Final Approval Order in accordance with this Agreement.

2.8 ***Class Notice.*** Within thirty (30) days of the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Notice to the Settlement Class Members. The Notice will be sent to the last known electronic mail address (if available) or the last known mailing address of each of the Settlement Class Members, which email and mailing addresses that are reasonably obtainable will be supplied in a timely fashion by Defendant and updated through the National Change of Address database by the Settlement Administrator before mailing (with all returned Notices skip-traced if no forwarding information is provided and promptly re-emailed or re-mailed).

2.9 ***Payments to Class Members.*** The Settlement Administrator will make payments from the Distributable Settlement Amount to each Settlement Class Member.

2.10 ***Class Action Fairness Notice.*** The Settlement Administrator, on behalf of Defendant shall, within ten (10) days of the filing of this Agreement, comply with the notice requirements of 28 U.S.C. § 1715, and Defendant shall file a notice confirming compliance prior to the Final Approval Hearing. Defendant will provide a template letter to the Settlement Administrator for its use.

2.11 ***Settlement Website.*** Within ten (10) days of the entry of the Preliminary Approval Order and no later than the first date that the mailing of the Notice occurs, the Settlement Administrator shall establish a settlement website (the "Settlement Website") with a URL that is mutually agreeable to the Parties, which shall contain the Notice, this Agreement and its exhibits, the Preliminary Approval Order, any other orders related to the Settlement, the Complaint (Dkt. 1), and any other documents or information agreed upon by the Parties. Class Counsel shall be responsible for causing the Settlement Administrator to post on the Settlement Website the Fee and Expense Application filed by Class Counsel, as soon as possible after its filing. The Notice, attached hereto as Exhibit B, will identify the web address of the Settlement

Website once it is established.

2.12 ***Settlement Telephone Line.*** Within ten (10) days of the entry of the Preliminary Approval Order, and no later than the first date of mailing of the Notice, the Settlement Administrator shall establish a toll-free telephone number (the “Settlement Information Line”) from which Settlement Class Members can obtain information about the Settlement. The Settlement Information Line shall employ an interactive voice response system to answer calls and shall provide callers the option of speaking with a live operator, if necessary.

2.13 ***No Rights of Exclusion.*** Settlement Class Members shall not be permitted to exclude themselves from the Settlement Class, which shall be certified under Federal Rule of Civil Procedure 23(b)(1) as a non-opt-out class.

2.14 ***Right to Object.*** Settlement Class Members shall be permitted to object to the Settlement. Requirements for filing an objection shall be as set forth in the Preliminary Approval Order and in the Notice.

III. Payments to the Settlement Class

3.1 *The Settlement Amount*

(a) Defendant will cause Two Hundred Ninety-Nine Thousand Dollars (\$299,000) (the “Settlement Amount”) to be paid to the Escrow Account via the First and Second Payments referred to below. None of the other Defendant Released Parties shall have any obligation to contribute financially to the Settlement.

(b) Defendant shall cause \$20,000 of the Settlement Amount (the “First Payment”) to be deposited into the Escrow Account within sixty (60) days of the entry of the Preliminary Approval Order to fund any Administrative Costs that arise before the Effective Date. Defendant shall cause the remaining \$279,000 of the Settlement Amount (the “Second Payment”) to be deposited into the Escrow Account within twenty-one (21) days after the Effective Date.

(c) The Settlement Amount shall be used solely for the purposes set forth in Sections 3.1 through 4.2 below.

(d) Subject to Court approval and oversight, the Escrow Account will be controlled by the Settlement Administrator and the Escrow Agent. Neither Defendant, the Plan, nor Named Plaintiff shall have any liability whatsoever for the acts or omissions of the Settlement Administrator and Escrow Agent. The Settlement Administrator and Escrow Agent shall not disburse the Settlement Amount or any portion thereof except as provided for in this Agreement, by an order of the Court, or with prior written agreement of Class Counsel and Defendant’s Counsel.

(e) The Settlement Administrator is authorized to execute transactions on behalf of the Settlement Class Members that are consistent with the terms of this Agreement and with orders of the Court.

(f) All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Agreement.

