

<p>DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO Boulder Justice Center 1777 6th Street Boulder, CO 80302</p> <hr/> <p>WILLIAM T. RICHARDSON, individually and on behalf of all others similarly situated Plaintiff,</p> <p>v.</p> <p>MENDOTA INSURANCE COMPANY, Defendant.</p> <hr/>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 06CV339</p> <p>Div.: 4</p>
<p>JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT</p>	

Plaintiff William T. Richardson (“Plaintiff”) and Defendant Mendota Insurance Company (“Defendant”), by their undersigned counsel of record move, pursuant to Colo.R.Civ.P. 23(e), for an Order: (1) preliminarily approving the Settlement Agreement Between Plaintiffs, Individually and on Behalf of a Class, and Defendant, attached as Exhibit 1 to this Joint Motion (the “Agreement”), (2) approving the manner and form of providing notice to the Class Members, as provided in the Agreement, (3) setting a final hearing date to determine whether the proposed Settlement should be approved as fair, reasonable and adequate, whether the proposed plan of distribution is fair and reasonable, and whether Class Counsel’s request for an award of attorneys’ fees and costs and Class Representative compensation should be approved (“Final Approval Hearing”).

In support of this motion, the Parties state as follows:

1. The settlement of class action litigation is favored. *Lisby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). Nonetheless, class action settlements must be approved by the court after notice to class members “in such a manner as the court directs.” Colo.R.Civ.P. 23(e). The purpose of requiring court approval of class action settlements is to protect the rights of absent class members by ensuring that the settlement is fair and is not a result of fraud, overreaching or collusion. *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 283 (D. Colo. 1997) (citing *Alvarado Partners, L.P. v. Mehta*, 723 F.Supp. 540, 546 (D.Colo. 1989), *app. dismissed*, 936 F.2d 582 (10th Cir. 1991) and *In Re New Mexico Nat. Gas Antitrust Litig.*, 607 F.Supp. 1491, 1497 (D.Colo. 1984)).

2. A class action settlement should be approved if the court determines that the settlement is “fair, reasonable, and adequate.” *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984); *Higley v. Kidder, Peabody & Co., Inc.*, 920 P. 2d 884, 891 (Colo. App. 1996). Factors the Court should consider include: “(1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.” *Gottlieb v. Wiles*, 11 F.3d 1004, 1014 (10th Cir. 1993). Other factors that may be reconsidered are the amount offered in settlement, the extent of discovery completed and the reaction of class members to the proposed settlement. *Higley v. Kidder, Peabody & Co., Inc.*, 920 P. 2d 884, 891.

3. Courts have established a two-step process in reviewing proposed class action settlements under Rule 23(e):

The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is ‘within the range of possible approval.’ This hearing is not

a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed to a fairness hearing. *Manual for Complex Litigation*, § 1.46 at 53-55 (West. 1977). If the . . . court finds a settlement proposal ‘within the range of possible approval,’ it then proceeds to the second step in the review process, the fairness hearing.

Armstrong v. Board of School Directors, 616 F.2d 305, 314 (7th Cir. 1980)), *overruled on other grounds*; see also *Horton v. Merrill Lynch, Inc.*, 855 F. Supp. 825, 827 (D.D.N.C. 1994) (in deciding whether to grant preliminary approval of a class settlement, the court need only consider “whether there is ‘probable cause’ to notify the class of the proposed settlement”) (citations omitted).

4. For the foregoing reasons, this Joint Motion does not require that the Court answer at this time the ultimate questions of the adequacy of the proposed settlement. Rather, the Court need only determine now whether the proposed settlement is “within the range of possible approval” such that it should be submitted to class members for their consideration. *Armstrong*, 616 F.2d at 314; *Horton*, 855 F. Supp. at 827. Preliminary approval of a proposed settlement before the final approval hearing is appropriate when the court finds that settlement negotiations occurred at arm’s length, there was sufficient discovery, and that the proponents of the settlement are experienced in similar litigation. 2 Newberg & Conte, *Class Action Litigation*, § 11.41, at 11-9.

5. The Parties submit that the proposed settlement in this action more than meets the standard for granting preliminary approval. The Plaintiff brought this action on behalf of a class consisting of all persons or entities who paid premiums to Mendota Insurance Company for uninsured/underinsured (“UM/UIM”) coverage on more than one motor vehicle at the same time in Colorado. Plaintiff contends that Defendant engaged in a course of conduct of selling UM/UIM coverage on multiple vehicles to its insureds for the same time period without

disclosing to its insureds that the persons insured under the policy obtained no additional UM/UIM benefits by purchasing UM/UIM coverage for more than one vehicle and that the “owned-but-not-insured” exclusion was invalid. Defendant vigorously denied those allegations.

6. The Parties have litigated Plaintiff’s claims for more than seven years. Significant motions addressing substantive legal issues have been resolved and documents have been exchanged as required by Rule 26(a) in many virtually identical cases being tried in Boulder County District Court. Moreover, the Settling Defendant provided additional information to Class Counsel in the context of the discussions that led to this Settlement, including information regarding the UM/UIM premiums assessed against putative class members during the Class Period. In short, the Settlement resulted from arm’s-length negotiations following a full evaluation of both the legal and factual basis of the Plaintiff’s claims. The proponents of the settlement, both Plaintiff and Settling Defendant, are represented by counsel experienced in similar litigation.

7. The Agreement provides that a Settlement Class will be certified that includes all persons or entities assessed premiums by Defendant for uninsured/underinsured motorist insurance (“UM/UIM”) coverage on more than one motor vehicle at the same time or provided any document related to a multi-vehicle policy containing or referring to the “owned-but-not-insured” exclusion in Colorado between May 1, 2001 and June 30, 2002 for policies issued or renewed, renewal policies issued between July 1, 2002 and July 31, 2002, new policies issued from July 1, 2002 to March 8, 2005, and renewal policies issued from August 1, 2002 until April 22, 2005, including any of their heirs, executors, administrators, personal representatives, successors and/or assigns, but excluding Settling Defendant and their employees, officers, directors and agents.

8. The Agreement further provides that the Settling Defendant will pay a total of \$419,022.95 (the “Settlement Fund”) to resolve the Class’ claims, to pay Class Counsel’s attorneys’ fees and expenses, and to pay compensation to the Class Representatives. In addition, Settling Defendants have also agreed to pay for all costs of the administration of the settlement.

9. The Settlement Fund represents approximately 81% of the UM/UIM premiums assessed to the Class Members on more than one vehicle at the same time during the Class Period by the Settling Defendant. This is, by all accounts, an excellent recovery for the Class Members in the context of this case, including the status of the case, extensive work that remains, and the uncertainties of litigation. Courts have consistently approved settlements involving recoveries far less attractive to the Class Members than this Settlement. See, e.g., *Newman v. Stein*, 464 F.2d 689 (2d Cir. 1971) (settlement award resulting in a recovery of less than 14% of actual alleged damages deemed fair); *In re General Instrument Securities Litigation*, 209 F. Supp.2d 423 (E.D. Pa. 2001) (court approved class action settlement in which class members would receive approximately 11% of the high-end of the range of damages); *In re Ikon Office Solutions, Inc. Securities Litigation*, 194 F.R.D. 166 (E.D. Pa. 2000) (settlement award resulting in a recovery between approximately 5-9% of damages was fair).

