

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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

**[PROPOSED] FINAL APPROVAL
ORDER**

The Court has reviewed and considered: (i) the Motion for Final Approval of Class Action Settlement, dated July 12, 2019, and the Declaration of Mark Rapazzini of Heffler Claims Group in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement; (ii) the terms and conditions of the Settlement Agreement, dated December 20, 2018; (iii) the application of Settlement Class Counsel for an award of attorneys’ fees, costs and expenses, and service awards dated April 24, 2019; (iv) the fact that there were no responses or objections to these submissions; and (v) the Declaration of Mailing of CAFA Notice, dated July 10, 2019, relating to compliance with the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”).

In addition, on August 1, 2019, the Court held a Final Settlement Hearing and is

1 satisfied that notice to the Settlement Class, which is defined below in Paragraph 2 of
2 this Final Order and Judgment (“Order”), was provided in accordance with the Court’s
3 Order preliminarily approving the proposed settlement, conditionally certifying the
4 settlement class, setting form and content of notice to members of the settlement class,
5 and scheduling final settlement hearing, entered on January 25, 2019 (the “Preliminary
6 Approval Order”).

7 The Court also has taken into account the fact that no objections were submitted
8 prior to the Final Settlement Hearing in accordance with the provisions of the
9 Preliminary Approval Order and the presentations and other proceedings at the Final
10 Settlement Hearing, and has considered the Settlement in the context of all prior
11 proceedings conducted in this litigation. Based on the submissions and proceedings
12 referenced above, the Court makes the following findings:

13 A. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
14 and 1367.

15 B. Capitalized terms used in this Order that are not otherwise defined herein
16 have the meaning assigned to them in the Settlement Agreement.

17 C. Notice to Settlement Class Members was provided in accordance with the
18 notice requirements specified by the Court in the Preliminary Approval Order. Such
19 notice constituted the best means of notice to Settlement Class Members that was
20 practicable under the circumstances and was due and sufficient notice of the Settlement
21 and the Final Settlement Hearing to all persons affected by and/or entitled to participate
22 in the Settlement or the Final Settlement Hearing. Further, such notice was in full
23 compliance with the requirements of due process, the Federal Rules of Civil Procedure,
24 and CAFA.

25 D. The Court held a Final Settlement Hearing to consider the fairness,
26 reasonableness, and adequacy of the Settlement, and has been advised that there are no
27 objections to the Settlement.

28

1 E. The Settlement is the product of good-faith, arm's-length negotiations
2 between Settling Plaintiffs and Settlement Class Counsel and Defendants and their
3 counsel.

4 F. In view of the monetary and non-monetary settlement consideration, the
5 Court finds that the Settlement, as provided for in the Settlement Agreement, is in all
6 respects fair, adequate, reasonable, and in the best interest of the Settlement Class. The
7 amount of formal and informal discovery and independent investigation by the
8 attorneys, and the factual record compiled, sufficed to enable the Parties to make an
9 informed decision as to the fairness and adequacy of the Settlement. In determining that
10 the Settlement is in all respects fair, adequate, reasonable, and in the best interest of the
11 Settlement Class, the Court has considered all of the factors set forth in Rule 23(e)(2) of
12 the Federal Rules of Civil Procedure.

13 G. The Release and Injunctions provisions of this Order, which prohibit the
14 assertion of claims against any Released Parties, as set forth below, are conditions of the
15 Settlement and a significant component of the consideration afforded to Defendants in
16 the Settlement Agreement, and the provisions are reasonable under the circumstances.

17 On the basis of the foregoing findings and the submissions and proceedings
18 referenced above, NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED,
19 AND DECREED:

20 Certification Of Settlement Class And Approval Of Settlement

21 1. The Settlement is hereby approved as fair, adequate, reasonable, and in the
22 best interests of the Settlement Class in light of the complexity, expense, and likely
23 duration of the litigation, and the risks involved in establishing liability, damages, and in
24 maintaining a class action through trial. The Court further finds that the requirements of
25 due process and Rule 23 of the Federal Rules of Civil Procedure have been satisfied.
26 There were no objections made based upon due process, constitutionality, procedures,
27 substance, and compliance with the law, including, but not limited to, the adequacy of
28 notice and the fairness of the Settlement.

