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9 Class Counsel for Plaintiffs

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 MICHAEL DON, EXECUTOR OF
13 THE ESTATE OF RUBEN DON;
14 TAMARA PELHAM, SPECIAL
ADMINISTRATOR FOR THE
15 ESTATE OF LEROY LITTLE; and
16 CAROLYN JAN LITTLE, Individually,
and as the Class Representatives on
17 behalf of those insureds similarly
18 situated,

Plaintiffs,

19
20 vs.

21 UNUM GROUP, a Delaware
22 Corporation; and UNUM LIFE
INSURANCE COMPANY OF
23 AMERICA, a Maine Corporation,

24 Defendants.
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CASE NO.: CV 13-4502-DSF (VBK)

Assigned to: Hon. Dale S. Fischer

**PLAINTIFFS' & CLASS
COUNSEL'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL**

Hearing: June 27, 2016
Time: 1:30 p.m.
Place: Courtroom 840

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

2 **PLEASE TAKE NOTICE** that on June 27, 2016 at 1:30 p.m., in Courtroom 840
3 or as soon thereafter as the motion can be heard in the above-entitled court located at
4 255 N. Temple Street, Los Angeles, CA 90012, Plaintiffs and Class Representatives
5 Michael Don (in his capacity as Executor of the Estate of Ruben Don) (“Don”), Tamara
6 Pelham (in her capacity as Special Administrator of the Estate of LeRoy Little)
7 (“Pelham”), and Carolyn Jan Little (“Little”) (collectively “Plaintiffs”), and Class
8 Counsel¹ will and hereby do move this Court pursuant to Rule 23 of the Federal Rules
9 of Civil Procedure for an order: (1) granting final approval of the parties’ Stipulation
10 of Settlement, dated December 3, 2015 and filed February 8, 2016 (Dock. No. 188-1),
11 which was preliminarily approved by this Court on March 9, 2016 (Dock. No. 199),
12 (2) approving payment of Class Counsel attorneys’ fees and Class Counsel expenses,
13 (3) awarding service awards and payments to Class Representatives, (4) permanently
14 enjoining parallel proceedings, and (5) directing the entry of Final Judgment,
15 dismissing the Action with prejudice.

16 This motion will be based on this Notice of Motion and Motion, the
17 accompanying Memorandum of Points and Authorities, the declarations of Class
18 Counsel, Allan A. Sheno, and the Settlement Administrator, Bruce Holman of Rust
19 Consulting, the Proposed Final Order and Proposed Final Judgment, any Reply that
20 Plaintiffs and Class Counsel may file, the entire court file, and any oral argument in
21 the matter.

22 Dated: May 26, 2016

By: _____/S/_____

23 Allan A. Sheno
24 Attorney for Plaintiffs

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27 _____
28 ¹ On March 9, 2016, the Court appointed Sheno Koes LLP as Lead Class Counsel and The Law Offices of Christopher Vader as Class Counsel to effect the settlement.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL DON, EXECUTOR OF THE ESTATE OF RUBEN DON; TAMARA PELHAM, SPECIAL ADMINISTRATOR OF THE ESTATE OF LEROY LITTLE; and CAROLYN JAN LITTLE, Individually, and as the Class Representatives on behalf of those insureds similarly situated,

Plaintiffs,

vs.

UNUM GROUP a Delaware Corporation; and UNUM LIFE INSURANCE COMPANY OF AMERICA, a Maine Corporation,

Defendants.

CASE NO.: CV 13-4502-DSF (VBK)

Assigned to: Hon. Dale S. Fischer

[PROPOSED] REVISED¹ FINAL ORDER (1) APPROVING CLASS ACTION SETTLEMENT, (2) APPROVING PAYMENT OF CLASS COUNSEL ATTORNEYS' FEES AND CLASS COUNSEL EXPENSES, (3) AWARDING SERVICE AWARDS AND PAYMENTS TO CLASS REPRESENTATIVES, (4) PERMANENTLY ENJOINING PARALLEL PROCEEDINGS, AND (5) DISMISSING ACTION WITH PREJUDICE

Following a hearing on March 7, 2016 (the "Preliminary Approval Hearing"), the Court on March 9, 2016 entered its Order (1) Preliminarily Approving Class Action Settlement, (2) Directing Distribution of the Class Action Settlement Notice, (3) Setting A Final Approval Hearing, and (4) Preliminarily Enjoining Parallel Proceedings, preliminarily approving the Settlement entered into by the Parties in the above-captioned Action ("Preliminary Approval Order"), which, among other things, scheduled a hearing to determine whether the Settlement is fair, reasonable, adequate, in the interests of the Settlement Class, and free from collusion, whether the Settlement should be finally approved by the Court, and to consider an

¹ This Order supersedes the proposed Order lodged as Docket Number 206-1.

1 application from Class Counsel for approval of Unum's payment of Class Counsel's
2 Attorneys' fees, Class Counsel Expenses, and service awards to the Class
3 Representative ("Fairness Hearing"). Dock. No. 199.

4 Plaintiffs on May 26, 2016 filed a motion seeking final approval of the
5 Settlement, and the Court held a Fairness Hearing on June 27, 2016. The Court has
6 considered: (i) Plaintiffs' points and authorities submitted in support of their motion
7 for final approval of the Settlement ("Final Approval Motion"); (ii) Plaintiffs' points
8 and authorities submitted in support of their application for approval of Unum's
9 payment of Class Counsel Attorneys' fees, Class Counsel's Expenses, and the
10 service awards to Class Representatives ("Application"); (iii) the declarations and
11 exhibits submitted in support of the Final Approval Motion and Application; (iv) the
12 Settlement itself; (v) the entirety of these proceedings, including but not limited to
13 the points and authorities, declarations, and exhibits submitted in support of
14 preliminary approval of the Settlement, filed February 8, 2016 (Dock. Nos. 187-
15 190); (vi) the Class Settlement Notice Package and the Class Settlement Notice
16 approved by the Court on March 9, 2016, which was provided to the members of the
17 class earlier preliminarily certified by the Court (Holman Decl., ¶ 11); (vii) the
18 relatively few (159 out of 131,216) Class Members who requested exclusion and the
19 single valid objection pursuant to their right to do so in response to the Class
20 Settlement Notice; (viii) the full and fair notice of the Settlement terms provided to
21 the Settlement Class Members of the proposed Settlement, as well as of the Fairness
22 Hearing, and the Settlement Class Members' rights with respect to the Settlement;
23 (ix) presentations of Class Counsel and Unum's Counsel at the Preliminary Approval
24 Hearing and Fairness Hearing; (x) this Court's experiences and observations
25 presiding over the Action; and (xi) the Court's file herein.

