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*Counsel for Certain Defendants**

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

Spinedex Physical Therapy, U.S.A., Inc.,
et al.,

Plaintiffs,

vs.

United Healthcare of Arizona, Inc., et al.,

Defendants.

No. CV 08-457-PHX-ROS

**DEFENDANTS’ MEMORANDUM
OF LAW IN SUPPORT OF JOINT
MOTION FOR CONDITIONAL
CERTIFICATION OF
SETTLEMENT CLASS,
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT, AND
APPROVAL OF FORM AND
CONTENT OF NOTICE TO
SETTLEMENT CLASS MEMBERS**

* See Attachment A

1 The United Defendants¹ and the Plan Defendants join the Settling Plaintiffs in
2 requesting preliminary approval of the proposed class settlement, as set forth in the
3 parties' Joint Motion for Conditional Certification of Settlement Class, Preliminary
4 Approval of Settlement Agreement, and Approval of Form and Content of Notice to
5 Settlement Class Members, dated December 21, 2018 ("Joint Motion for Preliminary
6 Approval"). Defendants respectfully submit this memorandum of law in support of the
7 Joint Motion for Preliminary Approval.²

8 **A. The Settlement Agreement is Fair and Reasonable to the Settlement Class**

9 The Settlement Agreement,³ reached only after extensive arm's length
10 negotiations involving the Settling Plaintiffs and the Defendants, is the culmination of
11 approximately ten years of hard-fought litigation. The Settlement provides direct
12 monetary relief for the Settling Plaintiffs and the Settlement Class. Specifically, the
13 Defendants will pay a total amount of \$1,475,000 into a cash Settlement Fund that,
14 following the Court's final approval, will be distributed to the Settlement Class in
15 accordance with a Plan of Allocation referenced in the Settlement Agreement. *See*
16 Settlement Agreement, § III. The Settlement also provides valuable non-monetary relief
17 for the Settling Plaintiffs and the Settlement Class. *See id.*, § IV.

18 Rule 23(e) of the Federal Rules of Civil Procedure (the "Federal Rules")
19 "requires the district court to determine whether a proposed settlement is fundamentally
20 fair, adequate and reasonable." *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
21 1276 (9th Cir. 1992). The Court's role in evaluating the proposed settlement "must be
22 limited to the extent necessary to reach a reasoned judgment that the agreement is not

23 ¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the
24 Settlement Agreement.

25 ² While the Settling Plaintiffs and the Defendants jointly move this Court to enter the
26 [Proposed] Preliminary Approval Order, they are filing separate memoranda of law in support
27 of the Joint Motion for Preliminary Approval. Defendants' support for the Joint Motion for
28 Preliminary Approval does not necessarily constitute agreement with all or any specific
factual or legal arguments set forth in the Settling Plaintiffs' memorandum of law.

³ A copy of the Settlement Agreement is attached as Exhibit A to the Declaration of Joseph A.
Garofolo in support of the Joint Motion for Preliminary Approval, dated December 21, 2018.

1 the product of fraud or overreaching by, or collusion between, the negotiating parties,
2 and that the settlement, taken as a whole is fair, reasonable and adequate to all
3 concerned.” *Vinh Nguyen v. Radiant Pharm. Corp.*, 2014 WL 1802293, at *2 (C.D. Cal.
4 May 6, 2014). In the Ninth Circuit, assessing a settlement proposal requires
5 consideration of the following factors: “the strengths of the plaintiffs’ case; the risk,
6 expense, complexity, and likely duration of further litigation; the risk of maintaining
7 class action status throughout the trial; the amount offered in settlement; the extent of
8 discovery completed and the stage of the proceedings; the experience and views of
9 counsel; the presence of a governmental participant; [and] the reaction of the class
10 members to the proposed settlement.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
11 (9th Cir. 1998).