(g) The Settlement Administrator shall, to the extent necessary and practicable, invest the Settlement Amount in instruments backed by the full faith and credit of the United States government or fully insured by the United States government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Neither the Settlement Amount nor any portion thereof shall be commingled with any other monies in any instruments. Any cash portion of the Settlement Amount not invested in instruments of the type described in the first sentence of this Subsection shall be maintained by the Settlement Administrator, and not commingled with any other monies, in a bank account that shall promptly be identified to the Parties.

(h) The Escrow Account is intended to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.4688-1 (the “Settlement Fund”). The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Escrow Taxes owed with respect to the Escrow Account. Defendant agrees to provide the Settlement Administrator with the statement described in Treasury Regulation § 1.468B-3(e). Neither Defendant, Defendant’s Counsel, Named Plaintiff, nor Class Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.

(i) All (a) taxes on the income of the Escrow Account (“Escrow Taxes”) and (b) expenses and costs incurred in connection with the taxation of the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) (“Escrow Tax-Related Costs”) shall be timely paid by the Settlement Administrator out of the Escrow Account.

(j) The Settlement Amount, together with any interest accrued thereon, will be used to pay the following amounts associated with the Settlement:

- (1) Compensation to Settlement Class Members determined in accordance with Section 3 plus taxes in accordance with Section 5;
- (2) Any Class Representative Service Award approved by the Court;
- (3) All Attorneys’ Fees and Expenses approved by the Court;
- (4) Administrative Costs; and
- (5) Escrow Taxes and Escrow Tax-Related Costs.

3.2 *Distribution to Settlement Class Members*

(a) The money remaining from the Settlement Amount, including any accrued interest thereon, after the payment of any approved Class Representative Service Award, approved Attorneys' Fees and Expenses, Administrative Costs, and Escrow Taxes and Escrow Tax-Related Costs (or any estimate of those amounts to be incurred in the future), shall constitute the funds available for distribution to Settlement Class Members (the "Distributable Settlement Amount").

(b) The Distributable Settlement Amount shall be divided among Settlement Class Members in accordance with the Plan of Allocation or such other allocation plan as may be ordered by the Court.

(c) The Parties agree to the following Plan of Allocation:

- (1) To be eligible for a distribution from the Distributable Settlement Amount, a person must be a Settlement Class Member who was charged a tobacco surcharge;
- (2) The Settlement Administrator shall obtain from Class Counsel or Defendant's Counsel the information necessary to identify, for each Settlement Class Member, the tobacco surcharge incurred during the Class period;
- (3) The Settlement Administrator shall determine the total Settlement payment available to each Settlement Class Member by calculating each such individual's share of the Distributable Settlement Amount calculated on a proportional basis;
- (4) The Settlement Administrator shall complete all payment calculations for all Settlement Class Members within thirty (30) calendar days after Final Approval or receipt of information from the Class Counsel or Defendant's counsel, whichever occurs later;
- (5) The total amount of all checks to be written by the Settlement Administrator to Settlement Class Members may not exceed the Distributable Settlement Amount; however, in the event that the Settlement Administrator determines that the Plan of Allocation would otherwise require payments exceeding the Distributable Settlement Amount, the Settlement Administrator is authorized to make such changes as are necessary to the Plan of Allocation such that said totals do not exceed the Distributable Settlement Amount;
- (6) The Defendant Released Parties shall not have any responsibility for or liability whatsoever with respect to the Plan of Allocation, including, but not limited to, the determination of the Plan of Allocation or the reasonableness of the Plan of Allocation;

- (7) If Settlement Class Members who receive a check do not timely cash the check, unclaimed amounts will revert to the Plan for Plan administrative expenses; and
- (8) Notwithstanding any other provision of this Agreement, any revisions by the Court or any appellate court or otherwise relating solely to the Plan of Allocation shall not operate to terminate or cancel or otherwise affect this Agreement; provided that any such revisions do not require Defendant, Defendant's insurers, or the Plan's current or former service providers to incur additional expenses and costs.

(d) The Settlement Administrator shall disburse the Distributable Settlement Amount via checks mailed to each Settlement Class Member as promptly as practicable after the Effective Date, and, in any event, shall use reasonable best efforts to disburse the Distributable Settlement Amount no later than sixty (60) days after the Effective Date.