26 Based upon these considerations, the Court's findings of fact and conclusions
27 of law as set forth in the Preliminary Approval Order and in this Final Order (1)
28 Approving Class Action Settlement, (2) Awarding Class Counsel Fees and Expenses
(3) Awarding Class Representatives Incentives, (4) Permanently Enjoining

1 Proceedings, and (5) Dismissing the Action with Prejudice (“Final Order”), and for
2 good cause appearing:

3 **IT IS HEREBY ORDERED AND DECREED**, as follows:

4 1. Definitions. The capitalized terms used in this Order have the meanings
5 and/or definitions given to them in the Stipulation For Settlement (“Settlement
6 Agreement”) (Dock. No. 188-1), or if not defined therein, then the definitions given
7 to them in this Order.

8 2. Incorporation of Documents. This Final Approval Order incorporates
9 and makes a part hereof:

- 10 A. the Settlement Agreement (including the exhibits thereto); and
11 B. this Court’s Preliminary Approval Order.

12 3. Jurisdiction and Venue. The Court has personal jurisdiction over the
13 Parties, the Settlement Class Members (as defined below at paragraph 4) including
14 the single objector , and any timely submitted objections or responses, pursuant to
15 the Class Action Fairness Act (“CAFA”) 28 U.S.C. §1715. The Court has subject
16 matter jurisdiction over this action, including, without limitation to approve the
17 Settlement, to settle and release all claims alleged in the Action and all claims
18 released by the Settlement, including the Released Claims (as defined in the
19 Settlement Agreement), to adjudicate any objections submitted over the proposed
20 Settlement and to dismiss the Action with prejudice. All Settlement Class Members,
21 who failed to exclude themselves according to the Court’s prior orders and the terms
22 of the Class Settlement Notice, have consented to the jurisdiction of this Court for
23 purposes of this Action and the Settlement of this Action. Jurisdiction is premised
24 upon, inter alia, 28 U.S.C. §1332, and other applicable law. For jurisdictional bases
25 requiring an amount in controversy, the amount in controversy exceeds the minimum
26 required for jurisdiction. Venue in this District is appropriate under 28 U.S.C. §
27 1391 and any other applicable law.

28 4. Definition of the Class and Settlement Class Members.

1 “Settlement Class” means, subject to the exclusions listed below, all Class
2 Members, except the following persons: (1) persons who properly opted-out of the
3 Settlement; (2) any officer, director, employee or agent of Unum; (3) any judge,
4 justice, or judicial official presiding over the Action and the staff and immediate
5 family of any such judge, justice, or judicial official; and (4) notwithstanding the
6 above, no Claim shall be eligible for or approved for Settlement Relief with respect
7 to any Policy for which a valid agreement or release exists between Unum and the
8 Settlement Class Member that would preclude the Settlement Class Member’s right
9 to receive relief from the Settlement. Unum represents that, except for the members
10 of Subclass VII, each member of the settling subclasses in the Settlement Class: (1)
11 is sufficiently identifiable; (2) Unum can accurately trace the benefits due each
12 beneficiary; and (3) each beneficiary has an undisputed and mathematically
13 ascertainable claim to part of the Settlement Relief. In other words, the value to
14 individual class members of benefits in each of the above items (except as to
15 Subclass VII, which is not included in the monetary Total Settlement Fund) can be
16 accurately ascertained, and this relief is part of the Settlement Relief.

17 “Class Member” means and includes any person included in the definition of
18 Subclass I, Subclass IV, or Subclass VII.

19 “Subclass I” means all current and former insureds nationwide whose Unum
20 LTC Policies state “[u]nless we tell you something else, years, months and
21 anniversaries that we refer to are calculated from the Policy Date” and Unum used
22 (for insureds with “accrued damages”), is using (for insureds “in claim”), or will use
23 (for “future claimant” insureds) the Effective Date. The class representative for
24 Subclass I is Don.

25 “Subclass IV” means all current (as of the Settlement Agreement Execution
26 Date) and former insureds nationwide whose Unum LTC Policies contain an optional
27 provision for inflation protection which states that their Lifetime Maximum Benefit
28 Amount will increase, and Unum applied (for insureds with “accrued damages”), is
applying (for “in claim” insureds), or will apply (for “future claimant” insureds) the

1 annual inflation increase to the remaining Lifetime Maximum Benefit Amount, even
2 though the word “remaining” does not quantify or reduce the Lifetime Maximum
3 Benefit Amount. The class representatives for Subclass IV are Don for those
4 insureds who have “accrued damages,” and Pelham for the “in claim” and “future
5 claimant” insureds.

6 “Subclass VII” means all current and former insureds under Unum’s LTC
7 Policies nationwide issued pre-2002 who since 2010 received a “duplicate” policy
8 that was not an exact copy of their original policy. The class representatives of
9 Subclass VII are Pelham for “in claim” insureds, and Little for “future claimant”
10 insureds.

11 The Settlement Class is hereby certified for settlement purposes only.
12 Settlement Class Members are subject to this Final Order and the Final Judgment to
13 be entered by the Clerk of Court in accordance herewith.