10. As the record before this Court reflects, this case has been hard fought from the beginning and involves numerous legal issues that ultimately may be subject to appeal absent a settlement. Moreover, many factual and legal issues remain. In addition to the inherent risks involved in further litigation as well as any subsequent appeals, there inevitably will be significant delay before any litigated outcome would provide benefits to the Class Members. For all of the foregoing reasons, the proposed settlement is fair and reasonable and in the best interests of the Class Members.

11. The Agreement provides for notice in the form attached to the Agreement as Exhibit B to be sent by first class mail, postage prepaid, to Class Members at their last known address reflected in the Settling Defendant's records. The Settlement Agreement further provides that any notices returned to the Class Administrator as not deliverable or not forwarded shall be checked against databases and re-mailed by the Class Administrator if a different address is found.

12. The notice advises Class Members of the terms of the proposed settlement, that they will be bound by the judgment to be entered in the event the Court approves the settlement, that a Final Approval Hearing will be held to consider final approval of the settlement, the proposed plan of distribution and class counsel's application for attorneys' fees and expenses and Class Representatives' compensation, and that they have a right to individually intervene in this action and/or present the Court with any objection they have to the proposed settlement, the plan of distribution or to the application for attorneys' fees and expenses and Class Representatives' compensation.

13. In addition, the Agreement provides for the entry by the Court of a Preliminary Approval Order in the form of Exhibit A to the Agreement if this Joint Motion is granted, and entry of Final Judgment in the form attached to the Agreement as Exhibit C in the event the Court approves the Settlement following the Final Approval Hearing.

14. If the Court enters the proposed order (Exhibit A to the Agreement) certifying a Settlement Class and preliminarily approving the proposed settlement, the parties suggest that the Court schedule a hearing for Final Approval Hearing as soon as practicable but not earlier than 120 days following entry of that Order in order to give the Class Administrator time to mail the notices to the Class Members time to re-mail as necessary and a meaningful opportunity for

Class Members to decide whether to exclude themselves from the Settlement Class and whether to object to the proposed settlement.

WHEREFORE, the Parties move the Court to enter an order pursuant to Colo.R.Civ.P. 23(e) in the form attached hereto as Exhibit A to the Agreement (a separate copy of which is provided for entry by the Court) certifying a settlement class and preliminarily approving the Settlement, approving the form and manner of providing notice to the Class Members, and setting a date for the Final Approval Hearing and related matters.

Dated: December 20, 2010

Respectfully submitted,

ATTORNEYS FOR SETTling
DEFENDANT:

*signed original on file at Overturf McGath
Hull and Doherty, P.C.*

/s/ Stacy B. Spurlock

Mark C. Overturf

Stacy B. Spurlock

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625 East 16th Avenue

Denver, CO 80203

ATTORNEYS FOR PLAINTIFF AND
THE SETTLEMENT CLASS:

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/s/ Thomas D. McFarland

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<p>DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO Boulder Justice Center 1777 6th Street Boulder, Colorado 80302</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>William T. Richardson, individually and on behalf of all others similarly situated</p> <p>Plaintiff,</p> <p>v.</p> <p>Mendota Insurance Company</p> <p>Defendant.</p>	
<p>Attorneys for Plaintiff:</p> <p>Robert F. Hill, #6873 Hill & Robbins, P.C. 1441 18th Street, Suite 100 Denver, CO 80202 Phone: (303) 296-8100</p> <p>Thomas D. McFarland, #9849 McFarland Law Offices 910 13th Street, Suite 200 Golden, CO 80401 Phone: (303) 277-0202</p> <p>M. Gabriel McFarland, #26167 Evans & McFarland, LLC 910 13th Street, Suite 200 Golden, CO 80401 Phone: (303) 279-8300</p> <p>Attorneys for Defendant:</p> <p>Mark C. Overturf, #15188 Stacy B. Spurlock, #34752 Overturf McGath Hull & Doherty, P.C. 625 East 16th Avenue Denver, CO 80203 Phone: (303) 860-2848</p>	<p>Case Number: 2006CV339</p> <p>Div: 4</p>
<p>SETTLEMENT AGREEMENT</p>	

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**SETTLEMENT AGREEMENT BETWEEN PLAINTIFF, INDIVIDUALLY
AND ON BEHALF OF A CLASS, AND DEFENDANT MENDOTA
INSURANCE COMPANY**

Plaintiff William T. Richardson (“Plaintiff”), on behalf of himself and the Settlement Class he represents, by and through undersigned counsel of record, and Defendant Mendota Insurance Company, by and through its undersigned counsel of record, hereby stipulate and agree that, subject to Court approval under C.R.C.P. 23, Plaintiff’s claims in this Litigation against Defendant will be settled and dismissed on the terms and conditions set forth in this Settlement Agreement (“Settlement Agreement”).

I. DEFINITIONS

The following words and phrases shall have the following meanings throughout this Settlement Agreement:

1. The word and phrase “Plaintiff” or “Class Representative” means William T. Richardson.
2. The phrase “Settling Defendant” means Mendota Insurance Company.
3. The phrase “Settlement Class” or “Settlement Class Members” means all persons who paid premiums to Mendota Insurance Company for uninsured/underinsured motorist insurance (“UM/UIM”) coverage covering more than one motor vehicle at the same time during the period from May 1, 2001 and April 22, 2005, excluding Settling Defendant and its employees, officers, directors and agents.
4. The phrase “Class Period” is defined as the time period for UM/UIM coverage on policies issued or renewed from May 1, 2001 to June 30, 2002; and renewal policies issued between July 1, 2002 and July 31, 2002. The Class Period shall also include the time period for

UM/UIIM coverage on new policies issued from July 1, 2002 to March 8, 2005; and renewal policies issued from August 1, 2002 until April 22, 2005.

5. The word “Litigation” means the above-captioned civil action presently in the District Court for Boulder County, Colorado insofar as it relates to the claims brought by Plaintiff against Settling Defendant.

6. The phrase “Class Counsel” means the law firms of Hill & Robbins, P.C., 1441 18th Street, Denver, Colorado 80202, the McFarland Law Offices, 910 13th Street, Suite 200, Golden, Colorado 80401, Evans & McFarland, LLC, 910 13th St., Suite 200, Golden, Colorado 80401, and their predecessor and/or successor firms.

7. The phrase “Settling Defendant’s Counsel” means the law firm of Overturf, McGath, Hull & Doherty, P.C., 625 E. 16th Ave, Denver, CO 80203.

8. The phrase “Final Judgment” means the entry by the District Court of the judgment attached hereto as Exhibit C without modification, except as may be approved by the Parties in writing.

9. The phrase “Final Approval” means the last date by which all of the following have occurred:

- (a) the District Court has entered the Final Judgment in the form attached hereto as Exhibit C, without modification, except as may be approved by the Parties in writing;
- (b) 45 days have passed after entry of the Final Judgment and rehearing, reconsideration, or appellate review is not timely filed by any person, or if rehearing, reconsideration, or appellate review of the Final Judgment is timely filed by any person, when any and all avenues of rehearing, reconsideration, and appellate review have been exhausted and no further rehearing, reconsideration, or appellate review is permitted or

the time for seeking such review has expired, provided that the Final Judgment has not been altered, modified, amended, vacated, or overturned.

10. The word “Parties” means Plaintiff and Settling Defendant, collectively.

11. The phrase “Class Administrator” means Class Action Administration, Inc., Broomfield, Colorado, to be retained by the Settling Defendant to administer the settlement.

