

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement is made by and between plaintiff, Steven A. Conner, DPM, P.C. (“Plaintiff”), on behalf of itself and the Class (as hereinafter defined), on the one hand, and defendant, Optum360, LLC (“Optum360” or “Defendant”), on the other hand (collectively, Plaintiff and Defendant may be referred to as the “Parties”), on the other hand. This Agreement fully and finally compromises and settles any and all claims that were or could have been asserted in the class action lawsuit styled as *Steven A. Conner, DPM, P.C. v. Optum360, LLC*, Case No. 2:17-cv-01642-JLS (E.D. Pa.) (the “Action”);

WHEREAS, on April 11, 2017, Plaintiff filed a Complaint in the United States District Court for the Eastern District of Pennsylvania, on behalf of itself and a putative class of all “persons or entities that Defendant sent one or more telephone facsimile messages (‘faxes’) about goods, products, or services available for purchase from optumcoding.com or optum360coding.com,” alleging (1) that Optum360 violated the Telephone Consumer Protection Act (the “TCPA”), 47 U.S.C. § 227, by faxing advertisements without the recipients’ prior express invitation or permission or a compliant opt-out notice; and (2) that Optum360 is liable for conversion of the Class’s fax machine, paper, toner, and memory, and valuable time;

WHEREAS, Plaintiff alleged that Optum360’s telephone facsimile messages violated the TCPA;

WHEREAS, Optum360 answered the Complaint as to Plaintiff’s TCPA claim and denied Plaintiff’s claim of liability and damages;

WHEREAS, Plaintiff’s counsel investigated the relevant facts and law relating to the Action;

WHEREAS, Plaintiff's counsel contend they can establish that Optum360 caused advertisements to be sent by facsimile to 25,432 unique fax numbers between April 15, 2015 and October 9, 2015;

WHEREAS, Optum360 filed a Motion for Summary Judgment on May 1, 2018, arguing that the fax Plaintiff received complied with the TCPA because Optum360 and Plaintiff had an "established business relationship" and the fax contained an opt-out notice that complied with the requirements of the TCPA;

WHEREAS, Plaintiff opposed that Motion for Summary Judgment, arguing that the opt-out notice on the fax did not comply with the TCPA;

WHEREAS, after the Motion for Summary Judgment was fully briefed, the Court ordered Plaintiff and Optum360 to attempt to mediate a resolution of this Action;

WHEREAS, this Agreement resulted from good faith, arm's length settlement negotiations over several months, including mediation sessions, before the Honorable Timothy Rice, Magistrate Judge of the Eastern District of Pennsylvania, and separately before the Honorable Diane M. Welsh, retired Magistrate Judge of the U.S. District Court for the Eastern District of Pennsylvania. The Parties also participated in direct discussions about possible resolution of this Action, including numerous telephonic meetings;

WHEREAS, after considering the benefits to the Class and the attendant risks, costs, uncertainties, and delays of litigation, Plaintiff and its counsel have concluded that the terms and conditions provided for in this Agreement are fair, reasonable, and adequate;

WHEREAS, Optum360 has denied any wrongdoing whatsoever, and this Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the

part of Optum360 with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Optum360 has asserted or would assert;

WHEREAS, the Parties have agreed to settle the disputes and claims to avoid the costs, uncertainties, and expense of this Action.

NOW, THEREFORE, the Parties, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

1. Definitions.

As used in this Agreement, the following terms shall have the meanings indicated.

- 1.1. “Action” means the action captioned as *Steven A. Conner, DPM, P.C. v. Optum360, LLC*, Case No. 2:17-cv-01642-JLS in the United States District Court for the Eastern District of Pennsylvania.
- 1.2. “Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing notice to the Class, locating Class Members, the fairness hearing, notice of final approval of the Settlement, claims processing, and mailing of claimed settlement proceeds.
- 1.3. “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement.
- 1.4. “Approved Claim” means a Claim Form that is (i) completed or postmarked prior to the deadline; (ii) is complete, meaning that it (a) provides the claimant’s name and current address to which the compensation may be sent; (b) attests that he/she

is a Class Member who owned or used a facsimile number on the Class List during the Class Period, and (c) provides the telephone facsimile number on which he or she received such fax and that number; and (iii) the claimant's name and telephone facsimile number match the name and number on the Class List, and the claimant validly completes the attestation. Each unique fax number on the Class List will only be eligible for one payment for an Approved Claim.