14 5. Findings and Conclusions. Based on its familiarity with the nature of the
15 case, the record, the procedural history, the parties and the work of their Counsel, the
16 Court finds that the Settlement was not the product of collusion and does not
17 evidence an indicia of unfairness. The Court finds the Settlement is fair, reasonably
18 adequate to the Settlement Class in light of the complexity, expense, and duration of
19 the Action (including the risk of appellate proceedings), and the risks involved in
20 establishing liability, damages, and in maintaining the Action as a class through trial
21 and appeal. The Court finds that the Settlement represents a complete resolution of
22 all claims asserted in a representative capacity on behalf of the Settlement Class and
23 should fully and finally resolve all such claims. In support of these findings and
24 conclusions, the Court further specifically finds:

25 A. There is no evidence of collusion. The proposed Settlement set forth in
26 the Settlement Agreement resulted from extensive arm’s-length negotiations. The
27 Action was extensively and vigorously litigated, prior to any settlement. Plaintiffs
28 and Unum engaged in intensive arm’s-length negotiations, over the course of
multiple mediation sessions before a capable and well-respected mediator, Robert J.

1 Kaplan of Judicate West, with extensive experience in mediating complex insurance
2 class action cases. Extensive negotiations thereafter resulted in the settlement
3 reflected by the Settlement Agreement.

4 B. The Settlement provides for substantial cash payments and other
5 monetary benefits to Settlement Class Members. No portion of the Settlement
6 Relief will be consumed by attorneys' fees, litigation expenses, settlement
7 administration expenses, or the incentive awards to the Class Representatives, since
8 such amounts are all separately provided for. The Court has considered the realistic
9 range of outcomes in this matter, including the amount Plaintiffs might receive if
10 they prevailed at trial, the strengths and weaknesses of the case, the novelty and
11 number of the complex legal issues involved, the risk that Plaintiffs would receive
12 less than the Settlement Relief or nothing at trial, and the risk of a reversal of any
13 judgment based on a reasonable and adequate review of these factors.

14 Subclass I. The Subclass I relief will be provided through a combination of
15 (a) monetary payments and (b) a future business practice change, anticipated to be
16 completed within two years of the Final Settlement Date, whereby Unum would
17 change its processes to calculate the Policy Anniversary based on the Policy Date
18 rather than the Effective Date ("Policy Anniversary Change"). For current Subclass
19 I class members, i.e., Subclass I class members who have already received benefits
20 under their policies, Unum would pay each class member the difference between
21 what they received in benefits and what they would have received in benefits if
22 Unum had calculated the Policy Anniversary based on the Policy Date. *Before the*
23 *date of the Policy Anniversary Change*, Unum will also pay future Subclass I class
24 members, i.e., Subclass I class members who in the future receive benefits under
25 their policies, the difference between what they receive in benefits and what they
26 would have received in benefits if Unum had calculated the Policy Anniversary
27 based on the Policy Date. *After the date of the Policy Anniversary Change*, Unum
28 will pay future Subclass I members benefits with the Policy Anniversary calculated

1 based on the Policy Date. Plaintiffs estimate the relief to be provided to Subclass I,
2 as described in this paragraph, at \$18,595,470. Plaintiffs contend that \$1,822,407.98
3 to 1,163 insureds that Unum's March 19, 2015 discovery responses identified have
4 been underpaid, is not included in the \$18,595,470 for Subclass I, which is plaintiffs'
5 estimate of payments for approximately 11,867 insureds. Unum agrees not to
6 challenge Plaintiffs' valuation. In addition, Unum will not claim back Unum's
7 overpayment, under Plaintiffs' Subclass I theory, of \$1,774,583.20 to 3,069 insureds.

8 Subclass IV. The Subclass IV relief will be provided as 1.5 months of
9 additional benefits, based on the Subclass IV class member's original monthly
10 benefit amount stated in the policy, payable to any Subclass IV class member who
11 reaches their Lifetime Maximum Benefit Amount. Unum and Plaintiffs value the
12 relief to be provided to Subclass IV, as described in this paragraph, at
13 \$18,600,000.00.

14 Subclass VII. Unum represents and warrants that members of Subclass VII
15 have had—and will continue to have—their claims adjudicated based the language of
16 their original policies, notwithstanding their prior receipt from Unum of versions of
17 their policies that were not exact copies of their original policies. Upon final
18 approval of the Parties' settlement by the Court in the Action, Unum will, on a going
19 forward basis, provide exact copies of the original policies to policyholders
20 requesting duplicate policies. While the monetary value of this change in practice to
21 Subclass VII is not easily quantifiable, Plaintiffs contend that it has substantial value.
22 Unum agrees not to oppose that contention.

23 C. Settlement value is well within a range of reasonableness. Before
24 reaching the Settlement, Plaintiffs and Unum vigorously litigated their claims and
25 defenses in extensive proceedings before this Court. For example:

- 26 • On August 6, 2014, this Court granted in part and denied in part Unum's
27 motion to dismiss;
- 28 • On August 20, 2014, the Parties stipulated to Michael Don, as Executor of the
Estate of Ruben Don, being substituted in as Plaintiff;

- 1 • On October 24, 2014, the Court ordered Unum to produce samples of the class
2 lists to Plaintiffs, which Plaintiffs received on December 15, 2014;
- 3 • On November 14, 2014, the Court denied in its entirety Unum's Motion to
4 Compel Plaintiffs to reveal which putative class members Plaintiffs' Counsel had
5 contacted;
- 6 • On December 15, 2014, the Court ordered Plaintiffs to brief the adequacy and
7 typicality of Michael Don and Class Counsel. The Court did not rule on these fully
8 briefed issues;
- 9 • On December 30, 2014, Unum stipulated (Dock 104) and this Court entered as
10 an Order (Dock 130-1) that "Unum Life may be treated as the agent and/or alter ego
11 of Unum Group";
- 12 • On March 26, 2015, the Court granted Plaintiffs' motion to file a Third
13 Amended Complaint to add two additional Class Representatives and a new
14 subclass, and to seek declaratory/injunctive relief; and
- 15 • The Parties fully briefed Plaintiffs' motion for class certification.

16 D. During the course of this Action, and before reaching the Settlement,
17 Plaintiffs and Unum also engaged in extensive discovery.

