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

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9 Spinedex Physical Therapy USA
Incorporated, et al.,

No. CV-08-00457-PHX-ROS

10 Plaintiffs,

ORDER

11 v.

12 United Healthcare of Arizona Incorporated,
13 et al.,

14 Defendants.

15
16 The Court has reviewed and considered the Joint Motion for Preliminary Approval,
17 dated December 21, 2018 (“Joint Motion”), and the terms and conditions of the Settlement
18 Agreement, dated December 20, 2018 (the “Settlement Agreement”), a corrected copy of
19 which has been submitted as Exhibit 1 of the Joint Notice of Errata (Doc. 814) filed on
20 January 15, 2019. All capitalized terms used in this Order that are not otherwise defined
21 herein have the meaning assigned to them in the Settlement Agreement. After consideration
22 of the Settlement Agreement and the Joint Motion, together with the other submissions by
23 the Parties in support of the Joint Motion, the Court finds that the Joint Motion should be
24 granted.

25 Accordingly,

26 **IT IS ORDERED** the Joint Motion for Conditional Certification of Settlement Class,
27 Preliminary Approval of Settlement Agreement, and Approval of Form and Content of
28 Notice to Settlement Class Members (Doc. 807) is **GRANTED** as set forth below.

1 finds them fair and adequate representatives of the interests of the Settlement Class with
2 claims typical of Settlement Class Members. In addition, and solely for the purposes of
3 settlement, the Court provisionally designates Garofolo & Ramsdell, LLP (lead counsel),
4 Creitz & Serebin LLP, and Martin & Bonnett, P.L.L.C. as Settlement Class Counsel and
5 finds that they are experienced and skilled attorneys capable of fairly and adequately
6 representing the interests of the Settlement Class.

7 3. This conditional certification of the Settlement Class, Settling Plaintiffs, and
8 Settlement Class Counsel is solely for purposes of effectuating the Settlement Agreement.
9 If (a) the Settlement Agreement is terminated or is not consummated for any reason, (b) this
10 Preliminary Approval Order is modified, reversed, or set aside on further judicial review, or
11 (c) the Court for any reason does not enter the Final Order and Judgment, the foregoing
12 conditional certification of the Settlement Class and appointment of Settling Plaintiffs and
13 Settlement Class Counsel shall be void and of no further effect, and the Parties to the
14 Settlement Agreement shall be returned to the status each occupied before entry of this Order
15 without prejudice to any legal argument, position, or privilege that any of the Parties to the
16 Settlement Agreement might have asserted but for the Settlement Agreement.

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18 Settlement Hearing; Right To Appear And Object

19 4. A hearing (the “Final Settlement Hearing”) shall be held before the Court on
20 **August 1, 2019, at 10:00 a.m.**, in the United States Courthouse, United States District Court
21 for the District of Arizona, 401 W. Washington St., Phoenix, Arizona, to determine:

22 (a) whether the Court should unconditionally certify the Settlement Class and
23 whether Settling Plaintiffs and Settlement Class Counsel have adequately
24 represented the Settlement Class;

25 (b) whether the Settlement, on the terms and conditions provided for in the
26 Settlement Agreement, should be finally approved by the Court as fair, reasonable,
27 and adequate;

28 (c) whether the causes of action between the Parties pending before this Court
should be dismissed on the merits and with prejudice in light of the Settlement;

1 (d) whether the application for attorney's fees, costs and expenses, and service
2 awards to be submitted by Settlement Class Counsel in connection with the
3 Settlement should be approved; and

4 (e) such other matters as the Court may deem necessary or appropriate.

5 The Court may finally approve the Settlement at or after the Final Settlement Hearing (with
6 any modifications agreed to by the Parties) without further notice to the Settlement Class.

7 5. Any Settlement Class Member may appear at the Final Settlement Hearing in
8 person or by counsel and be heard, to the extent allowed by the Court, either in support of or
9 in opposition to the matters to be considered at that Hearing, provided, however, that no
10 person shall be heard, and no papers, briefs, or other submissions shall be considered by the
11 Court in connection with its consideration of those matters, unless **no later than May 24,**
12 **2019**, such person:

13 (a) files with the Court a notice of such person's intention to appear, together with
14 a statement setting forth such person's objections, if any, to the matters to be
15 considered and the basis therefor, along with any documentation that such person
intends to rely upon at the Final Settlement Hearing, and

16 (b) the same or following day, serves copies of all such materials either by hand
17 delivery or by first-class mail, postage prepaid, upon the following counsel:

18 Joseph A. Garofolo, Esq.
19 Garofolo & Ramsdell, LLP
20 3443 Golden Gate Way, Suite H
Lafayette, CA 94549

21 John C. West, Esq.
22 Lewis Roca Rothgerber Christie LLP
23 201 East Washington Street, Suite 1200
Phoenix, AZ 85004

24 and

25
26 Nicholas J. Pappas, Esq.
27 Jared R. Friedmann, Esq.
28 Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

1 6. Any attorney retained by a Settlement Class Member at the Settlement Class
2 Member's expense for the purpose of objecting to the proposed Settlement must file with the
3 Clerk of the Court, and serve on Settlement Class Counsel and Defendants' counsel, a notice
4 of intention to appear, no later than **May 24, 2019**.