12. The phrase “Preliminary Approval” means entry by the District Court of an order the same or similar in content to the attached Exhibit A, without modification except such as may be approved by the Parties in writing: (a) preliminarily approving the terms and conditions of this Settlement Agreement; (b) certifying the Settlement Class pursuant to Colo.R.Civ.P. 23; (c) authorizing notice of the Settlement Agreement to be provided to the Settlement Class Members; (d) approving the manner and form of notice to be provided to the Settlement Class Members, as provided in this Settlement Agreement; and (e) scheduling a fairness hearing at which the Court will determine whether this Settlement Agreement should be approved as fair, reasonable, and adequate.

13. The phrase “Settlement Fund” means a compromised settlement sum of \$419,022.95 paid by Settling Defendant to the Settlement Class to resolve this Litigation.

14. The phrase “Released Parties” shall mean Settling Defendant, individually and collectively, and all of its respective past and present predecessors, parent corporations, successors, assigns, attorneys, accountants, representatives, officers, directors, employees, agents, and independent contractors. Other than the Settling Defendant, the phrase “Released Parties” does not include any other subsidiary or affiliate of Mendota Insurance Company which sells automobile insurance in Colorado and the release of any parent corporations is limited to liability resulting from the sale of UM/UIM coverage in Colorado. Released Parties shall not

include any parties making claims for UM/UIM benefits for any accident occurring on or before the date of this settlement.

15. The phrase “Plan of Distribution” means the methodology for calculating and procedure for distributing the Settlement Funds set forth in Article III, Sections 4 and 5 of this Settlement Agreement.

II. DESCRIPTION OF LITIGATION

Plaintiff alleges that the Settling Defendant failed to provide the requisite information to its Colorado policyholders in connection with its sale of UM/UIM coverage to permit its insureds to make an informed decision with respect to the purchase of UM/UIM coverage. Plaintiff brought this action on behalf of himself and a Class to recover the amounts collected for UM/UIM coverage above the amount that would have been collected for such coverage under a single-vehicle policy from May 1, 2001 to April 22, 2005. Plaintiff’s claims address only the Settling Defendant’s conduct in Colorado with respect to Colorado policyholders under Colorado law.

The Court’s Ruling and Order of January 26, 2005 in this case dismissed Plaintiff’s claims concerning the Settling Defendant’s disclosures to policyholders concerning UM/UIM coverage made prior to the decision of the Colorado Supreme Court in *DeHerrera v. Sentry Ins. Co.*, 30 P.3d 107, on April 30, 2001. Plaintiff’s claims concerning disclosures to policyholders about UM/UIM coverage made on and after May 1, 2001 remained pending.

Mendota deleted the reference to the “owned-but-not-insured” exclusion in its Colorado policies effective July 1, 2002 for new business and August 1, 2002 for renewal business. Mendota changed its practices regarding the sale of UM/UIM coverage in Colorado on March 9, 2005 for new business policies and April 23, 2005 for renewal customers.

Settling Defendant has denied and continues to deny the allegations of wrongdoing and has vigorously litigated the issues that have arisen to date in the Litigation. Settling Defendant also denies any wrongful conduct toward Colorado policyholders concerning the sale of UM/UIIM coverage. This settlement is a compromise of disputed claims, and Settling Defendant does not admit liability to Plaintiff or the Settlement Class. Nevertheless, without admitting or conceding any liability or damages and in order to avoid the uncertainty, risks, and costs of the Litigation, the Parties have agreed to settle the claims of the Plaintiff and the Settlement Class in the manner and upon the terms and conditions set forth in this Settlement Agreement.

NOW THEREFORE, it is stipulated and agreed by and between the Parties that the Litigation be settled, terminated, and dismissed, based on the following terms and conditions:

III. TERMS OF THE SETTLEMENT

1. Certification of Settlement Class for Settlement Purposes

1.1 The Parties hereby agree, subject to the approval of the Court pursuant to Rule 23 of the Colorado Rules of Civil Procedure and as part of its Motion for Preliminary Approval, Plaintiff will seek certification of the Settlement Class pursuant to Colo.R.Civ.P. 23 solely for the purpose of this Settlement. Settling Defendant will stipulate to that certification solely for the purpose of this Settlement.

2. Class Notice

2.1 Settling Defendant agree to use its best efforts to create, at its expense, a list of the names and last known addresses of Class Members during the Class Period, as reflected by Settling Defendant's records. Settling Defendant shall deliver such list of Class Members to the Class Administrator along with records documenting the amount of premiums each Class Member paid for UM/UIIM coverage in excess of the first vehicle within 15 days after Preliminary Approval.

2.2 No later than 30 days after the Class Administrator receives the list described in paragraph 2.1, the Class Administrator shall cause notice to be mailed to each Class Member, to the last known address of each Class Member as reflected in Settling Defendant's records. The notice shall be in substantially the same content and form as Exhibit B attached hereto. Any mailed notice returned to the Class Administrator by the U.S. Postal Service as not deliverable or not forwarded shall be checked against available databases and re-mailed by the Class Administrator if a different address is obtained or a forwarding address can be determined.

2.3 Any Settlement Class Member individually may elect to opt out of the Settlement Class, within the time and in the manner specified in the class notice and in the Preliminary Approval, with the effect that the rights of any Settlement Class Member who timely opts out shall not be affected by this Settlement Agreement. The right to opt out of the Settlement Class may only be exercised individually by a Settlement Class Member and not by any other person in a representative capacity. Any Settlement Class Member seeking to be excluded from the Settlement Class must send a written request for exclusion to the Class Administrator, at an address to be designated in the class notice and postmarked by the date that appears in the notice to request exclusion from the Settlement Class.

2.4 Within 14 days after the deadline for Settlement Class Members to mail their elections to exclude themselves from the Class, the Class Administrator shall submit a report to Class Counsel and Settling Defendant's Counsel of the names and addresses of all Settlement Class Members who have timely and properly excluded themselves from the Class. Upon the reasonable request of Class Counsel, the Class Administrator shall make available for inspection and copying any opt out requests received by the Class Administrator.

2.5 Settling Defendant shall have the right to withdraw from this Settlement

Agreement if the number of Settlement Class Members who timely elect to be excluded from the Settlement Class exceeds 10% of the total of all Settlement Class Members. Settling Defendant must exercise such right to withdraw, in writing to Class Counsel, within 10 business days after receipt of the report of opt outs from the Class Administrator. If Settling Defendant timely exercise the right to withdraw described herein, this Settlement Agreement shall be null and void for all purposes and the Parties shall be restored without prejudice to their respective pre-settlement litigation positions.

3. **Class Settlement Procedures**

3.1 Plaintiff through Class Counsel may, within 30 days of the signing of this Settlement Agreement seek, and Settling Defendant will provide, reasonable supporting information as to the numbers and the underlying data in possession of Settling Defendant regarding the total amount of UM/UIM premiums attributable to additional vehicles beyond one during the Class Period, and the number of impacted policies. Settling Defendant agrees through counsel to reasonably make one company representative available to Class Counsel, by telephone, as reasonably necessary for further confirmation of the information provided. No formal discovery will be permitted. Plaintiff agrees to treat all documents and information provided as confidential and subject to any protective order that may be entered in connection with the production.

3.2 The parties shall jointly move the Court to enter a Preliminary Approval order in the form of Exhibit A.

3.3 Prior to the Fairness Hearing, Plaintiff's Counsel shall move the Court to approve and enter Final Judgment, substantially in the form of Exhibit C hereto, granting final approval of this Settlement Agreement as fair, reasonable, adequate and binding on all Settlement Class

Members who have not timely and properly excluded themselves, approving the Plan of Distribution, and effecting the releases as set forth in Section 8.