18 In the course of the Action, Class Counsel have reviewed over 18,888 pages
19 of documents, analyzed extensive data, and taken the depositions of Unum officers
20 and employees, defended the depositions of all three Class Representatives, and
21 reviewed Unum's declarations of six independent agents. In addition, Plaintiffs have
22 retained and consulted with a variety of experts including an actuary concerning the
23 merits of Plaintiffs' claims and the defenses raised by Unum. Plaintiffs have
24 responded to exhaustive discovery propounded by Unum, and Unum has responded
25 to exhaustive discovery propounded by Plaintiffs. Finally, Plaintiffs have produced
26 6,513 pages of documents.

27 E. Based upon this full litigation of relevant legal issues affecting the
28 litigation and extensive investigation of the underlying facts in discovery, Plaintiffs
and Unum are fully informed of the legal bases for the claims and defenses herein,

1 and can balance the risks of continued litigation (both before this Court and on
2 appeal) versus the benefits of the Settlement.

3 F. The Class Representatives and Class Counsel, in litigating the Action
4 and in entering into and implementing the Settlement, have satisfied the
5 requirements of Federal Rules of Civil Procedure, Rule 23, and other applicable law.
6 Class Counsel submit that they have fully and competently prosecuted all causes of
7 action, theories of liability, and remedies reasonably available to the Settlement
8 Class Members. Further, both Class Counsel and Unum's Counsel are experienced
9 trial lawyers with specialized knowledge in insurance litigation, and complex class
10 action litigation generally. Class Counsel and Unum's Counsel are capable of
11 properly assessing the risks, expenses, and delay of continued litigation, including at
12 trial and on appeal. Class Counsel submit the Settlement is fair, reasonable and
adequate for the Settlement Class.

13 Unum denies all allegations of wrongdoing and disclaims any liability with
14 respect to any and all claims alleged by Plaintiffs and the Settlement Class, including
15 their claims regarding the propriety of class certification.

16 Unum considers it desirable to resolve the Action to put the claims of
17 Plaintiffs and the Settlement Class to rest and avoid, among other things, the risks of
18 continued litigation, the expenditure of time and resources necessary to proceed
19 through trial and any subsequent appeals, and suffer interference with ongoing
20 business operations.

21 G. The selection and retention of the Administrator was reasonable and
22 appropriate.

23 As further addressed in this Court's Preliminary Approval Order, through the
24 mailing of the Class Settlement Notice Package, the Class Settlement Notice, in the
25 form and manner ordered by the Court, the Settlement Class has received the best
26 practicable notice of this class action, of the Settlement, and of the Fairness Hearing,
27 and of Settlement Members' rights and options, including their right to opt out, to
28 object to the Settlement, or to exclude themselves, to appear at the Fairness Hearing

1 in support of a properly submitted objection, and the binding effect of the orders and
2 Judgment in this Action on all Settlement Class Members. Said notices have fully
3 satisfied notice requirements under the law, including the Federal Rules of Civil
4 Procedure and all due process rights under the U.S. Constitution and Amendments.

5 H. The response of the Settlement Class to the Certification of a Class
6 Action and to the proposed Settlement (including Class Counsel's application for
7 approval of Unum's payment of Class Counsel's Attorneys' Fees and Class
8 Counsel's Expenses, and the service awards to the Class Representatives) after full
9 and effective notice thereof, strongly favors final approval of the Settlement. Out of
10 131,216 notices mailed to the members of the class certified by the Court, only 159
11 valid requests for exclusion were received. In response to the 131,216 Class
12 Settlement Notices mailed to the Class, as of May 26, 2016 (eighteen days after the
13 deadline for objecting to the Settlement), there was a single valid objection filed in
14 the Action, considered by the Court, as fully addressed below.

15 I. As set forth in the Settlement Agreement, Unum has denied and
16 continues to deny, any wrongdoing or liability relating to the Action. Unum did not
17 join in Plaintiffs' Final Approval Motion or Fee Application or the points and
18 authorities and supporting papers filed in support of said motion and application.
19 Notwithstanding, Unum has filed a statement of Non-Opposition and separately
20 requested final approval of the Settlement, dismissal of the Action with prejudice,
21 and entry of judgment in the Action, on the terms and conditions set forth in the
22 Settlement Agreement.

23 6. Class Settlement Notice, and the Right of Objection. The Court finds
24 that the Class Settlement Notice Package was, with respect to its recipients, the best
25 practicable and was reasonable, adequate and sufficient notice, and was reasonably
26 calculated, under the circumstances, to apprise the Settlement Class Members of
27 their rights, including their right to opt out of the Class at that juncture, as set forth in
28 the notice, and fully satisfied the requirements of due process and applicable
provisions of law.

1 7. Requests for Exclusion. A list of those 159 insureds who have validly
2 requested exclusion from the Class, according to the terms of the Class Settlement
3 Notice, was filed with the Court as part of the final settlement approval motion as
4 Exhibit A to the declaration of Bruce Holman in support of final settlement approval,
5 and is incorporated herein and made a part herein, and it identifies the persons who
6 are excluded from the Settlement Class.

7 Those persons are therefore not Settlement Class Members, shall not be bound
8 by the Settlement or Final Order and Judgment in the Action, and shall not receive
9 any Settlement Relief. All other persons to whom the Class Settlement Notice was
10 mailed are included in the Settlement Class and shall be bound by all proceedings,
11 orders, and judgments in the Action, even if such person or party has previously
12 initiated or subsequently initiates or participates, or indirectly, in any individual or
13 class litigation, administrative, arbitration, mediation or regulatory proceeding or
14 order or other process against Unum relating to the Released claims.