1 2. The Court finds that, for the purposes of the Settlement only, each of the
2 elements of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure are satisfied.
3 Accordingly, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure,
4 the Court unconditionally certifies a class (the “Settlement Class”) composed of:

5 (i) all Decompression Therapy service providers that provided
6 Out-of-Network Decompression Therapy Services to a Plan
7 Member, submitted a claim for reimbursement of those
8 Decompression Therapy Services pursuant to an assignment
9 of benefits received from that Plan Member, and received a
10 Complete Claim Denial from any of the Released Parties
11 during the period from March 7, 2002 through April 24,
12 2019; and (ii) all Plan Members who received Out-of-
13 Network Decompression Therapy Services, submitted a claim
14 for reimbursement of those Decompression Therapy Services
15 (including, but not limited to, through an authorized
16 representative), and received a Complete Claim Denial from
17 any of the Released Parties during the period from March 7,
18 2002 through April 24, 2019.

19 3. Those persons who have validly and timely elected to Opt-Out of the
20 Settlement and the Settlement Class are hereby excluded from the Settlement Class and
21 shall not be entitled to any of the monetary benefits afforded to the Settlement Class
22 under the Settlement Agreement. Each and every Settlement Class Member who did not
23 timely and properly file a valid request for exclusion from the Settlement Class is hereby
24 permanently barred and enjoined from commencing, prosecuting, or assigning the right
25 to do so of any action asserting any Released Decompression Therapy Claims against
26 any of the Released Parties, including Defendants.

27 4. For purposes of the Settlement only, Settling Plaintiffs are certified as
28 representatives of the Settlement Class and Settlement Class Counsel is appointed
counsel to the Settlement Class, with Garofolo & Ramsdell, LLP to serve as lead
counsel (and Joseph A. Garofolo, Esq. appointed as the attorney to serve as lead
counsel). The Court concludes that Settlement Class Counsel and Settling Plaintiffs
have fairly and adequately represented the Settlement Class with respect to the
Settlement.

1 time of executing the release, which if known by him or her
2 must have materially affected his or her settlement with the
3 debtor.

4 9. Class Releasors are aware that they may, after the date of the Settlement
5 Agreement, discover claims or facts in addition to or different from those they now
6 know or believe to be true with respect to the Released Decompression Therapy Claims.
7 Nevertheless, each Settling Plaintiff and Settlement Class Member has expressly waived
8 and fully, finally, and forever settled and released any known or unknown, suspected or
9 unsuspected, contingent or non-contingent claim that is the subject matter of Paragraphs
10 6, 7, and 8 of this Order, whether or not concealed or hidden, without regard to the
11 discovery or existence of such different or additional facts.

12 10. Each of the Class Releasors is barred and enjoined from taking any step
13 whatsoever to commence, institute, continue, pursue, maintain, prosecute, or enforce any
14 Released Decompression Therapy Claims, on behalf of itself or any other person or
15 entity, against any of the Released Parties.

16 Applications For Attorneys' Fees and Approval of Other Distributions

17 11. The Court has reviewed the application for an award of attorney's fees,
18 costs and expenses, and services awards submitted by Settlement Class Counsel and the
19 exhibits, memoranda of law, and other materials submitted in support of that application.
20 On the basis of its review of the foregoing and on the presentations and other
21 proceedings at the Final Settlement Hearing, the Court hereby awards attorney's fees to
22 Settlement Class Counsel in the aggregate amount of \$491,666.00, representing one-
23 third (33 ⅓ %) of the Settlement Fund, \$126,000 for costs and expenses requested by
24 Settlement Class Counsel up to the date of the Final Order and Judgment Date, and
25 service awards to the Settling Plaintiffs in the amount of \$40,000 to Plaintiff Spinedex
26 Physical Therapy, U.S.A., Inc. and \$10,000 to Plaintiff Claude Aragon, all to be paid in
27 accordance with the provisions of the Settlement Agreement. The Court also approves
28 the payment or reimbursement by Defendants directly to Settlement Class Counsel of all

1 mediation fees invoiced by JAMS in accordance with the Settlement Agreement. In
2 accordance with the Settlement Agreement, the Court further approves \$153,780 to be
3 paid to Heffler Claims Group as settlement administrator and additional fees, costs, and
4 expenses so that, absent further approval of the Court, the total paid to Heffler does not
5 materially exceed \$175,801, all subject to review by counsel.

6 Other Provisions

7 12. The Settlement Agreement, in whole or in part, whether effective,
8 terminated, or otherwise, or any of its provisions or any negotiations, statements, or
9 proceedings relating to it shall not be construed as, offered as, received as, used as, or
10 deemed to be evidence of any kind in any action or proceeding, except to enforce the
11 Settlement Agreement or this Order.