3.4 If the District Court fails to enter the Final Judgment substantially in the form of Exhibit C hereto, or the Final Judgment does not receive Final Approval, or the Final Judgment materially alters the terms of this Settlement Agreement, each of the Parties have the right to declare the Settlement Agreement null and void, and the Litigation will resume without prejudice to the rights of any Party and restoration of the positions of the Parties as of the date this Settlement Agreement was executed, unless the Final Judgment and Final Approval in accordance with this Settlement Agreement are successfully obtained on appeal, or unless the Parties agree to amend the Settlement Agreement and obtain Final Approval of the amended Settlement Agreement.

4. **Disbursements to Settlement Class Members**

4.1 Within ten days after Final Approval, Settling Defendant shall establish the Settlement Fund by depositing the total sum \$419,022.95, in an account in trust established by the Class Administrator, with written confirmation of such deposit provided to Class Counsel. Except for certain administrative expenses as provided in Article III, paragraph 6.1, this deposit of the Settlement Fund shall constitute the entire monetary consideration to be paid by or on behalf of Settling Defendant in connection with the Settlement.

4.2 Within 30 days after Final Approval, the Settlement Fund shall be distributed to the Settlement Class Members based on their pro rata share of the Settlement Fund, without interest, less all sums approved by the Court and distributed as compensation to the Class Representative and payments to Class Counsel for attorneys' fees and costs. Each Settlement Class Members' pro rata share shall be determined based upon the business records provided by Settling Defendant, demonstrating the amount of UM/UIM premiums assessed to Settlement

Class Members in excess of the premiums that would have been collected from each Settlement Class Member for simultaneous coverage on one motor vehicle during the Class Period. Any class member whose notice was returned after all reasonable re-mailings as described in paragraph 2.2 will not be issued a check and their share of the Settlement Fund will be distributed pro rata to the other Settlement Class Members.

4.3 The Class Administrator shall notify Class Counsel and Settling Defendant's Counsel at least three (3) days business days before distributions to Settlement Class Members commence.

4.4 Disbursements to Settlement Class Members shall be issued via checks whose terms require negotiation within 120 days of the instrument's date. Checks shall be mailed by the Class Administrator to Settlement Class Members to their last known address. No check will be issued for less than \$5.00. In the event any such checks are returned to the Settlement Administrator by the U.S. Postal Service as not deliverable or not forwarded, the Class Members to whom such checks were mailed shall be checked against available databases and re-mailed by the Settlement Administrator if a different address is obtained or a forwarding address can be determined. The parties agree that any funds represented by checks not ultimately cashed will, with the Court's approval, be donated to the clinical education programs at the University of Colorado Law School.

4.5 Within 100 days after completing disbursements to Settlement Class Members, the Class Administrator shall report in writing to Class Counsel and Settling Defendant's Counsel the total amount of disbursements to Settlement Class Members and the disposition of any unclaimed funds, in accord with Article III, paragraph 4.4. Within 10 days after receipt of

the report of the Class Administrator, the Parties shall submit an agreed order to the Court in the form of Exhibit D, terminating and dismissing the Litigation.

5. **Attorneys' Fees and Costs and Payment To Class Representatives**

5.1 Neither Settling Defendant's nor Settling Defendant's Counsel will oppose nor object to Class Counsel's request for an award of attorneys' fees in connection with the representation of the Class in this Litigation up to a total of 30% of the Settlement Fund. Neither Settling Defendant's nor Settling Defendant's Counsel will oppose nor object to Class Counsel's request for an award for the reimbursement of the actual expenses and costs incurred by Class Counsel in connection with the representation of the Class in this Litigation. Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid by the Class Administrator from the Settlement Fund within 30 days after Final Approval.

5.2 Settling Defendant shall have no responsibility for and shall have no liability whatsoever with respect to the allocation among Class Counsel and/or any other person who may assert a claim thereto of any attorneys' fees or expenses that the Court may award.

5.3 Neither Settling Defendant nor Settling Defendant's Counsel will oppose a motion to the District Court seeking compensation to the Class Representative for his work in connection with the Litigation in an amount not to exceed \$5,000.00. Any compensation to the Class Representative approved by the Court shall be paid from the Settlement Fund at the same time as distributions to Settlement Class Members as described in Article III, paragraph 4.4.

6. **Settlement Administration Costs**

6.1 Settling Defendant shall pay all fees and costs of the Class Administrator, including but not limited to the fees and costs to determine current addresses for the Settlement Class Members as provided in Section III, paragraphs 2.2 and 4.2, provide notice to the Settlement Class Members as provided in Section III, paragraph 2.2, and distribute the

Settlement Fund in accordance with the Plan of Distribution approved by the Court as provided in Section III, paragraphs 3.1 through 3.4, and paragraphs 4.1 through 4.5.

6.2 Class Counsel and Settling Defendant's Counsel shall have the right to monitor the work of the Class Administrator and the Class Administrator shall report to the Parties and the Court, as requested, documenting its actions in connection with administration of the settlement pursuant to this Settlement Agreement. The Parties, Class Counsel, and Settling Defendant's Counsel shall in good faith cooperate in the implementation of the Settlement and this Settlement Agreement.

7. **List of Class Members**

7.1 Class Counsel agrees that the Class Administrator will treat the list of Settlement Class Members as "Confidential" and not use the list of Settlement Class Members for any purpose other than the administration and implementation of this Settlement Agreement.

8. **Release and Covenant Not to Sue**

8.1 Upon Final Approval, Plaintiff and all Settlement Class Members who have not timely and properly excluded themselves, regardless of whether such Settlement Class Members have claimed or obtained benefits hereunder, on behalf of themselves and their successors and assigns, shall release and forever discharge the Released Parties from any and all claims, lawsuits, rights, counts, causes of action, damages, judgments, executions, attachments, debts, demands, liabilities, and obligations of every kind and nature, known and unknown, in law or equity, class or individual, suspected or unsuspected, concealed or unconcealed, tangible or intangible, whether sounding in contract, tort, unjust enrichment or any other theory, that were asserted or could have been asserted by Plaintiff in this Litigation on behalf of the Class against the Released Parties, for any injury or damages relating to or arising out of: (a)(i) premiums or

rates charged for UM/UIM in the state of Colorado on more than one vehicle at the same time at any time during the Class Period; (ii) the manner in which premiums for UM/UIM coverage were described or not described to policyholders during the Class Period; (iii) disclosures or omissions to disclose in connection with the sale of UM/UIM coverage during the Class Period; including without limitation any claim that the Released Parties violated (with respect to the foregoing) any Unfair Claims Practices statute, any consumer fraud statute, or any other statutory or common law requirement or duty, any claims of negligence, bad faith, misrepresentation, breach of contract, conversion, unjust enrichment, or any other claim; (iv) the presence of the “owned-but-not-insured” exclusion in any offer or disclosure document or the policies of the Settling Defendant; and (b) any and all claims to attorneys’ fees and/or expenses in connection with the prosecution of this Litigation or the claims described in this subparagraph, except for the amount set forth in and awarded pursuant to paragraph 5.1. It is specifically agreed that this paragraph 8.1 should not be interpreted to adversely impact or release any Settlement Class Member’s claim, unrelated to the theories alleged in this Lawsuit, for any personal injury compensable under UM/UIM coverage.

8.2 Upon Final Approval, all Settlement Class Members who have not timely and properly excluded themselves hereby covenant not to sue the Released Parties in respect to any or all of the Released Claims identified in paragraph 8.1.