15 8. Notice of Settlement. Based upon the declarations of Counsel, and the
16 Administrator, the Court finds that the Class Settlement Notice was mailed on April
17 8, 2016, in the form and manner agreed to under the Settlement and approved by the
18 Court in the Preliminary Approval Order. The Class Settlement Notice provided fair
19 and effective notice to Class Members of the Settlement and the terms thereof,
20 including but not limited to those terms regarding the Settlement Relief, the Release
21 of claims and binding effect of the Settlement on all Settlement Class Members,
22 provisions for payment of Class Counsel's Attorneys' Fees and Class Counsel's
23 Expenses, Class Representatives' service awards and Class Counsel's motion to the
24 Court for approval of the same in the maximum amounts permitted under the
25 Settlement, the date, time, and place of the Fairness Hearing, Settlement Class
26 Members' rights to object to the Settlement, and to appear at the Fairness Hearing
27 (on their own or through counsel of their own selection at their own expense) in
28 support of any timely and validly submitted objection, as set forth in the Class
Settlement Notice. The Court finds that said form and the giving of notice, including

1 the steps taken for updating the Settlement Class' mailing database, researching
2 alternate mailing data, re-mailing any returned mail and receiving and responding to
3 Settlement Class Member inquiries (including support services to be provided by the
4 Administrator and Class Counsel), consisted of the best notice practicable, and were
5 reasonably calculated, under the circumstances to apprise the recipients of the Class
6 Settlement Notice of the Settlement's terms. The Court further finds that the
7 recipients of the Class Settlement Notice were afforded a reasonable period of time
8 to exercise any rights they may have pursuant to the Settlement and the Class
9 Settlement Notice.

10 Based on the foregoing, the Class Settlement Notice Package and the Class
11 Settlement Notice, in the form and manner approved by the Court, fully satisfied the
12 requirements of due process, the United States Constitution, the Federal Rules of
13 Civil Procedure, and all other applicable provisions of law.

14 9. Notices Pursuant to 28 U.S.C. § 1715. Based on the requirements in the
15 Settlement Agreement and the declarations submitted in support of final approval,
16 the Court finds that all notices and requirements of the Class Action Fairness Act of
17 2005, 28 U.S.C. § 1715, have been satisfied. The Settlement Agreement was filed
18 on February 8, 2016. Doc. No. 188-1. On February 9, 2016, Unum served the
19 notices required by 28 U.S.C. § 1715(b). Dock. No. 197. On March 10, 2016, Unum
20 further served a courtesy copy of the Preliminary Approval Order on the recipients of
21 the notices required by 28 U.S.C. § 1715(b). More than ninety (90) days have passed
22 since the service of the foregoing notices. No objection or response to the Settlement
23 has been filed by any federal or state official, including any recipient of the notices.
24 No federal or state official, including any recipient of the foregoing has appeared or
25 requested to appear at the Fairness Hearing.

26 10. Class Member Objections. As set forth in detail earlier, full and fair
27 notice of the Settlement Class Members' right to object to the Settlement and to
28 appear at the Fairness Hearing in support of such an objection has been provided in
the full manner required by the Settlement Agreement, the Court's Preliminary

1 Approval Order, the requirements of due process, and any other applicable law. No
2 valid requests to appear at the Fairness Hearing have been received, or timely
3 submitted. No person is permitted to appear at the Fairness Hearing to object to the
4 Settlement.

5 The single valid Objection by Mr. Schriftman, erroneously complains that the
6 Class Notice does not inform the Class how many people could benefit.

7 For Subclass I, the Class Notice specifically says 1,163 insureds were
8 previously underpaid a total of \$1,822,407.98, 3,069 were overpaid a total of
9 \$1,774,583.20, and payments are anticipated for 11,867 insureds out of the
10 \$18,595,470, which does not include either the \$1,822,407.98 or the \$1,774,583.20.²

11 With regard to Subclass IV, each and every class member is told in the Class
12 Notice he or she will receive an extra “1.5 months of additional benefits,” which can
13 be calculated with mathematical precision.

14 The Objector contends “there could be one million or more individuals
15 involved in the class.” As explained in Plaintiffs’ Motion, there are approximately
16 131,000 class members.

17 The Objector contends that each class member will receive “a mere \$36
18 benefit per individual.” As a member of Subclass VI, however, the Objector will
19 receive 1.5 times his Monthly Benefit should he have a covered claim and reach his
20 Lifetime Maximum Benefit Amount, which is worth between \$1,500 and \$9,000 in
21 benefits, calculated on a base of between \$1,000 and \$6,000.

22 Although the Objector states that he “cannot support the notion that the
23 plaintiffs were unaware of how benefits are to be paid,” the Objector was afforded an
24 opportunity to exclude himself from the class, which he could have done if he
25 believes he is not entitled to any relief.

26 The Objector also contends that “the class receives virtually no benefits.” As
27 explained earlier, 1,163 insureds in Subclass I were previously underpaid a total of

28 ² The Objector, who is not a member of Subclass I, has no standing to object to the settlement with respect to Subclass I relief. *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994) (to have standing to object to an aspect of the settlement, the class member must be aggrieved by the proposed action).

1 \$1,822,407.98 and each will now be paid exactly the amount underpaid to each of
2 them (averaging \$1,566.98 per insured); 3,069 insureds were overpaid a total of
3 \$1,774,583.20 which Unum will not claim back (averaging \$568.45 per insured); and
4 future payments are anticipated for 11,867 insureds out of the \$18,595,470 (this sum
5 does not include either the \$1,822,407.98 or the \$1,774,583.20) which averages to
6 \$1,566.98 per insured. Furthermore, every member in Subclass IV who reaches his
7 or her Lifetime Maximum Benefit Amount will be entitled to 1.5 months of extra
8 benefits, including the Objector if he meets all of the conditions to be in Subclass IV.

9 The Objector concludes, “The class should receive a comprehensive
10 breakdown of how the legal compensation was calculated including hours of attorney
11 time and expenses incurred.” This information was set forth in detail in Class
12 Counsel’s Motion for Attorneys’ Fees, and supporting evidence, which was filed
13 with the Court and posted on the Settlement Administrator’s website on April 8,
14 2016 as set forth in the last paragraph of the Class Notice that the Objector received.
15 The declaration in support of Class Counsel’s motion for award of attorneys’ fees
16 and costs, was also filed with this Court and posted on the Settlement
17 Administrator’s website on April 8, 2016, and provides a comprehensive breakdown
18 of how the legal compensation was calculated, including hours of attorney time and
19 expenses incurred.