- 1.5. "Claim Form" means the document Class Members must submit to make claims pursuant to this Settlement Agreement. The Claim Form will be e-mailed and mailed to Class Members with the Class Notice and available online at the Settlement Website. It will be substantially the same as Exhibit D.
- 1.6. "Claims Deadline" means 90 days from the date Notices are e-mailed and mailed to the Class List.
- 1.7. "Class" means, for the purposes of settlement, "all persons or entities in the United States who received a telephone facsimile message on a telephone facsimile machine from or on behalf of Optum360 regarding the Optum360 Essentials Coding, Billing and Compliance Conference on April 15, 2015, May 21, 2015, June 17, 2015, July 23, 2015, August 13, 2015, September 16, 2015, or October 9, 2015." The Class excludes Optum360, any parent, subsidiary, affiliate, or controlled person of Optum360, as well as its attorneys, officers, directors, agents, servants, or employees, and the immediate family members of such persons, and the judge(s) assigned to the Action and his or her staff.
- 1.8. "Class Counsel" means Phillip A. Bock of Bock, Hatch, Lewis & Oppenheim, LLC and Richard Shenkan of Shenkan Injury Lawyers LLC.

- 1.9. “Class List” means the list of Class Members provided by Optum360. The list will include facsimile numbers, e-mail addresses, and mailing addresses for Class Members in Optum360’s possession.
- 1.10. “Class Member” means any person who is a member of the Class as identified by the facsimile numbers on the Class List, including but not limited to Steven A. Conner, DPM, P.C.
- 1.11. “Class Notice” means the Notice of Proposed Settlement of Class Action, which the Settlement Administrator will send to Class Members substantially in the form attached hereto as Exhibit D.
- 1.12. “Class Period” means April 2015 to October 2015.
- 1.13. “Class Representative” means Steven A. Conner, DPM, P.C.
- 1.14. “Complaint” means the Class Action Complaint filed in the Action on April 11, 2017.
- 1.15. “Court” means the United States District Court for the Eastern District of Pennsylvania.
- 1.16. “Defendant” or “Optum360” means Optum360, LLC.
- 1.17. “Effective Date” means the date upon which the Settlement contemplated by this agreement shall become effective as set forth in Section 11 hereof.
- 1.18. “Expense Award” means the amount the Court awards to Class Counsel for costs and expenses, up to a maximum amount of \$105,000.
- 1.19. “Fee Award” means the amount the Court awards to Class Counsel for attorneys’ fees, up to a maximum amount of \$2,000,000.

- 1.20. “Final Fairness Hearing” means the hearing the Court will conduct pursuant to Rule 23 of the Federal Rules of Civil Procedure to determine the fairness, adequacy, and reasonableness of the Settlement, and whether to issue the Final Settlement Approval Order and Judgment.
- 1.21. “Final” or “Finality,” with respect to the Final Settlement Approval Order and Judgment, means: (1) if no appeal is filed, the first business day after the last date on which any appeal from the Final Settlement Approval Order and Judgment can be timely filed or noticed under the corresponding rules of the applicable court or legislation for filing or noticing appeals; or (2) if there is an appeal from the Final Settlement Approval Order and Judgment, whether timely or untimely, the first business day after the later of the date on which (a) any appeal from the Final Settlement Approval Order and Judgment is finally dismissed, (b) if the Final Settlement Approval Order and Judgment is affirmed, a petition for writ of certiorari or other form of review is denied or the time for filing such a petition expires, or (c) if certiorari or other form of review is granted, final affirmance of the Final Settlement Approval Order and Judgment following review pursuant to that grant is ordered. Any proceeding or order, or any appeal or petition for a writ of certiorari or other form of review pertaining solely to any Fee Award and Expense Award and/or Incentive Award shall not in any way delay or preclude the Final Settlement Approval Order and Judgment from becoming Final.
- 1.22. “Final Settlement Approval Order and Judgment” means (1) an Order by the United States District Court for the Eastern District of Pennsylvania finally approving the Settlement and the terms of this Agreement substantially in the

form attached hereto as Exhibit B and (2) a Judgment dismissing with prejudice all claims against Optum360 substantially in the form attached hereto as Exhibit C.