3.3 Treatment of Undistributed Funds and Uncashed Checks. Settlement Class Members that are paid by check must cash those checks within sixty (60) days of issuance. If they do not do so, the checks will be void and will not be replaced, so that such Settlement Class Members will cease to be entitled to a payment from the Distributable Settlement Amount pursuant to the Plan of Allocation. This sixty-day limitation shall be printed on the face of each check. Any funds associated with checks that are not cashed within sixty (60) days of issuance, and any funds that cannot be distributed to Settlement Class Members for any other reason, together with any interest earned on them, and after the payment of any applicable taxes by the Escrow Agent, shall revert to the Plan for the payment of Plan administrative expenses. The voidance of checks shall have no effect on the Settlement Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

3.4 Administrative Costs. Administrative Costs shall be paid from the Settlement Amount, subject to Court approval. Any Administrative Costs not approved by the Court shall be borne by Class Counsel.

3.5 Entire Monetary Obligation. In no event, and notwithstanding anything else in this Agreement, shall Defendant or its insurers be required to pay any amounts other than the Settlement Amount. It is understood and agreed upon that Defendant's and its insurers' monetary obligations under this Agreement will be fully discharged by paying the amount specified in Section 3.1 above, and that Defendant and its insurers shall have no other monetary obligations or obligations to make any other payments under this Agreement or otherwise.

IV. Other Payments

4.1 Service Award

(a) Named Plaintiff intends to seek a Class Representative Service Award not to exceed the amount of Five Thousand Dollars (\$5,000) in recognition of his service to the Class, as well as consideration for his general release of claims against the Defendant Released Parties, which shall be subject to Court approval (the "Class Representative

Service Award”). The Settlement Administrator shall use reasonable best efforts to pay any Class Representative Service Award approved by the Court within fourteen (14) days of the Second Payment, as defined in Section 3.1(b) above. The Class Representative Service Award shall be paid by the Settlement Administrator solely out of the Settlement Amount and shall be deducted (to the extent approved by the Court) from the Settlement Amount on or after the Effective Date and prior to the distribution to the Settlement Class Members. Named Plaintiff shall also be entitled to a distribution under this Settlement pursuant to Section 3.1(c) as a Settlement Class Member, to the extent of proof he incurred any tobacco surcharges in the Class Period.

(b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of any application for the Class Representative Service Award shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the Class Representative Service Award, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material hereto.

(c) Defendant and its insurers shall have no obligations whatsoever with respect to any Class Representative Service Awards, which shall be payable solely out of the Settlement Amount.

(d) Defendant shall not take any position on the propriety of, or oppose, such award, so long as it does not exceed the amount set forth in Section 4.1(a) above.

4.2 Attorneys’ Fees and Expenses

(a) Class Counsel intends to submit a Fee and Expense Application, seeking an award of Attorneys’ Fees and Expenses based on the value of the Settlement and the work performed, not to exceed one-third (1/3) of the Settlement Amount, plus reasonable expenses. At the same time, Class Counsel shall seek the Court’s approval of all Administrative Costs in connection with the Settlement.

(b) Defendant shall take no position on the Fee and Expense Application, provided the fees requested do not exceed one-third of the Settlement Amount. Any amount awarded by the Court in response to such Fee and Expense Application shall be paid by the Settlement Administrator solely out of the Settlement Amount and shall be deducted (to the extent approved by the Court) from the Settlement Amount. The Settlement Administrator shall use reasonable best efforts to pay any expenses awarded to Class Counsel within fourteen (14) days of the Second Payment described in Section 3.1(b).

(c) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of the Fee and Expense Application to be paid out of the Settlement Amount shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the award of Attorneys’ Fees and Expenses, or any appeal of any order relating thereto, shall not operate to terminate or cancel

this Agreement or be deemed material hereto.

(d) Defendant and its insurers shall have no obligations whatsoever with respect to any Attorneys' Fees and Expenses incurred by Class Counsel, which shall be payable solely out of the Settlement Amount.