20 For these reasons, the Court overrules this Objection and concludes the
21 Objector does not raise meritorious challenges to the valuation or the reasonableness
22 or fairness of the settlement as a whole to the Class. See *In re Skilled Healthcare*
23 *Group, Inc. Sec. Litig.*, No. CV 09-5416 DOC RZ, 2011 WL 280991, at *6 (C.D.
24 Cal. Jan. 26, 2011) (overruling objections to a class action settlement “based on little
25 more than hypothesis or speculation”); *In re Toyota Motor Corp. Unintended*
26 *Acceleration Mktg. Sales Practices, & Prods. Liab. Litig.*, No. 8:10 MIL 02151 JVS
27 (FMO) 2013 U.S. Dist. LEXIS 94484, at *261 (C.D. Cal. June 17, 2013) (“That the
28 Objectors may have made another bargain is beside the point; settling parties need
not find the most ideal terms.”).

1 11. Final Settlement Approval and Binding Affect. The terms and provisions
2 of the Settlement have been entered into in good faith, and are fair, reasonable,
3 adequate as to, and in the best interests of, the Parties and the Settlement Class
4 Members, and in full compliance with all applicable requirements of the Rules of
5 Civil Procedure, the United States Constitution (including the Due Process Clause),
6 and any other applicable law.

7 The Settlement is approved. The Settlement, this Order and the Judgment are
8 forever binding on the Plaintiffs and all other Settlement Class Members, and their
9 heirs, conservators, personal representatives, executors and administrative
10 predecessors, successors and assigns, and shall have *res judicata* and preclusive
11 effect in all pending and future claims, lawsuits or other proceedings maintained by
12 or on behalf of any such persons, to the fullest extent allowed.

13 12. Implementation of Settlement. The Parties are directed to implement the
14 Settlement according to its terms and conditions. Unum is authorized in its sole
15 discretion, in accordance with the terms of the Settlement Agreement, and without
16 requiring further approval of the Court, to implement the Settlement by the Final
17 Settlement Date (as defined in the Settlement Agreement). As provided for in the
18 Settlement Agreement, Unum shall make available to Class Counsel and the
19 Administrator all required data concerning the Settlement.

20 13. Appeal and Implementation. Any Settlement Class Member who did
21 not timely and validly submit his or her objection to the Settlement, as required by
22 the Settlement, the Class Settlement Notice, and this Court's Preliminary Approval
23 Order, has waived any objection. Any Settlement Class Member, to appeal from the
24 Court's rulings approving the Settlement, must have (a) made a timely objection to
25 the Settlement which was rejected by the Court, in whole or in part, (b) requested
26 and obtained a stay of implementation of the Settlement, and (c) posted an
27 appropriate bond, and absent satisfaction of all three of these requirements, Unum is
28 authorized, in its sole discretion, to proceed with implementation of the Settlement,
even if such implementation would moot the appeal.

1 14. Permanent Injunction. All Settlement Class Members are permanently
2 enjoined from filing, commencing, prosecuting, intervening in, maintaining,
3 participating in, as class members or otherwise, directly or indirectly, through a
4 representative or otherwise, receiving any benefits from, or organizing or soliciting
5 the participation in, directly or indirectly, any lawsuit (including class action
6 lawsuits), arbitration, administrative, mediation or related proceeding or order in any
7 jurisdiction asserting any claims based on the Released Claims Nothing in this
8 paragraph, however, shall require any Settlement Class Member to take any
9 affirmative action with regard to other pending class litigation in which they may be
10 absent class members. Unum has reserved the right to file motions or to take other
11 actions to enforce the release provisions in this Settlement Agreement and of this
12 injunction, as it may deem appropriate. The Court finds that issuance of this
13 permanent injunction is necessary and appropriate in aid of the Court's jurisdiction
14 over the Action and its judgments.

15 15. Enforcement of Settlement. Nothing in this Final Order shall permit any
16 separate action to enforce the Settlement or interpret the terms of the Settlement
17 Agreement. Any action which seeks to enforce or interpret the terms of the
18 Settlement, or which seeks to interpret or avoid in any way any legal consequences
19 of or the effect of the Settlement Agreement, the Preliminary Approval Order or the
20 Final Order, the Permanent Injunction contained in this Final Order or the terms
21 contained in the Settlement Agreement, shall be brought solely in this Court.

22 16. Class Counsel Attorneys' Fees and Class Counsel Expenses.

23 The Court notes that Unum has agreed not to oppose Plaintiffs' counsel's
24 requests for fees and costs up to the amounts specified in the Settlement Agreement.

25 The Court has fully assessed and finds fair and reasonable the payment by
26 Unum of Class Counsel's Attorneys' Fees and Class Counsel's Expenses in the
27 amount, and manner provided for in the Settlement Agreement. All such terms are
28 the proper and non-collusive, result of an arm's-length negotiation conducted under
the auspices of an experienced mediator. The Court notes in particular that approval

1 of the Settlement Agreement was not conditioned on the award of any attorneys' fees
2 and costs and that the terms of the Settlement Relief to the Class was reached after
3 the involvement of an independent mediator after the resolution of relief to the
4 classes and before the parties discussed attorneys' fees and costs.

5 This Court has reviewed at length Class Counsel's submissions in support of
6 their application. Based on those submissions, the Court finds Counsel's hourly rates
7 reasonable for complex class action litigation in Los Angeles. The hourly rates are
8 commensurate with the skill and experience of the Parties' attorneys.

9 Likewise, the amount of time devoted to the Action (and to various segments
10 of that action) was reasonable, given Unum's vigorous defense of Plaintiffs' claims.
11 The evidence shows that Class Counsel exercised sound billing practices in a
12 complex case they had to litigate against first-rate defense counsel.