- 1.23. “Incentive Award” means the amount the Court awards to the Class Representative pursuant to applicable rules and law for serving as the Class Representative, which amount shall not exceed \$10,000.
- 1.24. “Parties” means Steven A. Conner, DPM, P.C., the Class, and Optum360, LLC.
- 1.25. “Plaintiff” means Steven A. Conner, DPM, P.C.
- 1.26. “Preliminary Settlement Approval Order” means an order by the Court substantially in the form attached as Exhibit A preliminarily approving this Agreement, requiring notice to the Class (including the forms and procedure for doing so), establishing procedures for Class Members to request exclusion from the Settlement or to object to the Settlement, and setting a date for a fairness hearing .
- 1.27. “Released Claim” means any claim, liability, right, demand, suit, obligation, damage, including consequential damages, losses or costs, punitive damages, attorneys’ fees and costs, actions or causes of action, of every kind or description that Settlement Class Members, individually or collectively, have, had, or may have against the Released Parties, whether known or Unknown (as the term “Unknown Claims” is defined herein), suspected or unsuspected, asserted or unasserted, accrued or which may hereafter accrue, regardless of legal or equitable theory and the type of relief or damages claimed, based upon, arising out of, or related in any way to the Released Parties transmitting or causing a

telephone facsimile message regarding the Optum360 Essentials Coding, Billing and Compliance Conference to be transmitted to a telephone facsimile machine during the Class Period to a fax number on the Class List, to the fullest extent those terms are used, defined, or interpreted by the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., and any other statutory or common law claim arising from the transmission of telephone facsimile messages to telephone facsimile machines. “Released Claim” does not include claims related to facsimiles sent (1) outside the Class Period; or (2) to fax numbers not on the Class List. “Released Claim” also does not include all claims, rights or causes of action or liabilities whatsoever related to the enforcement of the Settlement, including, without limitation, any of the terms of this Agreement or orders or judgments issued by courts in connection with the Settlement.

- 1.28. “Released Party” or “Released Parties” means Optum360 and its past, present, and future successors, predecessors, parents, related organizations, subsidiaries, divisions, departments, or affiliates and any of their past, present, and future officers, directors, stockholders, partners, agents, attorneys, servants, subrogees, insurers, employees, representatives, assigns, consultants, principals, and advisors.
- 1.29. “Settlement” means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.
- 1.30. “Settlement Administrator” means CAC Services Group, LLC. The Settlement Administrator shall issue the Class Notice as well as provide services related to the administration of the Settlement.

- 1.31. “Settlement Class Member” means any Class Member who has not timely elected to “opt out” of the settlement described in this Agreement.
- 1.32. “Settlement Website” means the website operated pursuant to Paragraph 6.2.
- 1.33. “Unknown Claims” means any and all Released Claims that any Plaintiff does not know or suspect to exist in his, her, or its favor as of the Effective Date and which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by Cal. Civ. Code § 1542, and any similar, comparable, or equivalent law of any state of the United States, or principle of common law or otherwise (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11). Cal. Civ. Code § 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Class Representative and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement.

2. Settlement Purposes Only.

- 2.1. This Agreement is for settlement purposes only, and to the fullest extent permitted by law, neither the fact of, nor any provision contained in this Agreement, nor any actions taken hereunder, shall constitute, be construed as, or used as, or be admissible in evidence as, an admission of the validity of any claim or any fact alleged by Plaintiff in this action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of laws, or liability of any kind on the part of Optum360, or admission by any of the Parties of the validity, or lack thereof, of any claim, allegation, or defense asserted in the Action or any other action.
- 2.2. Class Counsel and/or Plaintiff will not issue press releases or initiate any public statements regarding the Settlement. Class Counsel and/or Plaintiff also will not make statements of any kind to any third-party regarding the Settlement prior to the filing of a motion for Preliminary Approval with the Court, with the exception of the Settlement Administrator. In all communications, Class Counsel must comply with all confidentiality agreements in the Action and must not disclose the contents of any document produced in this action and designated “confidential” or filed under seal.