12 The Settlement Agreement is fundamentally fair, adequate and reasonable. The
13 Parties initially engaged in an initial round of arm’s length settlement negotiations
14 between January 2017 and May 2017 that was unsuccessful. But following the Court’s
15 third summary-judgment ruling in December 2017, the Parties reengaged in arm’s length
16 settlement negotiations beginning in or about March 2018, which included a more than
17 six-week-long formal mediation process led by mediator Elliot Gordon of JAMS during
18 May 2018 and July 2018, which eventually culminated in a settlement in principle on the
19 economic and certain other terms set forth in a term sheet, and thereafter memorialized
20 in this Settlement Agreement. The Settlement was reached only after the Parties
21 conducted extensive document and written discovery, took certain depositions, and
22 briefed and argued numerous motions over the last ten years. *See id.*, 150 F.3d at 1026.
23 The Settlement also eliminates the uncertainty as to whether the Settling Plaintiffs or
24 Defendants would ultimately prevail in the Litigation, as well as the difficulties and
25 delays inherent in continuing proceedings, and confers substantial benefits upon
26 Settlement Class Members. *See id.* As discussed in further detail in the Settling
27 Plaintiffs’ memorandum of law in support of the Joint Motion for Preliminary Approval,
28 all relevant factors weigh in favor of preliminary approval, and many, heavily so.

1 **B. The Proposed Notice Procedures Satisfy the Federal Rules and Due Process**

2 The notice process set forth in the Settlement Agreement complies with the due
3 process requirements of Rule 23(c)(2) and Rule 23(e) and is reasonably calculated to
4 apprise the Settlement Class Members of the pendency of the action and proposed
5 Settlement, and to afford them an opportunity to present their objections. *See Zamora v.*
6 *Ryder Integrated Logistics, Inc.*, 2014 WL 9872803, at *5 (S.D. Cal. Dec. 23, 2014);
7 *Clayton v. Knight Transp.*, 2013 WL 5877213, at *12-13 (E.D. Cal. Oct. 30, 2013)
8 (approving the settlement notice process where the notice stated the nature of the action,
9 gives the definition of the class certified, sets forth the claims, issues and defenses,
10 explains the terms of the settlement, informs class members that they may request
11 exclusion and the time and manner to make such request, and informs class members
12 that they may object and appear at the hearing).

13 Accordingly, the Court should approve both the form and content of the proposed
14 Mailed Notice and the proposed Published Notice, as well as the dissemination plan for
15 both.

16 **C. The Defendants Entered into the Settlement Agreement Without Admitting**
17 **Liability**

18 Defendants have raised a number of defenses to the claims asserted in the
19 Litigation that they believe are meritorious, and Defendants have not admitted liability.⁴
20 Nonetheless, Defendants have entered into the Settlement Agreement to avoid the
21 expense, inconvenience, and burden of protracted and complex litigation, the risks
22 inherent in uncertain litigation, and the distraction and diversion of their personnel and
23 resources concomitant with such a litigation. As more fully set forth in Sections XVI.B
24 and XVIII of the Settlement Agreement, if the Court should deny final approval of the
25

26 ⁴ Solely for the purpose of certifying the Settlement Class, the Court need not address
27 Defendants' affirmative or negative defenses to the claims of the Settling Plaintiffs, because
28 in the Settlement Agreement, Defendants agreed with the Settling Plaintiffs to waive such
defenses solely for purposes of effectuating the Settlement. *See* Settlement Agreement at §§
XVI.B, XVIII.

1 Settlement Agreement, or if the settlement Agreement otherwise should fail to become
2 effective and final, Defendants specifically reserve and do not waive any and all legal
3 arguments, positions or privileges—including their right to oppose certification of the
4 class or to assert the failure of the Settling Plaintiffs to establish class wide liability or
5 damages during any proceeding in this Litigation—that might have been asserted but for
6 the Settlement Agreement. *See, e.g., La Fleur v. Med. Mgm't Intern., Inc.*, 2014 WL
7 2967475, at *5 (C.D. Cal. June 25, 2014) (acknowledging that certification is for
8 settlement purposes only, and that if the settlement is not approved, the defendant “may
9 well oppose class certification”); *In re Wachovia Corp. Pick-a-Payment Mortg.*
10 *Marketing & Sales Practices Litig.*, 2010 WL 5559767, at *2 (N.D. Cal. Dec. 16, 2010)
11 (holding that in the event the settlement is not finally approved or otherwise does not
12 take effect, neither the settlement nor the provisional certification order would affect the
13 defendant’s right to take action in opposition to class certification or to defend itself in
14 the litigation).