V. Tax Treatment

5.1 The Parties acknowledge that any payments to Settlement Class Members or their attorneys may be subject to applicable tax laws. Defendant, Defendant's Counsel, Class Counsel, and Named Plaintiff will provide no tax advice to the Settlement Class Members and make no representation regarding the tax consequences of any of the Settlement payments described in the Settlement Agreement.

5.2 For tax purposes, the Distributable Settlement Amount distributed to the Settlement Class Members in accordance with the Plan of Allocation (the "Class Member Payments") shall be treated as back wages.

5.3 The Class Member Payments will be made net of all applicable employment taxes and will be reported to the IRS and any other appropriate taxing authorities and the payee by the Settlement Administrator under the payee's name and Social Security number on an IRS Form W-2. The employee portion of all applicable income and payroll taxes will be the sole responsibility of the Settlement Class Member and will be deducted from the Class Member Payments by the Settlement Administrator and remitted to the IRS. UGN will be responsible for the employer payroll taxes.

5.4 Each Settlement Class Member shall be solely responsible for any and all additional federal, state, and local taxes that may be due from any Class Member Payments made to him or her, whether it is determined that any additional taxes are owed based on the taxation laws in effect on the date of execution of this Settlement Agreement or that may become due at any time in the future because of a change to the laws governing the taxation of such settlement proceeds.

5.5 The Service Award, if approved, shall be paid without tax withholdings to Named Plaintiff. The Settlement Administrator shall issue an IRS Form 1099 to Named Plaintiff. Named Plaintiff shall assume full responsibility and liability for the payment of any taxes due on the Service Award.

5.6 Any Attorney's Fees and Expenses paid to Class Counsel pursuant to its Fee and Expense Application, if approved, shall be paid without tax withholdings to Class Counsel. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel. Class Counsel shall assume full responsibility and liability for the payment of any taxes due on the Attorney's Fees and Expenses.

5.7 Each Settlement Class Member shall hold Defendant, Defendant's Counsel, the Defendant Released Parties, Named Plaintiff, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments or credits under the Agreement, and shall hold Defendant, the Defendant Released Parties,

Defendant's Counsel, Named Plaintiff, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees) of any proceedings (including, for example, investigation and suit), related to such tax liability.

VI. Settlement Administration

6.1 As soon as practicable, Defendant shall provide the Settlement Administrator with the reasonably obtainable participant data sufficient to effectuate class notice and to calculate each Settlement Class Member's allocable portion of the Distributable Settlement Amount.

6.2 The Settlement Administrator shall administer the Settlement subject to the supervision of Class Counsel, Defendant's Counsel, and the Court as circumstances may require.

6.3 The Defendant Released Parties and Defendant's Counsel shall have no responsibility for, interest in, or liability whatsoever, with respect to:

(a) any act, omission or determination of the Settlement Administrator, Class Counsel, or designees or agents of Class Counsel or the Settlement Administrator;

(b) any act, omission or determination of Class Counsel or their designees or agents in connection with the administration of the Settlement;

(c) the management, investment, or distribution of the Settlement Amount or the Distributable Settlement Amount; or

(d) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount or the Distributable Settlement Amount.

6.4 The Settlement Administrator shall provide to Class Counsel and Defendant's Counsel, no less than monthly, a full accounting of all expenditures made in connection with the Settlement, including Administrative Costs, and any distributions from the Settlement Amount.

6.5 The Settlement Administrator shall provide such information as may be reasonably requested by the Parties relating to administration of this Agreement.

VII. Releases

7.1 ***Releases of Defendant Released Parties by Named Plaintiff and the Settlement Class.*** Upon the Effective Date, Named Plaintiff and each Settlement Class Member (for themselves and on behalf of their current and former beneficiaries, representatives, heirs, assigns, and successors-in-interest) absolutely and unconditionally release, forever discharge, and covenant not to sue the Defendant Released Parties from and for each and every Released Claim that Named Plaintiff and the Settlement Class directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have.

Without admitting that California law in any way applies to this Agreement, with respect

to any and all Released Claims, the Parties agree that, upon the Effective Date, Named Plaintiff, each Settlement Class Member, and all other Parties shall be deemed to have, and by operation of the Final Approval Order shall have, expressly waived the provisions, rights and benefits of California Civil Code § 1542, which provides:

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.