3. Representations.

- 3.1. Each Party represents that (i) such Party has full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval, (ii) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party, (iii) this Agreement constitutes a valid, binding, and

enforceable agreement, and (iv) such Party has not assigned any of the claims referred to herein to any other person or entity and no consent or approval of any person or entity is necessary for such Party to enter into this Agreement.

4. Settlement Consideration.

- 4.1. As full and complete consideration for the Settlement, Optum360 will pay up to \$6,000,000 (“Settlement Fund”) for: (i) Approved Claims for cash benefits submitted by Settlement Class Members pursuant to Section 5 below; (ii) the Fee Award and Expense Award, as described in Section 10 below; and (iii) the Incentive Award to the Class Representative, as described in Section 10 below. Optum360 need not segregate funds or otherwise create special accounts to hold the Settlement Fund. Optum360 will not relinquish control of any money until payments are due. Optum360 shall not be responsible for any payments or obligations other than those specified in this Agreement.
- 4.2. Any portion of the Settlement Fund that is not used to pay the sum total of Approved Claims, the Fee Award, the Expense Award, and the Incentive Award shall revert to and be kept by Optum360.
- 4.3. Each Settlement Class Member will be limited to one cash payment of \$500 per unique fax number on the Class List. If the Approved Claims, in conjunction with any other payments due and owing from the Settlement Fund, would otherwise cause the total cash payout to exceed \$6,000,000, then the amount of each payment for Approved Claims will be reduced proportionately such that the total payout will not exceed \$6,000,000.

- 4.4. Ten business days after the later of the Effective Date or its counsel being informed by the Settlement Administrator of the total number of Approved Claims and therefore the total amount owed to claimants, Optum360 will fund an escrow account (“Escrow Account”), to be administered by the Settlement Administrator, to pay Approved Claims and an Incentive Award for the Class Representative, if any.
- 4.5. If any Settlement Class Member does not cash its settlement check within 120 days after issuance, the funds from that check shall revert back to Optum360.

5. Claims Process.

- 5.1. Each Class Member shall be entitled to submit a Claim Form for cash payment.
- 5.2. A Class Member must either (i) submit a Claim Form online at the Settlement Website or (ii) submit a completed Claim Form to the addressee identified on the Claim Form, either by mail or fax. All Claim Forms must be submitted at the Settlement Website or faxed or postmarked by the Claims Deadline as set forth in the Class Notice. The Settlement Administrator shall deem any Claim Form submitted or postmarked after the Claims Deadline untimely and invalid.
- 5.3. The Settlement Administrator shall issue checks to pay the Approved Claims within 60 days after Optum360 funds the escrow account pursuant to Paragraph 4.4.

6. Class Notice.

- 6.1. Class Notice. The Settlement Administrator shall send a copy of the Class Notice substantially in the form attached hereto as Exhibit D to both the mailing and e-mail addresses on the Class List within 30 days after the entry of the Preliminary

Settlement Approval Order, or as soon as practicable thereafter. The notice by U.S. Mail shall be sent after the Settlement Administrator uses the National Change of Address Database to ensure accurate addresses for the Class List.

- 6.2. Settlement Website. The Settlement Administrator shall establish and maintain a Settlement Website that (i) enables Class Members to submit a claim and access and download the Class Notice and Claim Form, (ii) makes available for viewing and download copies of key documents including the Class Action Complaint, this Agreement, and the Preliminary Settlement Approval Order, and (iii) provides contact information for the Settlement Administrator and Class Counsel. The Class Notice shall include the address (URL) of the Settlement Website. The Settlement Administrator shall maintain the Settlement Website for no less than 30 days after the Claims Deadline. The website shall not bear or include Optum360's or any of its parents, affiliates, or subsidiaries' logos or trademarks.
- 6.3. Toll Free Number: The toll free telephone number established by the Settlement Administrator shall be maintained for no less than 30 days after the Claims Deadline. After that time, either a person or a recording will advise the caller that the Claims Deadline has passed.
- 6.4. Opt-Out. The Class Notice shall explain the procedure whereby Class Members may exclude themselves from the Class by mailing a request for exclusion. Any Class Member who does not timely and validly request exclusion shall be a Settlement Class Member and shall be bound by the terms of this Agreement.