12 13. In the event that the Settlement Agreement does not become effective or is
13 canceled or terminated in accordance with the terms and provisions of the Settlement
14 Agreement, then this Order shall be rendered null and void and be vacated and all orders
15 entered in connection therewith by this Court shall be rendered null and void.

16 Entry Of Judgment And Continuing Jurisdiction

17 14. The Clerk of the Court is directed to enter the judgment in the form
18 attached to this Order as Exhibit A dismissing the causes of action between the Parties
19 pending before this Court with prejudice.

20 15. Without in any way affecting the finality of this Order, this Court shall
21 have exclusive jurisdiction and authority to administer, interpret, and enforce the terms
22 of the Settlement Agreement, and to consider, rule upon, and issue a final order with
23 respect to suits, whether judicial, administrative or otherwise, which may be instituted
24 by any Person, individually or derivatively, with respect to the Settlement Agreement.
25 This reservation of jurisdiction does not limit any reservations of jurisdiction in the
26 Settlement Agreement, nor do any such reservations of jurisdiction in the Settlement
27 Agreement limit the reservation in this Paragraph. Except as otherwise provided in the
28 Settlement Agreement, each Party and each Settlement Class Member has irrevocably

1 submitted to the exclusive jurisdiction and venue of this Court for any suit, action,
2 proceeding, case, controversy, or dispute relating to the Settlement Agreement and/or
3 the negotiation, performance, or breach of the Settlement Agreement.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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

JUDGMENT

In accordance with, and for the reasons set forth in the Final Approval Order, entered on **[insert date]**, this action is dismissed with prejudice as to defendants United Healthcare of Arizona, Inc., Ingenix, Inc., United Health Group Inc., United Healthcare, Inc., United Healthcare Services, Inc., United Healthcare Insurance Co., 5 & Diner Franchise Corp. Group Health Plan, Abbott Laboratories Health Care Plan, Acoustic Technologies, Inc. Group Health Plan, Adobe Drywall, LLC/Adobe Paint, LLC Welfare Benefit Plan, ADP TotalSource, Inc. Health and Welfare Plan, Affiliated Cardiologists of Arizona, P.C. Group Health Plan, Alcatel-Lucent Retiree Welfare Benefits Plan, America West Holdings Corporation Employees' Health Care Plan, American Express Medical and Dental Plan, Art In Metal USA, LLC Group Health Plan, AT&T Medical Expense Plan for Occupational Employees, Car-Graph, Inc., Group Health Plan, Delta

1 Family-Care Medical Plan, Discount Tire Company/America's Tire Company Welfare
2 Benefit Plan, Downtown Tempe Community Inc. Group Health Plan, Faxwatch, Inc.
3 Group Health Plan, General Motors Corporation Group Health Plan, Genuine Parts
4 Company Group Health Plan, Hasbro, Inc. Employee Benefit Plan, Home Depot U.S.A.,
5 Inc. Group Health Plan, Honeywell International Inc. Group Health Plan, IBM Medical
6 and Dental Benefits Plan for Regular Full-time and Part-Time Employees, Insight
7 Enterprises Inc. Welfare Benefit Plan, Iridium Satellite LLC Group Health Plan, ITC
8 Manufacturing & Powder Coating Group Health Plan, Martz Agency Welfare Benefit
9 Plan, MetLife Options Plan, Oldcastle, Inc. Welfare Benefit Plan, Pinnacle Engineering,
10 Inc. Group Health Plan, Pfizer Medical Plan, The Procter & Gamble Health Care Plan,
11 Qualex Inc. Welfare Benefit Plan, Qwest Health Care Plan, Revlon Consumer Products
12 Corporation Group Health Plan, Richard A. Bietz, D.D.S., P.C. Group Health Plan,
13 Shamrock Foods Company Welfare Benefit Plan, Shasta Industries Health Plan,
14 Southwest Airlines Co. Funded Welfare Benefit Plan, The Smith Barney Inc. Medical
15 Benefit Plan, SUMCO USA Welfare Benefit Plan, Temcon Concrete Welfare Benefit
16 Plan, URS Corporation Welfare Benefits Plan, Watson Williams Freight Agency Inc.
17 Group Health Plan, and Wells Fargo Health Plan, pursuant to Rule 54(a) of the Federal
18 Rules of Civil Procedure.

19 Dated: _____
20

21 _____
22 Clerk of the Court
23
24
25
26
27
28