8.3 Effective upon entry by the Court of the Final Judgment, all claims of Plaintiff and of all Settlement Class Members, except for those who have timely and properly excluded themselves, shall be dismissed with prejudice and without costs.

8.4. Plaintiff agrees that Settling Defendant has offered consideration for the Released Claims by Settlement Class Members who do not opt out, regardless of whether Settlement Class Members receive or negotiate the checks described in Section 4.

8.5 Upon Final Approval, the Settling Defendant shall fully, finally and forever release the Class Representative, Settlement Class Members who have not opted out, and Class Counsel from any and all past, present, or future damages and/or request for equitable relief arising out of, relating to, or in connection with the institution, prosecution, or resolution of this Litigation.

8.6 This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims, and neither the Settlement Agreement nor the releases given herein, nor any consideration therefore, nor any actions taken to carry out this Settlement Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, or of any point of fact or law (including but not limited to the propriety of class certification) on the part of any Party. Settling Defendant denies the allegations of the complaint and all amended complaints filed in the Litigation.

9. **Miscellaneous**

9.1 All proceedings with respect to the administration of this Settlement Agreement and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Boulder County District Court.

9.2 The terms of this Settlement Agreement inure to the benefit of and are binding upon the Parties and their assigns and successors in interest.

9.3 This Settlement Agreement may be executed in counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned.

9.4 Class Counsel and Settling Defendant's Counsel agree to cooperate in the timely submission of this Settlement Agreement to the Court, to recommend approval of the settlement in the form set forth in this Settlement Agreement, and to use their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may become reasonably necessary by order of the Court or otherwise, to effect the Settlement provided for by this Settlement Agreement and to obtain Final Approval of the Final Judgment.

9.5 The terms and conditions set forth in this Settlement Agreement, including exhibits identified as Exhibit A, Exhibit B, Exhibit C, Exhibit D, constitute the complete and exclusive agreement between the Parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations, representations, and understandings, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement and all attached exhibits constitute the complete and exclusive statement of its terms as between the Parties and that no extrinsic evidence may be introduced in any judicial proceeding involving this Settlement Agreement. Prior or contemporaneous representations not contained in this Settlement Agreement shall be of no force or effect. Any modification of this Settlement Agreement must be in writing signed by or on behalf of Class Counsel and Settling Defendant.

9.6 This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

9.7 Settling Defendant expressly reserve the right to communicate with and respond to inquiries from policyholders and Settlement Class Members orally and/or in writing, and it

may do so through any appropriate agent or agencies. Settling Defendant will undertake to assure that such communications accurately reflect the pertinent terms, conditions and effects of this Settlement.

9.8 This Agreement was entered into only for purposes of compromise and settlement and is not an admission of liability by Settling Defendant or an admission that a class should be certified. In the event that Final Approval, without modification, does not occur for any reason, then no term or condition of this Settlement Agreement shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation or in any other proceeding.

9.9 The determination of the terms of and the drafting of this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel.

9.10 As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof as the context may require.

9.11 In the event any date or deadline for actions set forth in this Settlement Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the date it has been executed on behalf of both Plaintiff and Defendant.

Dated: December ____, 2010

Dated: December ____, 2010

Mendota Insurance Company
Settling Defendant

ATTORNEYS FOR SETTling
DEFENDANT:

/s/ Stacy B. Spurlock

Mark C. Overturf
Stacy B. Spurlock
Overturf McGath Hull & Doherty, P.C.
625 East 16th Avenue
Denver, CO 80203

ATTORNEYS FOR PLAINTIFF AND
THE SETTLEMENT CLASS:

/s/ Thomas D. McFarland

Thomas D. McFarland
McFarland Law Offices
910 13th Street, Suite 200
Golden, CO 80401

M. Gabriel McFarland
Evans & McFarland
910 13th Street, Suite 200
Golden, CO 80401

Robert F. Hill
John H. Evans
Nate P. Flynn
Hill & Robbins, P.C.
1441 18th Street, Suite 100
Denver, CO 80202

DISTRICT COURT, BOULDER COUNTY, STATE OF
COLORADO
Boulder Justice Center
1777 6th Street
Boulder, CO 80302

WILLIAM T. RICHARDSON, individually and on behalf
of all others similarly situated
Plaintiff,

v.

MENDOTA INSURANCE COMPANY
Defendant.

▲ COURT USE ONLY ▲

Case Number: 06CV339

Div.: 4

**ORDER PRELIMINARILY APPROVING SETTLEMENT BETWEEN PLAINTIFF
AND DEFENDANT MENDOTA INSURANCE COMPANY, AND APPROVING NOTICE
TO SETTLEMENT CLASS MEMBERS**

Plaintiff and Settling Defendant, having made a joint motion for preliminary approval of a Settlement Agreement (“the Settlement”) between a Settlement Class and Mendota Insurance Company (referred to as “Settling Defendant”); and the Court having read and considered the Settlement Agreement,

IT IS ORDERED that:

1. For settlement purposes only and contingent upon the Settlement being finally approved the Court finds that this action is maintainable as a class action against Settling Defendant, for settlement purposes only, on behalf of a Settlement Class defined as follows:

2. All persons or entities allegedly assessed premiums by Mendota Insurance Company for uninsured/underinsured motorist insurance (“UM/UIM”) coverage on more than

one motor vehicle at the same time or provided any document related to a multi-vehicle policy containing or referring to the “owned-but-not-insured” exclusion in Colorado between May 1, 2001 and April 22, 2005, including any of their heirs, executors, administrators, personal representatives, successors and/or assigns, but excluding Settling Defendant, and its employees, officers, directors and agents.

3. Subject to Final Approval and the entry of Final Judgment, both as defined in the Settlement Agreement, and for settlement purposes only, the Court finds that the prerequisites of Colo.R.Civ.P. 23 are met and hereby certifies the foregoing defined Settlement Class as a damages class pursuant to Colo.R.Civ.P. 23(b)(3). If such Final Approval of the Settlement is not granted, or if Settlement Order and Final Judgment as contemplated herein is not entered, this Order of Certification shall be vacated and the parties shall be restored without prejudice to their respective litigation positions prior to the date of this Order of Preliminary Approval.

4. The Court finds that the manner and content of notice specified in the Settlement Agreement and in Exhibit B thereto will provide the best practicable notice to members of the Settlement Class and satisfies the requirements of due process. Notice shall be mailed to Settlement Class members, at Settling Defendant’s expense, no later than 60 days after the date of this Order, in a form and content substantially similar to Exhibit B to the Settlement Agreement, and in substantially the manner specified in the Settlement Agreement. This notice will provide Settlement Class members with the opportunity to request exclusion from the Settlement Class. Such opt out rights may be exercised only individually by a Settlement Class Member, and not by any other person in a representative capacity.

5. The Court preliminarily and conditionally approves the settlement of the Class claims as described in the Settlement Agreement for the total sum of \$419,022.95 (the

“Settlement Fund”), plus the payment of the actual fees and costs of the Class Administrator, as provided in the Settlement Agreement, Article III, 6.1. The Court preliminarily finds the Settlement to be fair, reasonable, and adequate and in the best interests of Settlement Class Members. The Court also preliminarily finds the manner and method of distribution of the Settlement Fund to be fair, reasonable, and adequate and in the best interests of Settlement Class Members.