Named Plaintiff, each Settlement Class Member, and all other Parties shall be deemed to have, and by operation of the Final Approval Order shall have, expressly waived all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. Named Plaintiff, any Settlement Class Member, and any of the other Parties may later 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 the Released Claims, but Named Plaintiff, any Settlement Class Member, and all of the other Parties, upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts.

Named Plaintiff, any Settlement Class Member, and all the other Parties shall be deemed to have, and by operation of the Final Approval Order shall have, acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

7.2 Additional General Release by Named Plaintiff. Upon the Effective Date, Named Plaintiff (for himself and on behalf of his current and former beneficiaries, representatives, heirs, assigns, and successors-in-interest) hereby absolutely and unconditionally releases, forever discharges, and covenants not to sue the Defendant Released Parties from and for any Claims, that Named Plaintiff directly, indirectly, derivatively, or in any other capacity, has, may have, or hereafter can, shall or may have against any of the Defendant Released Parties, for any matter, cause or thing existing now or at any time prior to the Effective Date; provided, however, that the provisions of this Subsection do not extend or apply to, or in any way limit or affect any rights or obligations under, this Agreement. Except for the proviso at the end of the preceding sentence, this Subsection is intended to be a general release that is the broadest release permitted by law.

7.3 If any of Settlement Class Members or Named Plaintiff hereafter sues any of the Defendant Released Parties for the purpose of enforcing or asserting any claims that are released under this Agreement, this Agreement, when pleaded, shall be and constitute a complete defense and bar thereto, and the Defendant Released Party shall be entitled to receive a declaratory judgment and/or an injunction against conduct or litigation that violates or threatens to violate this Agreement. Each of the Defendant Released Parties that is not one of the Parties hereto is intended to be a third party beneficiary of this Agreement and shall be entitled to the rights and

benefits of this Agreement.

VIII. Representations and Warranties

8.1 ***Parties' Representations and Warranties.*** Each Party represents and warrant as follows, and each Party acknowledges that each other Party is relying on these representations and warranties in entering into this Agreement:

(a) Each Party has diligently investigated the Claims asserted in this Litigation;

(b) Each Party is voluntarily entering into this Agreement as a result of arm's-length negotiations among their counsel;

(c) In executing this Agreement, each Party is relying solely upon its own judgment, belief, knowledge, and the advice and recommendations of its own independently selected counsel concerning the nature, extent, and duration of its rights and Claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

(d) Except as provided in this Agreement, each Party is not relying on, and has not been influenced to any extent whatsoever in executing this Agreement by, any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party other than those representations expressly set forth in writing in this Agreement;

(e) Each Party assumes the risk of mistake as to facts or law;

(f) Each Party has carefully read the contents of this Agreement;

(g) This Agreement is signed freely by each person executing the Agreement on behalf of each of the Parties; and

(h) Each Party has made such investigation of the facts pertaining to this Agreement, and all of the matters pertaining hereto, as he, she, or it deems necessary or advisable.

8.2 ***Signatories' Representations and Warrants.*** Each person executing this Agreement on behalf of any other person or entity does hereby personally represent and warrant that he or she has the authority to execute this Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

8.3 Named Plaintiff hereby represents and warrants that no right or claim compromised pursuant to this Agreement has been assigned or hypothecated to any third party.

IX. Contingencies and Effect of Disapproval or Termination of Settlement

9.1 This Agreement shall terminate and be cancelled if any of the following events

occur and, within fourteen (14) days thereafter, either Defendant or Named Plaintiff provide written notification of an election to terminate the Settlement:

(a) The Independent Fiduciary fails to approve and authorize the Settlement on behalf of the Plan;

(b) The Court declines to provide preliminary approval of this Agreement, or declines to enter or materially modifies the contents of the Preliminary Approval Order attached hereto as Exhibit D, or the Preliminary Approval Order is vacated, reversed, or modified in any material respect on any appeal or other review or in a collateral proceeding;

(c) The Court declines to provide final approval of this Agreement, or declines to enter or materially modifies the contents of the Final Approval Order attached hereto as Exhibit A, or the Final Approval Order is vacated, reversed, or modified in any material respect on any appeal or other review or in a collateral proceeding; or

(d) The Court declines to certify the Settlement Class under Federal Rule of Civil Procedure 23(b)(1), or materially modifies the scope of the Settlement Class.