15 **CONCLUSION**

16 For the foregoing reasons, Defendants respectfully request that the Joint Motion
17 for Preliminary Approval be granted.

18 RESPECTFULLY SUBMITTED this 21st day of December, 2018.

19 LEWIS ROCA ROTHGERBER
20 CHRISTIE, LLP

WEIL, GOTSHAL & MANGES LLP

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ATTACHMENT A

Companies and Group Health Plans Represented by Lewis Roca Rothgerber

Christie LLP:

United Healthcare of Arizona, Inc.

Ingenix, Inc.

United Health Group, Inc.

United Healthcare, Inc.

United Healthcare Services, Inc.

United Healthcare Insurance, Co.

Alcatel-Lucent Retiree Welfare Benefits Plan

America West Holdings Corporation Employees' Health Care Plan

American Express Medical and Dental Plan

AT&T Medical Expense Plan for Occupational Employees

Delta Family-Care Medical Plan

Hasbro, Inc. Employee Benefit Plan

Honeywell International Inc. group health plan

IBM Medical and Dental Benefits Plan for Regular Full-time and Part-time Employees

Iridium Satellite LLC group health plan

Southwest Airlines Co. Funded Welfare Benefit Plan

1 **Companies and Group Health Plans Represented by Weil, Gotshal & Manges LLP:**

- 2 United Healthcare of Arizona, Inc.
- 3 Ingenix, Inc.
- 4 United Health Group, Inc.
- 5 United Healthcare, Inc.
- 6 United Healthcare Services, Inc.
- 7 United Healthcare Insurance, Co.
- 8 5 & Diner Franchise Corp. group health plan
- 9 Abbott Laboratories Health Care Plan
- 10 Acoustic Technologies, Inc. group health plan
- 11 Adobe Drywall, LLC/Adobe Paint, LLC Welfare Benefit Plan
- 12 ADP TotalSource, Inc. Health and Welfare Plan
- 13 Affiliated Cardiologists of Arizona, P.C. Group Health Plan
- 14 Art In Metal USA, LLC group health plan
- 15 Car-Graph, Inc. group health plan
- 16 Discount Tire Company/America's Tire Company Welfare Benefit Plan
- 17 Downtown Tempe Community Inc. group health plan
- 18 Faxwatch, Inc. group health plan
- 19 General Motors Corporation group health plan
- 20 Genuine Parts Company group health plan
- 21 Home Depot U.S.A., Inc. group health plan
- 22 Insight Enterprises Inc. Welfare Benefit Plan
- 23 ITC Manufacturing & Powder Coating group health plan
- 24 Martz Agency Welfare Benefit Plan
- 25 MetLife Options Plan
- 26 Oldcastle, Inc. Welfare Benefit Plan
- 27 Pinnacle Engineering, Inc. group health plan
- 28 Pfizer Medical Plan

- 1 The Procter & Gamble Health Care Plan
- 2 Qualex Inc. Welfare Benefit Plan
- 3 Qwest Health Care Plan
- 4 Revlon Consumer Products Corporation Group Health Plan
- 5 Richard A. Bietz, D.D.S., P.C. group health plan
- 6 Shamrock Foods Company Welfare Benefit Plan
- 7 Shasta Industries Health Plan
- 8 The Smith Barney Inc. Medical Benefit Plan
- 9 SUMCO USA Welfare Benefit Plan
- 10 Temcon Concrete Welfare Benefit Plan
- 11 URS Corporation Welfare Benefits Plan
- 12 Watson Williams Freight Agency Inc. group health plan
- 13 Wells Fargo Health Plan

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