6. A Fairness Hearing shall be held before this Court on _____, 2011 at _____m., to consider and finally determine:

- a. Whether the Settlement should be finally approved by the Court as fair, reasonable, and adequate;
- b. Whether attorneys’ fees and expenses should be awarded to Plaintiff’s Counsel and payment should be made to the Class Representative, as provided in the Settlement Agreement;
- c. Whether the plan of distribution is fair and reasonable; and
- d. Objections, if any, made to the Settlement, or any of its terms.

The Fairness Hearing may be postponed, adjourned, or continued by order of the Court without further notice to Settlement Class Members.

7. Any person who wishes to opt out of the Settlement Class must send a written request for exclusion in the manner and to the address provided in the notice approved above. Any Settlement Class Member who has not requested exclusion and who objects to approval of the proposed settlement may appear at the Fairness Hearing in person or through counsel retained at their own expense to show cause why the proposed settlement should not be finally approved as fair, reasonable, and adequate. However, no person (other than named Parties) may be heard at the Fairness Hearing, or file papers or briefs in connection therewith, unless on or before _____, _____, such person has filed with the Court and served on Class Counsel and Settling Defendant’s Counsel a timely written objection and notice of intent to appear, in accordance with the procedures specified in the notice. Any member of the Settlement

Class who does not object to the settlement in the manner provided herein shall be deemed to have waived any such objection.

8. Settling Defendant's Counsel and Class Counsel shall promptly furnish to all other counsel copies of any objection or notice of intent to appear that comes into such counsel's possession.

9. If the Settlement is finally approved, the Court shall enter a Settlement Order and Final Judgment approving the Settlement Agreement and incorporating it as the judgment of the Court, which judgment shall be binding upon all members of the Settlement Class who have not previously requested exclusion in accordance with this order and the terms of the Settlement Agreement.

10. In the event that the proposed settlement reflected by the Settlement is not approved by the Court, or entry of Final Judgment or Final Approval as provided in the Settlement Agreement does not occur for any reason, then the Settlement Agreement, all drafts, negotiations, discussions, and documentation relating thereto, and all orders entered by the Court in connection therewith, shall become null and void, and shall not be used or referred to for any purpose in this Litigation or in any other proceeding. In such event, the Settlement Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice to the rights of any of the Parties thereto, who shall be restored to their respective positions as of the date of the execution of the Settlement.

11. Subject to Final Approval, all Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class are permanently enjoined, in either an individual or representative capacity, from filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or seeking to certify a

class in, or organizing owners of policies of Settling Defendant into a separate class of persons, as a purported class action (including by seeking to amend a pending complaint to include class allegations) in or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction, based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in or underlying this action which qualify them as Settlement Class Members.

12. Capitalized terms herein shall have the same meaning as defined in the Settlement Agreement.

13. The Parties are hereby authorized without further approval from the Court to adopt such amendments or modifications of the Settlement Agreement and all exhibits thereto as shall be consistent in all respects with this Order and do not limit the rights of Settlement Class Members.

Dated: _____, _____.

JUDGE D.D. MALLARD
Boulder County District Court

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: ALL PERSONS OR ENTITIES ASSESSED PREMIUMS BY MENDOTA INSURANCE COMPANY FOR UNINSURED/UNDERINSURED MOTORIST INSURANCE (“UM/UIM”) COVERAGE ON MORE THAN ONE MOTOR VEHICLE AT THE SAME TIME, OR PROVIDED ANY DOCUMENT RELATED TO A MULTI-VEHICLE POLICY CONTAINING OR REFERRING TO THE “OWNED-BUT-NOT-INSURED” EXCLUSION IN COLORADO, BETWEEN MAY 1, 2001 AND APRIL 22, 2005, INCLUDING ANY OF THEIR HEIRS, EXECUTORS, ADMINISTRATORS, PERSONAL REPRESENTATIVES, SUCCESSORS AND/OR ASSIGNS, BUT EXCLUDING SETTLING DEFENDANT, AND ITS EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS.

Please Read This Notice Carefully And Completely. Your Rights May Be Affected By Legal Proceedings In This Litigation. A Settlement Has Been Proposed In Pending Class Action Litigation. If You Are A Member Of The Class, You May Be Entitled To Receive An Award Of Benefits Pursuant To The Proposed Settlement.

THIS IS NOT A LAWSUIT AGAINST YOU. YOU ARE NOT BEING SUED.

This is to notify you of litigation currently pending in the District Court for Boulder County, Colorado, entitled William T. Richardson, Individually, and On Behalf Of All Others Similarly Situated v. Mendota Insurance Company, Case Number: 06CV339 that may affect your legal rights.

The parties to the lawsuit have reached a proposed settlement under which benefits will be provided to Class Members, as identified below. The Court has conditionally certified a class for settlement purposes and has ordered this Notice to be sent to you to advise you of your rights. **IF YOU WISH TO REMAIN A MEMBER OF THE CLASS AND PARTICIPATE IN THE SETTLEMENT DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.**

DESCRIPTION OF THE LAWSUIT

1. This litigation was initiated by Plaintiff William Richardson (“Plaintiff”) against Mendota Insurance Company (“Mendota”), alleging that Mendota engaged in a course of conduct of selling uninsured/underinsured (“UM/UIM”) coverage on multiple vehicles to its insureds for the same time period without disclosing to insureds that the persons insured under the policy obtained no or little additional UM/UIM benefits by purchasing UM/UIM coverage for more than one vehicle and that the “owned-but-not-insured” exclusion in Mendota’s policies was invalid. Mendota denied and continues to deny the allegations of wrongdoing.

2. Class actions are lawsuits in which one or more persons sue on behalf of other persons who have similar claims. The members of this group are called the Class.

3. The Court has certified a class for settlement purposes. Members of the Class include all persons or entities allegedly assessed premiums by Mendota Insurance Company for uninsured/underinsured motorist insurance (“UM/UIM”) coverage on more than one motor vehicle at the same time or provided any document related to a multi-vehicle policy containing or referring to the “owned-but-not-insured” exclusion in Colorado between May 1, 2001 and

April 22, 2005, including any of their heirs, executors, administrators, personal representatives, successors and/or assigns, but excluding Settling Defendant, and its employees, officers, directors and agents.

4. You have received this Notice because Mendota's records indicate that you are a Class Member.

COUNSEL FOR PLAINTIFFS AND DEFENDANTS

5. For purposes of this Settlement, the Court has designated Plaintiff William Richardson as class representative and Robert F. Hill, John H. Evans, and Nathan P. Flynn of Hill & Robbins, P.C., 1441 18th Street, Denver, CO 80202, Tom McFarland of McFarland Law Offices, 910 13th Street, Suite 200, Golden, CO 80401, and M. Gabriel McFarland, of Evans & McFarland, LLC, 910 13th Street, Suite 200, Golden, CO 80401, as counsel for Plaintiff and the Class.

Attorneys for the Settling Defendant are Mark Overturf and Stacy Spurlock of Overturf, McGath, Hull and Doherty, P.C., 625 E. 16th Ave, Denver, Colorado 80203.

THE PROPOSED SETTLEMENT

6. The following description of the proposed settlement is only a summary. You may look at the complete text of the Settlement Agreement in the Court files for this case located in the Clerk's Office in the Boulder Justice Center, 1777 6th Street, Boulder, Colorado. You may also view the Settlement Agreement at the Hill and Robbins, P.C. web site (<http://www.HillandRobbins.com>).