13 Unum acknowledges that Class Counsel's fees may be higher than Sidley
14 Austin LLP's defense fees because, in part, all Parties acknowledge Plaintiffs did not
15 have the benefit of the substantial assistance and investigation performed by Unum, a
16 client with a large in-house legal staff, as Sidley Austin LLP did not have to research
17 items which Unum knew, but of which Plaintiffs were unaware.

18 Unum acknowledges that Class Counsel pursued novel theories and that the
19 portion of the action based on novel legal theories required greater attorney effort
20 than actions based on familiar legal theories.

21 Class Counsel moved for approval of the Class Counsel Attorneys' Fees and
22 Class Counsel Expenses at least 21 days prior to the deadline for the submission of
23 Exclusions and Objections, or such other date set by the Court. The amount of the
24 Class Counsel Attorneys' Fees approved by the Court for payment by Unum is
25 \$9,493,406.12, and Class Counsel's costs and litigation expenses are \$81,593.91.
26 The reduction between the \$9,518,406.12 requested and \$9,493,406.12 awarded is
27 the additional \$25,000, which is being paid out of the attorneys' fees component to
28 the Settlement Administrator as expressly envisioned by the parties in Section V(A)
of the Stipulation for Settlement, p. 13:1-11 of 110 of Docket Number 188-1.

1 All court approved fees and expenses and costs shall be wire-transferred to the
2 IOLTA Trust Account of Shenoi Koes LLP only.

3 The representation was on a contingent-fee basis assurance that Class Counsel
4 would be compensated for their years of service on behalf of the Class, if successful.
5 It was in this challenging context that Class Counsel successfully negotiated a
6 beneficial Settlement for the Settlement Class Members.

7 Having reviewed and approved Class Counsel's hourly rates and time and
8 fully familiar with the litigation and circumstances leading to the Settlement
9 elaborated above, the Court finds, based on ample evidence a reasonable lodestar in
10 this case is \$3,385,499.75 and a reasonable expense Class Counsel have fully
11 documented is \$81,593.91.

12 The Court further finds that the requested Attorneys' Fees and Expenses are
13 reasonable when the lodestar is cross-checked under a percentage-of-recovery
14 analysis. Class Counsel Attorneys' Fees and Class Counsel Expenses are reasonable
15 in addition, under both (a) a percentage of the overall benefit conferred to the
16 Settlement Class by the Settlement, (yielding a percentage of approximately 21 %,
17 well below the 25% benchmark recognized in the Ninth Circuit), and (b) under a
18 lodestar analysis (which yields a multiplier of 2.81, which is well within the typical
19 range of 2 to 4 that is appropriate and warranted). Moreover, Class Counsel does not
20 receive a disproportionate share of the Settlement. The payment of Class Counsel
21 Attorneys' Fees and Class Counsel Expenses provided for in the Settlement
22 Agreement came at no cost to the Settlement Class and does not diminish the
23 Settlement Relief afforded to the Settlement Class. Accordingly, given the foregoing
24 factors and the result obtained, the Court finds the negotiated Class Counsel
25 Attorneys' fees and Class Counsel Expenses to be reasonable, and approves payment
26 to Class Counsel of \$9,493,406.12 in fees, plus litigation expenses in the amount of
27 \$81,593.91. The Court directs Unum to pay these amounts to Class Counsel in
28 accordance with the provisions of the Settlement Agreement.

1 The payment of attorneys' fees and litigation expenses to Class Counsel is
2 approved and directed in this Final Approval Order, and shall be the sole award and
3 expenses to which Class Counsel or any other counsel for the Settlement Members
4 and the Settlement Class are entitled from Unum with respect to the Action. No
5 Plaintiff, nor any other Settlement Class Member, shall have any obligation to pay
6 Class Counsel any further amounts for attorneys' fees or litigation expenses in the
7 Action. No Plaintiff, or any other Settlement Member, shall be entitled to seek or
8 receive any further payment of attorneys' fees or litigation expenses in connection
9 with the Action from Unum.

10 Class Counsel will determine the amount of fees and expenses awarded by the
11 Court to be paid to other Co-Class Counsel. Disagreements, if any, between/among
12 Plaintiffs' Counsel in the Action relating to the Court's award of expenses, or of their
13 individual shares of such an award of fee, will be determined by the Court, which
14 will retain sole and exclusive jurisdiction to resolve any disagreements.
15 Disagreements between or among Plaintiffs' Counsel will not impact the
16 effectiveness or the implementation of this Settlement, nor will disagreements have
17 any impact on or result in any increase of the obligation imposed upon Unum by this
18 Final Order.

19 17. Service Awards/Payments to Plaintiffs. In recognition of their service
20 as Class Representatives, Unum shall pay Class Representative incentive awards to
21 Don of \$25,000, Pelham of \$20,000, and Little of \$15,000. The incentive awards to
22 Plaintiffs total \$60,000. In addition, Unum shall pay Michael Don \$15,000 in
23 consideration for individually settling a claim he had that Unum represents was
24 unique to him. Unum shall pay these amounts in addition to any benefits that
25 Plaintiffs are entitled to receive as Settlement Class Members.

26 Based on the declarations of Class Counsel and the Plaintiffs submitted in
27 support of final settlement approval, Plaintiffs have actively participated with and
28 assisted Class Counsel in this litigation for the substantial benefit of the Settlement
Class despite facing significant personal limitations. These service awards are

1 approved to compensate the Plaintiffs' burdens of their active involvement in this
2 litigation and their continuing efforts on behalf of the Class.

3 18. Payment to the Administrator. The Court further orders that in
4 accordance with the Settlement Agreement, Unum shall pay to the Administrator all
5 reasonable settlement notice and administration expenses up to \$125,000 billed
6 thereby in connection with the Settlement, consistent with the contract that such
7 Administrator entered into for the performance of such work and any additional
8 work requested by the Parties jointly, which sum now includes the adjustment
9 upwards of \$25,000, which the Court has approved over the preliminarily approved
10 sum of \$100,000.