6.5. Objections. The Class Notice shall explain the procedure for Class Members to object to the settlement set forth herein and/or to the attorneys' fees and costs for which Class Counsel will petition the Court.

6.6. CAFA Notice. The Settlement Administrator will serve the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

7. Settlement Administration.

7.1. The Settlement Administrator shall administer the Settlement. The Settlement Administrator shall be responsible for administrative tasks, including, without limitation: (a) arranging for distribution of the Class Notice and Claim Forms to Class Members; (b) making any mailings to Class Members required under this Agreement; (c) answering inquiries from Class Members and/or forwarding such inquiries to Class Counsel or their designee; (d) assisting Class Members upon request in completing and submitting forms; (e) receiving and maintaining any Class Member correspondence regarding requests for exclusion from the Settlement; (f) establishing the Settlement Website; (g) establishing the toll-free telephone number; (h) receiving and processing claims and distributing payments to Settlement Class Members; (i) collecting tax information from the Class Members if necessary or make appropriate tax withholding and tax payments; (j) preparing the list of Approved Claims; and (k) otherwise assisting with implementation and administration of the Settlement Agreement terms. Other than issuing the notice described herein and creating the Settlement Website, the Settlement Administrator shall not make any public statement regarding the Settlement.

- 7.2. Optum360 will provide the Class List to the Settlement Administrator within five days following Preliminary Approval.
- 7.3. The Settlement Administrator will work cooperatively with Class Counsel and Optum360's counsel and provide them an opportunity to review and revise all documents, drafts, templates, scripts, or other writings to be used in communicating with Class Members, including, but not limited to, text to be used on the Settlement Website.
- 7.4. Within 30 days after the Claims Deadline, the Settlement Administrator will make available to Optum360's counsel and Class Counsel copies of submitted Claim Forms for the purposes of objection to the Settlement Administrator's decision as to validity. The ultimate decision of the settlement administrator as to the validity of claims following any objection is final and binding.

8. Obtaining Court Approval of the Agreement.

- 8.1. Class Counsel will file a motion for preliminary approval of the Settlement with the Court by June 7, 2019.
- 8.2. Class Counsel shall apply to the Court for entry of a Preliminary Settlement Approval Order, substantially in the form attached hereto as Exhibit A. Such Order shall include approval for the mailing and electronic mailing of a Class Notice substantially in the form of Exhibit D attached hereto.
- 8.3. Class Counsel shall request that, after Class Notice is given, the Court hold a hearing and enter the Final Settlement Approval Order and Judgment for the litigation substantially in the form of Exhibits B and C attached hereto.

- 8.4. If the Court does not preliminarily approve the settlement described in this Agreement, the Agreement shall terminate and be of no force or effect, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain preliminary approval of the settlement described herein.
- 8.5. If the Court does not grant final approval of the settlement described in this Agreement, the Agreement shall terminate and be of no force or effect, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain final approval of the settlement described herein.
- 8.6. If the Court does not grant final approval of the Agreement, the Parties will equally share the cost the Settlement Administrator incurs in sending the Class Notice and setting up the claims process.

9. Withdrawal from Settlement.

- 9.1 If any of the conditions set forth below occurs and either (a) the Class Representative or (b) Optum360 gives notice that such party wishes to withdraw from this Agreement, then this Agreement shall terminate and be null and void except that the Parties will equally share the cost the Settlement Administrator incurs in sending the Class Notice and setting up the claims process:
- a. any objections to the proposed settlement are sustained, which results in changes to the settlement described in this Agreement that the withdrawing Party deems in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement);

- b. the final approval of the settlement described in this Agreement results in changes that the withdrawing Party did not agree to and that the withdrawing Party deems in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement);
- c. more than 1% of the Class Members exclude themselves from the settlement described in this Agreement;
- d. the final approval of the settlement described in this Agreement is (i) substantially modified by an appellate court and the withdrawing Party deems any such modification in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement) or (ii) reversed by an appellate court. Plaintiff, Class Counsel, and Optum360 agree that any alterations to the Fee Award and Expense Award are not material for purposes of this provision.