5 7. Any Settlement Class Member who does not timely file and deliver a written
6 objection and a notice of intention to appear, no later than **May 24, 2019**, and any witness
7 not identified in the notice of intention to appear, (a) shall not be permitted to object or appear
8 at the Final Settlement Hearing except for good cause shown; (b) shall be deemed to have
9 waived and forfeited, and shall be foreclosed from raising, any objection made at the Final
10 Settlement Hearing; and (c) shall be bound by all of the terms of the Settlement Agreement
11 and by all proceedings, orders, and judgments of this Court.

12 8. The date and time of the Final Settlement Hearing shall be set forth in the
13 Mailed and Published Notices.

14 9. The Court reserves the right to adjourn the Final Settlement Hearing, or any
15 portion thereof, without further notice of any kind other than an announcement of such
16 adjournment in open court at the Final Settlement Hearing or any adjournment thereof, or by
17 order of the Court entered in the public record of the actions, and the Court retains jurisdiction
18 to consider all further applications arising out of or in connection with the Settlement
19 Agreement.
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21 Settlement Administrator; Form And Timing Of Notice

22 10. With the consent of Defendants, Settlement Class Counsel has designated
23 Heffler Claims Group as Settlement Administrator, and such Settlement Administrator shall
24 perform the functions described in the Settlement Agreement, except as otherwise set forth
25 herein.

26 11. All deadlines set forth in the Proposed Amended Schedule for Settlement
27 Proceedings filed on January 24, 2019 ("Proposed Schedule") (Doc. 822-3) shall be adhered
28 to by the Parties. No later than March 25, 2019, and in accordance with the Settlement

1 Agreement, the Settlement Administrator shall cause to be mailed, via first-class postage,
2 copies of the Mailed Notice, the form and content of which is hereby approved, to all
3 members of the Settlement Class for whom a last-known address can be identified through
4 reasonable effort. In addition, no later than March 25, 2019, and in accordance with the
5 Settlement Agreement, the Settlement Administrator shall cause to be published the
6 Published Notice, the form and content of which is hereby approved, at least once in the legal
7 notices section of *USA Today*, as set forth in Exhibit 5 of the Settlement Agreement. The
8 Court also hereby approves the form and content of the proposed notice pursuant to the Class
9 Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), which is set forth as Exhibit A of
10 the Joint Motion to Approve Amended Class Action Fairness Act Notice (Doc. 813) filed on
11 January 3, 2019, and which KCC Class Action Services, LLC or its affiliates (“KCC”) has
12 distributed consistent with statutory requirements.

13
14 12. Prior to the Final Settlement Hearing, the Settlement Administrator and/or
15 KCC shall attest to compliance with Paragraph 11 of this Order. Costs of providing the
16 notice to the Settlement Class that is specified in this Order shall be paid as set forth in the
17 Settlement Agreement.

18 13. The Notices to be provided as set forth in Paragraph 11 of this Order are hereby
19 found to be the best means of notice to Settlement Class Members that is practicable under
20 the circumstances and are reasonably calculated, under the circumstances, to apprise
21 Settlement Class Members of the pendency of the Litigation and their right to object to or
22 exclude themselves from the proposed Settlement. When completed, the Notices shall
23 constitute due and sufficient notice of the Settlement, the Settlement Agreement, the Final
24 Settlement Hearing and all other matters set forth in the Notices to all persons affected by
25 and/or entitled to participate in the Settlement or the Final Settlement Hearing, in full
26 compliance with the requirements of due process, the Federal Rules of Civil Procedure, and
27 CAFA.

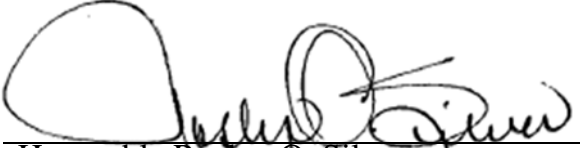
28 Ability Of Members Of The Settlement Class To Opt-Out

1 or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating
2 to it shall not be construed as, offered as, received as, used as, or deemed to be evidence of
3 any kind in this lawsuit or in any other action or proceeding, except in a proceeding to enforce
4 the Settlement Agreement. Without limiting the foregoing, neither the Settlement
5 Agreement nor any related negotiations, statements, or proceedings shall be construed as,
6 offered as, received as, used as, or deemed to be evidence, or an admission or concession of
7 liability, of wrongdoing or breach of any duty on the part of any Party, or as a waiver by any
8 Defendant of any applicable defense, including, without limitation, any applicable statute of
9 limitations.

10 19. In the event that the Settlement Agreement is terminated or is not consummated for
11 any reason, the Settlement and all proceedings had in connection therewith shall be null
12 and void, except to the extent expressly provided to the contrary in the Settlement
13 Agreement, and without prejudice to the rights, positions, and privileges of the Parties to
14 the Settlement Agreement before it was executed.

15 Dated this 24th day of January, 2019.

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Honorable Roslyn O. Silver
Senior United States District Judge