11 19. Modification of Settlement Agreement. The Parties are hereby
12 authorized, without needing further approval from the Court, to agree to and make
13 amendments to, and modifications and expansions of the Settlement Agreement
14 provided such changes are consistent with this Final Order and do not limit the
15 Settlement Class Members or any other person entitled to Settlement Relief under
16 the Settlement Agreement.

17 20. Retention of Jurisdiction. The Court has jurisdiction to enter this Order
18 and Final Judgment. Without in any way affecting the finality of this Order or the
19 Final Judgment, for the benefit of the Settlement Class and Unum and to protect this
20 Court's jurisdiction, the Court expressly retains jurisdiction as to all matters relating
21 to the Settlement, including but not limited to any modification, interpretation,
22 administration, implementation, or enforcement of the Settlement, the administration
23 of the Settlement and Settlement Relief, including notices, payments, and benefits
24 thereunder, any objection to the Settlement, any request for exclusion from the
25 Settlement Class, the adequacy of representation by Counsel and/or the Class
26 Representatives, the amount of attorneys' fees and litigation expenses paid to Class
27 Counsel, the amount of any service awards paid to the Class Representatives, any
28 claim by any person or entity regarding or relating to representation of the Settlement
Class by Class Counsel, to enforce the related injunction provisions of the Settlement

1 and of this Final Order and Final Judgment and after any remand after appeal or
2 denial of any appellate challenge, any challenge made regarding any matter related
3 to this litigation or this Settlement, and the conduct of any party or counsel relating
4 to this litigation or this Settlement and all other issues related to this Action and
5 Settlement.

6 Further, without limiting the foregoing, the Court retains continuing
7 jurisdiction to:

8 A. enforce the terms and conditions of the Settlement Agreement to resolve
9 any disputes, claims or causes of actions that, in whole or in part, are to or arise out
10 of the Settlement Agreement, this Final Order and the Final Judgment (including,
11 without limitation, determining whether a person is or is not a Settlement Class
12 Member, and enforcing the permanent injunction that is a part of the Order and the
13 Final Judgment), and determining whether claims or causes of action allegedly
14 related to this case are barred by this Final Order and the Final Judgment;

15 B. interpret the Settlement Agreement and any Order entered by the Court
16 in the Action;

17 C. enter such additional orders as may be necessary or appropriate to
18 protect or effectuate this Final Order and the Final Judgment, or to ensure an orderly
19 administration of the Settlement;

20 D. preserve and protect the ability of the Settlement Class Members to
21 exercise their rights under the Settlement Agreement, including their right to receive
22 the Settlement Relief to which they are entitled under the terms and provisions of
23 the Settlement Agreement; and

24 E. enter any other necessary or appropriate orders to protect and effect the
25 Court's retention of continuing jurisdiction; provided however, nothing in this
26 Paragraph is intended to restrict the ability of the Parties to exercise their rights
27 under the Settlement Agreement.

28 21. No Admissions. This Order and the Settlement Agreement's provisions, all other documents referenced herein or any actions taken to carry out

1 this Order and the Judgment, and any negotiations, statements, or proceedings
2 relating to them shall not be construed as, offered as, received as, used as, or deemed
3 to be admissions of any kind, including in this Action, any other action, or in any
4 other administrative, regulatory, or other proceeding, except for purposes of approval
5 of the Settlement and the entry of judgment in the Action, to enforce implementation
6 of the Settlement, or to support any defense by Unum on principles of res judicata,
7 collateral estoppel, release, waiver, settlement, full faith and credit, setoff, or any
8 theory of claim preclusion, issue preclusion, release, injunction, or similar basis to
9 the extent allowed by law. Without limiting the foregoing, neither the Settlement
10 Agreement nor any related negotiations, statements, positions, notes, drafts, outlines,
11 memoranda of understanding, or Court proceedings relating to the Settlement or
12 Settlement approval, shall be offered as, received as, used as, or deemed to be
13 evidence in any proceeding by any person, including but not limited to, as proof of
14 any liability or wrongdoing whatsoever on the part of Unum, or as a waiver by
15 Unum, of any applicable defense, including any limitation or applicable statute of
limitation.

16 22. Disposition of Materials. Materials produced or created during the
17 proceedings related to the Action shall be disposed of as provided in the Settlement
18 Agreement.

19 23. Dismissal of Action. This Action, including all individual and
20 Settlement Class claims resolved in it, is hereby dismissed on the merits and with
21 prejudice without an award of attorneys' fees or costs to any party except as provided
22 in this Court's Order.

23 WHEREFORE, the Motion for Final Approval of the Settlement is
24 **GRANTED** on the terms set forth in this Order, and the Parties' counsel are directed
25 to implement and consummate the Settlement according to terms and provisions, as
26 they are set forth in the Settlement Agreement.

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IT IS SO ORDERED.

Dated: _____ 2016

Honorable Dale Fischer
United States District Judge

Applications/Ex Parte Applications/Motions/Petitions/Requests

2:13-cv-04502-DSF-VBK Michael Don v. Unum Life Insurance Company of America et al

(VBKx),DISCOVERY,MANADR,PROTORD

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Sheno, Allan on 5/26/2016 at 3:11 PM PDT and filed on 5/26/2016

Case Name: Michael Don v. Unum Life Insurance Company of America et al

Case Number: 2:13-cv-04502-DSF-VBK

Filer: Michael Don

Document Number: 211

Docket Text:

NOTICE OF MOTION AND MOTION for Order for For Final Approval filed by Plaintiffs Michael Don. Motion set for hearing on 6/27/2016 at 01:30 PM before Judge Dale S. Fischer. (Attachments: # (1) Proposed Order) (Sheno, Allan)

2:13-cv-04502-DSF-VBK Notice has been electronically mailed to:

Allan A Sheno asheno@shenoikoes.com

Christopher C Vader cvader@dc.rr.com

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2:13-cv-04502-DSF-VBK Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

The following document(s) are associated with this transaction:

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Document description: Proposed Order

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