7. The Settling Defendant has agreed to pay a total of \$419,022.95 ("Settlement Fund"), representing approximately 81% of the UM/UIM premiums assessed to the Class Members on more than one vehicle at the same time during the Class Period by the Settling Defendant, to resolve the underlying claims for relief and have also agreed to pay the costs and expenses of the administration of the settlement.

8. Class Counsel intends to request that the Court award them fees for their work on this case and reimbursement for the costs they have incurred in a total amount equal to 30% of the Settlement Fund and to ask the Court to award compensation in an amount not to exceed \$5,000.00 to the Class Representative, all of which would be paid from the Settlement Fund established by the Settling Defendant.

PLAN OF DISTRIBUTION

9. After deducting any Court ordered fees and compensation as well as all costs of Class Administration to be paid out of the Settlement Fund, the Class Administrator shall calculate the pro rata recovery for each Class Member. Each Class Member's pro rata share will be determined based upon the business records provided by the Settling Defendant, demonstrating the amount of UM/UIM premiums collected by the Settling Defendant in excess of the amount of premiums each Class Member would have been charged for UM/UIM coverage on a single vehicle during the same policy periods between May 1, 2001 and April 22, 2005.

10. All Class Member who have not elected to exclude themselves from the Class and have been located by the Class Administrator will automatically be sent a check for their pro rata share.

PARTICIPATION IN AND EXCLUSION FROM THE CLASS

11. **IF YOU WISH TO REMAIN A MEMBER OF THE CLASS AND PARTICIPATE IN THE SETTLEMENT DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.** Each member of the class is deemed to have submitted to the jurisdiction of the District Court for Boulder County, Colorado for purposes of enforcing the relief set forth herein and any judgment that may be entered in the litigation. If the Court approves the proposed settlement and you do not timely request to be excluded from the Class, you will release (give up) all claims against Settling Defendant relating to this lawsuit.

12. If you wish to be excluded from the Class, you must send a letter addressed to the Mendota Settlement Class Administrator, P.O. Box _____, _____, on or before _____, _____, requesting in writing to be excluded from the Class. The request must contain your name, address, telephone number, and mention the Mendota Colorado Settlement. The right to exclude yourself from the Class may only be exercised individually by a Class Member, and not by any other person in a representative capacity. If you exclude yourself from the Class, you will not receive any benefits from the settlement and you will not be bound by a judgment approving the settlement and releasing Class claims.

SETTLEMENT APPROVAL HEARING

13. PLEASE TAKE NOTICE that a hearing will be held on _____, _____, at _____, _____, .m. in Courtroom ___ at the District Court for Boulder County, Colorado, Boulder Justice Center, 1777 6th Street Boulder, Colorado 80302, to determine whether the proposed Settlement of the class action should be approved as fair, reasonable and adequate, whether the proposed Plan of Distribution is fair and reasonable, and whether Class Counsel's request for an award of attorneys' fees and costs and Class Representative compensation should be approved.

14. If you remain a member of the Class and do not choose to personally enter an appearance, you will be represented by Plaintiff's counsel. You may also enter an appearance in the action personally, or through your attorney at your own expense.

15. If you remain in the Class, but wish to object to the terms of the Settlement, the proposed Plan of Distribution, or the compensation requested by the class representatives and Class Counsel, you must file a written objection on or before _____, _____, with the Clerk of the Court, District Court in and for Boulder County, 1777 6th Street Boulder, Colorado 80302 and at the same time serve copies upon Robert F. Hill of Hill & Robbins, P.C., 1441 18th Street, Suite 100, Denver, Colorado 80202, and Michael D. Alper of Wheeler, Trigg, O'Donnell LLP 1801 California Street, Suite 3600, Denver, Colorado 80202-2617.

16. The written statement of objection must set forth: (a) the identity of the action, i.e., Richardson v. Mendota Insurance Company; (b) the Class Member's full name, address and

telephone number; (c) the specific reason(s) for the objection; and (d) provide any evidence or legal authority that supports your objection. You will be barred from presenting to the Court any reasons, evidence or legal authority not timely set forth in your written objection.

OTHER INFORMATION

17. Requests for more information should be directed to the Class Administrator either by phone at _____ or by first-class mail at Mendota Settlement Class Administrator, P.O. Box _____, Broomfield, CO 80021.

PLEASE DO NOT CALL THE COURT, THE CLERK OF COURT, YOUR INSURANCE COMPANY OR AGENT, OR COUNSEL FOR SETTLING DEFENDANTS REGARDING THIS MATTER.

Dated _____, _____

JUDGE D.D. MALLARD
Boulder County District Court

<p>DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO Boulder Justice Center 1777 6th Street Boulder, CO 80302</p> <hr/> <p>WILLIAM T. RICHARDSON, individually and on behalf of all others similarly situated Plaintiff,</p> <p>v.</p> <p>MENDOTA INSURANCE COMPANY, Defendant.</p> <hr/>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 06CV339</p> <p>Div.: 4</p>
FINAL JUDGMENT APPROVING SETTLEMENT	

This action was heard on _____, 20__, before the undersigned, pursuant to the Order Preliminarily Approving Settlement and Approving Notice to Class Members (the “Preliminary Approval Order”) entered on _____, 20__, for the purpose of determining: (i) whether the settlement of the Litigation, on the terms and conditions set forth in the Settlement Agreement dated _____, 2010 between a Settlement Class and Defendant Mendota Insurance Company (“Settling Defendant”), previously submitted to the Court (“Settlement Agreement”), should be approved as fair, reasonable and adequate; (ii) the amount of attorneys’ fees and expenses to award Class Counsel and the amount of compensation to award the three class representatives; (iii) whether the plan of distribution is fair and reasonable; and (iv) whether a Final Judgment should be entered.

Pursuant to Rule 23(e) of the Colorado Rules of Civil Procedure, this class action cannot be compromised without the approval of this Court, finding that Settlement Class Members have been afforded reasonable notice of the proposed settlement and an opportunity to be heard, and that the settlement is fair, adequate, and reasonable. Having conducted the required analysis, and after consideration of all facts and circumstances, including those adduced at the hearing, the Court finds and concludes for purposes of settlement only that the requirements of Rule 23 have been satisfied, that the settlement is fair, adequate and reasonable, and that Settlement Class members received reasonable notice of such settlement and an opportunity to be heard.

Having considered the record in this action, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Class set forth in the Court's Order of Preliminary Approval of _____, 20____, certifying a class action, is hereby affirmed, for settlement purposes only, defining a class represented by Plaintiff ("the Settlement Class") for purposes of this settlement as follows:

1. All persons or entities allegedly assessed premiums by Mendota Insurance Company for uninsured/underinsured motorist insurance ("UM/UIM") coverage on more than one motor vehicle at the same time or provided any document related to a multi-vehicle policy containing or referring to the "owned-but-not-insured" exclusion in Colorado between May 1, 2001 and April 22, 2005, including any of their heirs, executors, administrators, personal representatives, successors and/or assigns, but excluding Settling Defendant, and its employees, officers, directors and agents.

2. The Court finds that counsel for the Plaintiff are competent to serve as Class Counsel and will fairly and adequately represent the interests of the Settlement Class.

3. Based on the evidence presented at the hearing, the Court finds that notice has been given to Settlement Class Members pursuant to and in compliance with the Preliminary Approval Order and that the notice methodology adopted pursuant to such Order and the Settlement Agreement were the best notice practicable, satisfied due process requirements, and provided Settlement Class Members with fair and adequate notice of the certification of the Settlement Class and of the fairness hearing, adequate information concerning the fairness hearing, the right to be excluded from the Settlement Class, the settlement, and the right of counsel for Plaintiff to apply for an award of attorneys' fees and expenses.