10. Attorneys' Fees and Expenses.

10.1. Class Counsel will petition the Court for an award of attorneys' fees not to exceed a total of one-third of the Settlement Fund (\$2,000,000) and a request for expenses, including Administrative Expenses, up to \$105,000. The Fee Award and Expense Award shall be the total respective obligations of Optum360 to pay Class Counsel for attorneys' fees, costs, and/or expenses of any kind (including, but not limited to, travel, filing fees, court reporter, and videographer expenses, expert fees and costs, and document review and production costs). Optum360 shall not object to fees and expenses sought by Class Counsel, or appeal their

award, so long as the fees and expenses sought do not exceed a cumulative total of up to \$2,105,000, including up to \$2,000,000 in fees and \$105,000 in costs..

10.2. Optum360 shall pay the Fee Award and Expense Award by wire transfer or check to “Bock Law Firm, LLC Client Trust Account” within 10 business days after the later of (i) the Final Settlement Approval Order and Judgment (Exhibits B and C) becoming Final, and (ii) the delivery to Optum360 of payment routing information and a W-9. Class Counsel shall be responsible for allocating and shall allocate all attorneys’ fees, costs, and expenses that are awarded by the Court and paid by Optum360 amongst and between Class Counsel, and Optum360 shall have no responsibility, role, or liability in connection with such allocation.

10.3. Optum360 shall pay the Incentive Award by wire transfer or check to “Bock Law Firm, LLC Client Trust Account” within 10 business days after the later of (i) the Final Settlement Approval Order and Judgment (Exhibits B and C) becoming Final, and (ii) the delivery to Optum360 of payment routing information and a W-9. Optum360 shall not object to such Incentive Award to be paid to the Class Representative, provided the amount requested does not exceed \$10,000. Court approval of the Incentive Award or its amount shall not be a condition of Settlement. In addition, no interest will accrue on such amount at any time.

11. Effective Date and Termination.

11.1. The Effective Date of the Settlement shall be the date on which the Court enters a Final Settlement Approval Order and Judgment substantially in the form attached as Exhibits B and C and such Order and Judgment becomes Final.

11.2. Except as otherwise provided herein, in the event the Settlement is withdrawn pursuant to Section 9, the Parties shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related Orders had not been entered.

12. Release.

12.1. The Settlement Class Members absolutely and unconditionally release and discharge any and all Released Claims against any and all Released Parties, but such release shall become null and void if the Settlement does not become Final.

12.2. The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes that risk of such possible difference in facts, and agrees that this Agreement shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief and knowledge and that each Party does not rely on inducements, promises or representations made by anyone other than those embodied herein.

12.3. Notwithstanding any other provision of this Agreement (including, without limitation, this Section), nothing in this Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any court order implementing this Agreement, in a manner consistent with the terms of this Agreement.

13. No Admission of Wrongdoing.

13.1. This Agreement, any drafts thereof, and any proceedings taken pursuant to it:

- a. shall not be offered or received against any Party as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Party with respect to the truth of any fact alleged by the other Party or the validity or lack thereof of any claim that has been or could have been asserted in the Action or in any litigation, or the sufficiency or deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing, or lack thereof, of Optum360;
- b. shall not be offered or received against any Party as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the other Party;
- c. shall not be offered or received against any Party as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or lack thereof, or in any way referred to for any other reason as against the other Party, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Parties may refer to it to effectuate the liability protection granted them hereunder; and

- d. shall not be construed against any Party as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial.