9.2 For purposes of this Agreement and Section 9, no order of the Court, or modification or reversal on appeal of any order of the Court, solely concerning the Plan of Allocation, the administration of the Settlement or the persons performing such administrative functions, or the amount of any award of Attorney's Fees and Expenses or Class Representative Service Award, shall constitute grounds for cancellation or termination of the Agreement.

9.3 If for any reason this Agreement is terminated or fails to become effective, then: (a) this Agreement will be rendered null and void and without force or effect; and (b) the Parties can elect to renegotiate this Agreement. If the Parties elect not to renegotiate this Agreement, or they do not reach a new agreement, then the following shall occur:

(a) Any certification of the Settlement Class shall be vacated and void;

(b) Any Settlement Class shall be decertified by joint motion and without objection;

(c) The certification of any Settlement Class and Defendant's consent to it for settlement purposes only shall be inadmissible for all purposes;

(d) The Parties shall be deemed to have reverted to their respective status in the Litigation as of November 27, 2024, which shall then resume proceedings in the Court as if no Settlement Class were certified, and, except as otherwise expressly provided in this Agreement, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered with no Party having waived any claims, defenses, objections, arguments, or remedies;

(e) No reference to the prior Settlement Class or any documents related thereto shall be made for any purpose, and Defendant shall reserve all rights to object to

the propriety of class certification in the Litigation in all other contexts and for all other purposes;

(f) Class Counsel will not use any information that Defendant provided about the Settlement Class during settlement negotiations or the Settlement Administration process until and unless it is separately obtained in discovery; and

(g) Class Counsel and Defendant's Counsel shall, within fourteen (14) days after the date of termination of the Agreement and unless they enter into a new agreement, jointly notify the Escrow Agent (either directly or through the Settlement Administrator) in writing to return to Defendant the full amount contained in the Settlement Fund, with all net income earned thereon, after deduction of any amounts earlier disbursed for purposes of administering the Settlement and/or incurred by the Settlement Fund as of the termination, and direct the Escrow Agent to effect such return within fourteen (14) days after such notification.

Prior to the return of amounts contemplated by Subsection (g), the Escrow Agent shall fully and finally fulfill, and set aside funds for, any and all tax obligations of the Settlement Fund as set forth in Section 3.1(i), and the Defendant Released Parties shall have no past, present, or future liability whatsoever for any such tax obligations.

X. No Admission of Wrongdoing

10.1 The Parties understand and agree that this Agreement embodies a compromise settlement of disputed claims, and that nothing in this Agreement, including the furnishing of consideration for this Agreement, shall be deemed to constitute any finding or admission of any wrongdoing or liability by Defendant, or give rise to any inference of wrongdoing or liability in the Litigation or any other proceeding. This Agreement and the consideration provided hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. Defendant specifically denies any such liability or wrongdoing and states that it is entering into this Agreement solely to eliminate the burden and expense of further litigation. Further, Named Plaintiff, while believing that all Claims brought in the Litigation have merit, has concluded that the terms of this Agreement are fair, reasonable, and adequate to the Settlement Class Members given, among other things, the inherent risks, difficulties, and delays in complex ERISA litigation such as the Litigation. Neither the fact nor the terms of this Agreement shall be used or offered or received as evidence of liability or damages in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement.

XI. Miscellaneous Provisions

11.1 ***No Disparaging Statements.*** Named Plaintiff and Class Counsel agree that they shall make no disparaging statements or accusations of wrongdoing related to this Agreement, the Litigation, the Defendant Released Parties, Defendant, or Defendant's Counsel, whether written or oral, including but not limited to any statements to the press or on any website or social media platform. Defendant and Defendant's Counsel agree that they shall make no disparaging statements or accusations of wrongdoing related to this Settlement Agreement, the Litigation, Named Plaintiff or Class Counsel, whether written or oral, including but not limited to any

statements to the press or on any website or social media platform.