4. The terms of the Settlement, as set forth in the Settlement Agreement, are hereby determined to be fair, reasonable and adequate and in the best interests of members of the Settlement Class. Accordingly, said Settlement Agreement, including each of its respective terms and conditions, is hereby finally approved by and incorporated as part of this Final Judgment. Capitalized words and terms in this Final Judgment have the same meaning as defined in the Settlement Agreement.

5. Settling Defendant shall deposit the Settlement Fund of \$419,022.95 with the Class Administrator, in the manner and within the time set forth in the Settlement Agreement. Disbursements to Settlement Class Members shall be made by the Class Administrator in such amounts as provided in the Settlement Agreement.

6. In addition to the Settlement Fund, Settling Defendant shall pay the costs and expenses of the Class Administrator, as provided in the Settlement Agreement.

7. Incentive compensation in the amount of \$_____ shall be paid from the Settlement Fund to the Representative Plaintiff, at the same time as and in addition to any payments they are entitled to receive as Settlement Class Members pursuant to the Settlement

Agreement.

8. The sum of \$_____ is hereby awarded as the entire attorneys' fees and costs in this action, covering all fees for legal services, all costs, all disbursements, all out-of-pocket expenses and all other expenditures, in connection with this Litigation on behalf of Plaintiff and the Settlement Class. This sum shall be allocated among Class Counsel representing Plaintiff and the Settlement Class, and shall be paid as provided in the Settlement Agreement from the Settlement Fund, subject to the terms and conditions set forth in the Settlement Agreement.

9. Disbursements to Settlement Class Members and others shall be made from the Settlement Fund by the Class Administrator, in the manner and within the time periods provided in the Settlement Agreement.

10. Settling Defendant shall have no responsibility for and shall have no liability whatsoever with respect to the allocation among Class Counsel and/or any other person who may assert a claim thereto, of attorneys' fees and expenses awarded by the Court.

11. The Class Administrator shall discharge all aspects of notice, payment, and other settlement administration in accordance with the Settlement Agreement.

12. The Court hereby enters judgment fully and finally terminating all claims, on the merits and with prejudice, that are pending against Settling Defendant (as defined in the Settlement Agreement) in the Litigation, and all of their respective past and present predecessors, parent corporations, successors, assigns, attorneys, accountants, representatives officers, directors, employees, agents, and independent contractors, but not including any other Mendota entities selling automobile insurance in Colorado (collectively, "Released Parties"), and finds that Plaintiff and all Settlement Class Members who have not timely and properly excluded

themselves, regardless of whether such Settlement Class Members have claimed or obtained benefits hereunder, shall, by operation of this Order, release, dismiss with prejudice, and forever discharge the Released Parties from any and all claims, lawsuits, rights, counts, causes of action, damages, judgments, executions, attachments, debts, demands, liabilities, and obligations of every kind and nature, known and unknown, in law or equity, class or individual, suspected or unsuspected, concealed or unconcealed, tangible or intangible, whether sounding in contract, tort, unjust enrichment or any other theory, that were asserted or could have been asserted by Plaintiff in this Litigation against Released Parties, for any injury or damages relating to or arising out of (a)(i) premiums or rates charged for UM/UIM in the state of Colorado on more than one vehicle at the same time at any time during the Class Period; (ii) the manner in which premiums for UM/UIM were described or not described to policyholders during the Class Period; (iii) disclosures or omissions to disclose in connection with the sale of UM/UIM coverage during the Class Period; including without limitation any claim that the Released Parties violated (with respect to the foregoing) any Unfair Claims Practices statute, any consumer fraud statute, or any other statutory or common law requirement or duty, any claims of negligence, bad faith, misrepresentation, breach of contract, conversion, unjust enrichment, or any other claim; (iv) the presence or reference to the “owned-but-not-insured” exclusion in any offer or disclosure document or the policies of the Settling Defendant; and (b) any and all claims to attorneys’ fees and/or expenses in connection with the prosecution of this Litigation or the claims described in subsection 8.1(a), except for the amount set forth in and awarded in this Order. As provided in the Settlement Agreement, this release should not be interpreted to adversely impact any Settlement Class Members’ claim, unrelated to the theories alleged in this Lawsuit, for any personal injury compensable under UM/UIM coverage.

13. By operation of this Order, the Settling Defendant shall fully, finally and forever releases the Class Representative, the Settlement Class Members who have not timely excluded themselves from the Settlement Class, and Class Counsel from any and all past, present, or future damages and/or request for equitable relief arising out of, relating to, or in connection with the institution, prosecution, or resolution of this Litigation.

14. All Settlement Class Members who have not timely and properly excluded themselves from the Settlement Class are permanently enjoined, in either an individual or representative capacity, from filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or seeking to certify a class in, or organizing owners of policies of Settling Defendant into a separate class of persons, as a purported class action (including by seeking to amend a pending complaint to include class allegations), or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction, based on or relating to the claims and causes of action asserted in this Litigation, the facts and circumstances relating to this Litigation, or the claims released in paragraph 12.

15. Neither this Final Judgment, the Settlement Agreement, the fact of settlement, the settlement proceedings, settlement negotiations, nor any related document, shall be used as an admission of any act or omission by Settling Defendant or any other Released Party or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by Settling Defendant or any other Released Party in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Settlement Agreement or this Final Judgment.

16. The Parties are hereby authorized without further approval from the Court to

adopt such amendments or modifications of the Settlement Agreement and all exhibits thereto as shall be consistent in all respects with the Settlement Order and Final Judgment and do not limit the rights of Settlement Class Members.

17. Upon written confirmation by the Class Administrator that all distributions have been made from the Settlement Fund pursuant to the Settlement Agreement, the Court will dismiss this action as against Settling Defendant with prejudice and without costs or attorneys' fees (except such costs and fees as are awarded herein) as to all claims released by Plaintiff and Settlement Class Members in Paragraph 12.

18. Without affecting the finality of this Order, the Court retains jurisdiction over this Settlement to the extent necessary to implement, enforce, and administer the Settlement Agreement and this Final Judgment. Notwithstanding the foregoing, this Order constitutes a final and complete adjudication of Plaintiff's claims against Settling Defendant and the Court expressly determines that there is no just reason for delay pursuant to Rule 54(B).

Dated: _____, 2011

JUDGE D.D. MALLARD
Boulder County District Court

EXHIBIT D
TERMINATION ORDER

<p>DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO Boulder Justice Center 1777 6th Street Boulder, CO 80302</p> <hr/> <p>WILLIAM T. RICHARDSON, individually and on behalf of all others similarly situated Plaintiff,</p> <p>v.</p> <p>MENDOTA INSURANCE COMPANY, Defendant.</p> <hr/>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 06CV339</p> <p>Div.: 4</p>
STIPULATED ORDER OF DISMISSAL	

Pursuant to the Settlement Agreement between the parties, as approved by the Court in the Final Judgment entered _____, 20 __, which was a final judgment of all claims in this Litigation, the Court retained jurisdiction over the implementation and enforcement of such settlement. The Court being advised that the settlement as described in the Settlement Agreement and Final Judgment has been fully implemented and completed, it is hereby ORDERED, and ADJUDGED that this action is hereby dismissed with prejudice and without costs or attorneys' fees, except for such fees and costs as previously approved by the Court in the Final Judgment.

Dated: _____, 2011

JUDGE D.D. MALLARD
Boulder County District Court