14. Miscellaneous Provisions.

- 14.1 Further Steps. The Parties agree that each shall undertake any required steps to effectuate the purposes and intent of this Agreement.
- 14.2. Representation by Counsel. The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.
- 14.3. Contractual Agreement. The Parties understand and agree that all terms of this Agreement are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to enter into this Agreement and to legally bind the party for which he or she is signing.
- 14.4. Change of Time Periods. The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by written agreement of Class Counsel and Optum360's counsel, without notice to Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

- 14.5. Integration. This Agreement contains the full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among the Parties, which prior agreements may no longer be relied upon for any purpose. This Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Parties supported by acknowledged written consideration.
- 14.6. Drafting. The Parties agree that no single Party shall be deemed to have drafted this Settlement Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentum*. This Settlement Agreement is a collaborative effort of the Parties and their respective attorneys.
- 14.7. Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Persons who executed this Agreement or their successors-in-interest.
- 14.8. Waiver. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 14.9. Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that

the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder. Provided, however, that the terms of this Paragraph shall not apply should any court or tribunal find any part, term, or provision of the release, as set forth in Section 12, to be illegal or invalid.

14.10. Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties thereto.

14.11. Governing Law. The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the Commonwealth of Pennsylvania, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.

14.12. Interpretation.

- a. Definitions apply to the singular and plural forms of each term defined.
- b. Definitions apply to the masculine, feminine, and neuter genders of each term defined.
- c. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

14.13. No Precedential Value. The Parties agree and acknowledge that this Agreement carries no precedential value.

- 14.14. Fair, Reasonable, and Adequate. The Parties and their counsel believe that this Agreement is a fair, reasonable, and adequate compromise of the disputed claims and that it resulted from extensive mediation and arm's-length negotiations.
- 14.15. Retention and Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for 180 days after entry of the Final Settlement Approval Order and Judgment. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of the Agreement shall be presented by motion to the Court.
- 14.16. Headings. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary its construction or meaning. In the event of a dispute concerning this Agreement, the headings shall be disregarded.
- 14.17. Exhibits. Exhibits to this Agreement are expressly incorporated and made part of the terms and conditions set forth herein.
- 14.18. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.
- 14.19. Facsimile and Electronic Mail. Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.

14.20. No Assignment. Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title, or interest in or to any claims, causes of action, or demands which were or could have been, or ever could be asserted against any Party and that are released in this Agreement, or which were, could have been, or ever could be asserted against any Party. Any Party that breaches the representations and warranties set forth in this Paragraph shall indemnify and hold harmless each other Party, its parents, subsidiaries, and affiliates, and their respective agents, attorneys, successors, heirs, assigns, administrators, officers, directors, employees, and all other persons acting in concert with them from any and every claim or demand of every kind or character arising out of a breach by any such breaching Party of its representations and warranties in this Paragraph.

14.21. Non-Disparagement. The Class Representative, Optum360, and their respective counsel agree not to make any statement, written or verbal, or to cause or encourage any other Person to make any statement, written or verbal, that defames, disparages, or in any way criticizes the personal or business reputation, practices, or conduct of any Party, any Released Party, or any of their respective counsel concerning the Released Claims, the litigation of this Action, the Settlement, this Settlement Agreement, or any discussions, interactions, or negotiations by the Parties and their counsel; provided, however, nothing herein shall preclude any Party, its agents, its representatives, or its counsel from any good faith response to any inquiry under oath or in response to a government

inquiry or from making statements in the course of legal proceedings, or from non-public communications with Class Members with regard to the Settlement.

14.22. Destruction of Confidential Documents. It is agreed that, consistent with Section 4 of the Stipulated Protective Order entered in this Action, the originals and all copies of all confidential documents and/or information subject to all confidentiality agreements and the Stipulated Protective Order (“Confidential Information”) shall be returned to the producing party within 60 days after the Effective Date, unless the document has been offered into evidence or filed without restriction as to disclosure. The Parties may agree in writing that certain Confidential Information may be destroyed in lieu of being returned. This obligation extends to the Class List. Nothing in the Agreement shall require attorney work product or pleading files to be returned or destroyed.