11.2 **No Publicity.** Named Plaintiff and Class Counsel agree that they will not disclose the existence or terms of this Agreement to the media (whether affirmatively or in response to an inquiry) or through: (a) publication of a press release; (b) public comment or via social media; or (c) as to Class Counsel, their respective law firms' websites.

11.3 **Adequate Discovery.** Named Plaintiff agrees that Defendant has provided sufficient information to allow Named Plaintiff and Class Counsel to evaluate Named Plaintiff's positions and the strength of the claims prior to deciding to settle this case.

11.4 **Waiver.** The provisions of this Agreement may be waived, amended, altered, or modified only by an instrument in writing executed by all Parties. For the purposes of this Section, email shall not constitute an instrument in writing, although an instrument in writing may be transmitted as an attachment to an email. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

11.5 **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties, and it supersedes any prior written or oral agreements, undertakings, promises, representations, warranties, or covenants not contained herein among the Parties.

11.6 **Construction of Agreement.** This Agreement shall be construed to effectuate the intent of the Parties to resolve all disputes encompassed by the Agreement. All Parties have participated in the drafting of this Agreement, and any ambiguity shall not be resolved by virtue of a presumption in favor of any Party. The Agreement was reached at arm's-length by the Parties represented by counsel. None of the Parties shall be considered to be the drafter of this Agreement or any provision hereof for the purposes of any statute, case law, or rule of interpretation or construction.

11.7 **Principles of Interpretation.** The following principles of interpretation apply to this Agreement:

- (a) The headings of this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.
- (b) Definitions apply to the singular and plural forms of each term defined.
- (c) References to a person are also to the person's permitted successors and assignees.
- (d) Whenever the words "include," "includes," or "including" are used in this Agreement, they shall not be limiting, but rather shall be deemed to be followed by the words "without limitation."

11.8 **Executed in Counterparts.** This Agreement may be executed in counterparts, all of which shall be considered one and the same document as if a single document had been executed, and shall become effective when such counterparts have been signed by each of the

Parties and delivered to the other Party. Counterpart copies of signature pages, whether delivered in original or by email in pdf format, taken together shall all be treated as originals and binding signatures.

11.9 **Notices.** Unless otherwise provided herein, any notice, request, instruction, application for Court approval, or application for Court order sought in connection with this Agreement, shall be in writing and delivered personally or sent by certified mail or overnight delivery service, postage prepaid, with copies by email to the attention of Class Counsel or Defendant’s Counsel.

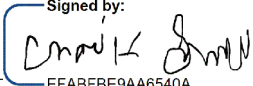
11.10 **Extensions of Time.** The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of this Agreement.

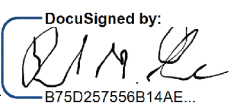
11.11 **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any conflict of law provisions thereof that would cause the application of the substantive laws of any jurisdiction other than Illinois.

11.12 **Fees and Expenses.** Except as otherwise expressly set forth herein, each Party hereto shall pay his, her, or its own fees, costs, and expenses incurred in connection with the Litigation, including fees, costs, and expenses incident to his, her, or its negotiation, preparation, implementation, or compliance with this Agreement, and including any fees, expenses, and disbursements of his, her, or its counsel, accountants, and other advisors. Nothing in this Agreement shall require Defendant to pay any monies other than as expressly provided herein.

11.13 **Communication With Participants.** Nothing in this Agreement or the Settlement shall prevent or inhibit Defendant’s ability to communicate with current or former employees and participants of its health and welfare plans.

11.14 **Retention of Jurisdiction.** The Parties agree that the Court may retain jurisdiction of this matter after the Effective Date and enter such orders as are necessary or appropriate to effectuate the terms of this Agreement.

Charles K. Smith
Signed by: 
EFABFB E9AA6540A...
Date: 1/27/2025

Paul Secunda (on behalf of the Settlement Class)
By: 
B75D257556B14AE...
Title/Date: Law Partner 1/27/2025

U.G.N., Inc.
DocuSigned by: 
By: Peter Anthony
P...2C212025C51C4B9... Chief Executive Officer
Date: 1/27/2025