14.23. Notices. All notices to counsel provided for herein, including requests for exclusion and objections to the Agreement, shall be sent by email with a hard copy sent by overnight mail to:

As to Plaintiff and the Class:

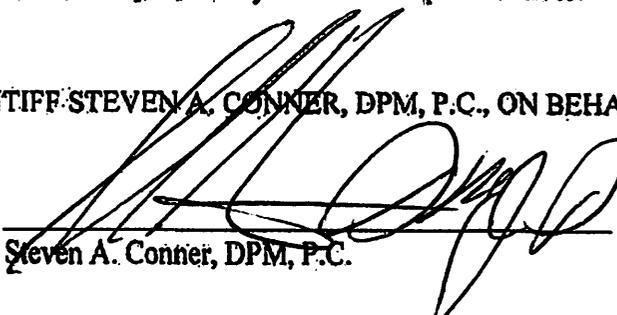
Phillip A. Bock
phil@classlawyers.com
134 N LaSalle St # 1000
Chicago, IL 60602

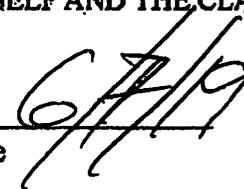
As to Optum360:

Adam K. Levin
adam.levin@hoganlovells.com
555 Thirteenth Street, NW
Washington, DC 20004

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

PLAINTIFF STEVEN A. CONNER, DPM, P.C., ON BEHALF OF ITSELF AND THE CLASS

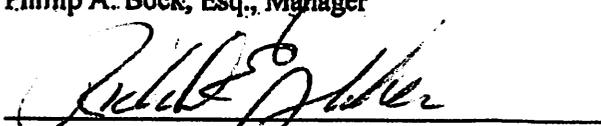
By: 
Steven A. Conner, DPM, P.C.

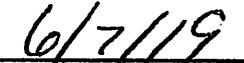
Date: 
6/7/19

BOCK, HATCH, LEWIS & OPPENHEIM, LLC and SHENKAN INJURY LAWYERS, LLC, COUNSEL FOR THE CLASS

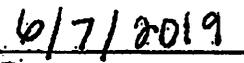
By: _____
Phillip A. Bock, Esq., Manager

Date

By: 
Richard Shenkan, Esq., Manager


Date
6/7/19

OPTUM360, LLC
By: 


Date
6/7/2019

Its: CEO of Optum360, LLC

HOGAN LOVELLS US LLP, COUNSEL FOR OPTUM360, LLC

By: _____
Adam K. Levin, Esq.
Partner

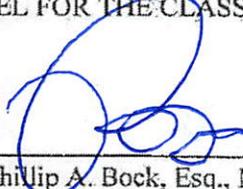
Date

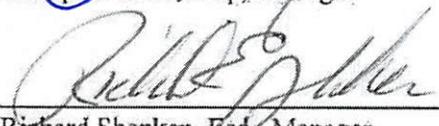
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

PLAINTIFF STEVEN A. CONNER, DPM, P.C., ON BEHALF OF ITSELF AND THE CLASS

By: _____ Date _____
Steven A. Conner, DPM, P.C.

BOCK, HATCH, LEWIS & OPPENHEIM, LLC and SHENKAN INJURY LAWYERS, LLC, COUNSEL FOR THE CLASS

By:  _____ Date 6/7/19
Phillip A. Bock, Esq., Manager

By:  _____ Date 6/7/19
Richard Shenkan, Esq., Manager

OPTUM360, LLC
By:  _____ Date 6/7/2019
Its: CEO of Optum360, LLC

HOGAN LOVELLS US LLP, COUNSEL FOR OPTUM360, LLC

By: _____ Date _____
Adam K. Levin, Esq.
Partner

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

PLAINTIFF STEVEN A. CONNER, DPM, P.C., ON BEHALF OF ITSELF AND THE CLASS

By: _____
Steven A. Conner, DPM, P.C. Date

BOCK, HATCH, LEWIS & OPPENHEIM, LLC and SHENKAN INJURY LAWYERS, LLC,
COUNSEL FOR THE CLASS

By: _____
Phillip A. Bock, Esq., Manager Date

By: _____
Richard Shenkan, Esq., Manager Date

OPTUM360, LLC

By: _____
Date

Its: _____

HOGAN LOVELLS US LLP, COUNSEL FOR OPTUM360, LLC

By:  _____
Adam K. Levin, Esq. Date
Partner 6/7/19