



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**DR. DEREK MELBY, and DANILO
POLICARPIO** *as individuals and on behalf
of all others similarly situated,*

Plaintiffs,

v.

**AMERICA’S MHT, INC., SCOTT
POSTLE, ASCENTIUM CAPITAL LLC,
and CLIFF MCKENZIE,**

Defendants.

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Civil Action No. 3:17-cv-155-M
(Consolidated with Civil Action Nos.
3:17-CV-732-M; 3:17-CV-868-M; and
3:17-CV-963-M)

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Stipulation”) is made by and among the following “Settling Parties”: (a) all of the named plaintiffs in all of the putative class actions consolidated in this Court under Civil Action No. 3:17-cv-155 (“Plaintiffs”), on behalf of themselves and the proposed Settlement Class defined below, and (b) three “Settling Defendants”: Ascentium Capital LLC (“Ascentium”), Uninvest Capital, Inc., (“Uninvest”), and Cliff McKenzie (“McKenzie”).

RECITALS

WHEREAS Plaintiffs have filed the putative class actions consolidated in this Court (the “Court”) under Case No. 3:17-cv-155 (as consolidated, the “Action”);

WHEREAS the Action alleges, among other things, that the Settling Defendants violated the law and committed actionable torts in connection with a home healthcare business program developed by America’s MHT, Inc. (“MHT”);

WHEREAS the Action further asserts that the Settling Defendants caused or contributed to causing Plaintiffs to become obligated to—or allegedly obligated to—Ascentium, Uninvest, Balboa Capital Corporation (“Balboa”), MHT, and/or one or more Doctor LLCs defined below

under various contracts (including, without limitation, license agreements, management services agreements, loans, installment payment agreements, and other contractual arrangements);

WHEREAS the Action further asserts that such contracts are subject to rescission, and Plaintiffs seek or have sought declarations of equitable estoppel prohibiting enforcement of such contracts, declarations of unconscionability and unenforceability prohibiting enforcement of such contracts, and a declaration of novation to extinguish certain alleged obligations from Plaintiffs to Ascentium and/or Univest;

WHEREAS the Action further asserts that the Settling Defendants are liable to Plaintiffs for monetary and other damages, in addition to declaratory and/or equitable relief;

WHEREAS the Settling Defendants deny that they have acted illegally, improperly, fraudulently, or in any other actionable manner;

WHEREAS the Settling Defendants also insist and assert (a) that Plaintiffs' allegations fail to state any claim on which relief can be granted against the Settling Defendants, (b) that the terms of the applicable contracts are enforceable as written and compliant with all applicable laws, and (c) that prior payments, settlements, and judgments have or might have resolved or reduced some of the claims Plaintiffs assert on behalf of the putative class;

WHEREAS Plaintiffs, while believing that the claims asserted in the Action have substantial merit, have considered the risks associated with the continued prosecution and possible appeal of this complex and time-consuming litigation, as well as the likelihood of success on the merits of the Action, and believe that, in consideration of all the circumstances, the Settlement embodied in this Stipulation is fair, reasonable, adequate, and in the best interests of the Potential Class Members;

WHEREAS the Settling Defendants, while denying wrongdoing of any kind whatsoever, and without admitting liability or any deficiencies in the contracts at issue in the Action, nevertheless have agreed to enter into this Stipulation to avoid further burden and expense of protracted litigation and to be completely free of any further controversy with respect to the claims which have been asserted or could have been asserted in the Action;

WHEREAS Plaintiffs admit no liability or obligation with regard to the contracts at issue in the Action, but nevertheless agree to enter into this Stipulation to avoid further burden and expense of protracted litigation and to be completely free of any further controversy with respect to the contracts at issue in the Action;

WHEREAS Plaintiffs vigorously deny any responsibility or accountability for any Doctor LLCs created in their names and further deny that they have or had any control over any such entities; and

WHEREAS Plaintiffs and the Settling Defendants negotiated the terms of this Stipulation at arms' length and with the assistance of an experienced mediator and did not negotiate the amount or range of any attorneys' fees, costs, or expenses to be requested by Class Counsel or awarded by the Court until after they agreed on all other material terms of this Stipulation.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Settling Parties, through their respective counsel, that the Action be settled and compromised by Plaintiffs, the Settlement Class, and the Settling Defendants on the following terms and conditions, subject to the approval of the Court after hearing as provided in this Stipulation:

I. ADDITIONAL DEFINITIONS

In addition to terms defined elsewhere in this Stipulation, the following terms shall be defined as follows:

1. “Class Counsel” means the attorneys approved by the Court to represent the Settlement Class and the Class Members as provided in paragraphs 27-28, below.

2. “Class Member” means any person who (a) is included within the definition of the Settlement Class (or succeeds to—or has succeeded to—the interests of such a person as an heir, executor, administrator, or assignee) and (b) does not timely and properly request exclusion from the Settlement Class as provided in paragraphs 49-50, below.

3. “Class Notice” means the notice of the preliminary approval of this Stipulation and the Settlement to be given under paragraphs 30-33, below.

4. “Detailed Notice” means a detailed Class Notice made available to Potential Class Members on an internet website as provided in paragraph 32, below.

5. “Doctor LLC” means a limited liability company or similar entity created or used by MHT and one or more other persons to facilitate the participation of one or more physicians in the MHT Program.

6. “Effective Date” means the later of (a) the date defined in paragraph 68, below, or (b) the thirtieth day after the entry of the Final Judgment.

7. “Fairness Hearing” means the hearing to be held to consider approval of the Settlement as provided in paragraph 34, below.

8. “Final Judgment” means the order and judgment finally approving the Settlement as reasonable, fair, adequate, and in the best interests of the Settlement Class and fully and finally disposing of all claims asserted against the Settling Defendants in the Action, as provided in paragraph 35, below.

9. “Guarantor” means a person listed in one or more Ascentium IPAs, Univest IPAs, and/or Balboa IPAs as the guarantor of a Doctor LLC’s obligations under such IPA(s). “Ascentium

Guarantor” means a person listed as the guarantor of one or more Ascentium IPAs. “Univest Guarantor” means a person listed as the guarantor of one or more Univest IPAs. “Balboa Guarantor” means a person listed as the guarantor of one or more Balboa IPAs.

10. “Individual Notice” means a summary Class Notice mailed to Potential Class Members as provided in paragraphs 30-31, below.

11. “IPA” means an Installment Payment Agreement or other financing instrument between Ascentium, Univest, or Balboa and a Doctor LLC that relates in any way to the MHT Program. “Ascentium IPA” means an Installment Payment Agreement or other financing instrument between Ascentium and a Doctor LLC related to the MHT Program. “Univest IPA” means an Installment Payment Agreement or other financing instrument between Univest and a Doctor LLC related to the MHT Program. “Balboa IPA” means an Installment Payment Agreement or other financing instrument between Balboa and a Doctor LLC related to the MHT Program.

12. “MHT” means America’s MHT, Inc.

13. “MHT Program” means the home healthcare program developed by MHT and defined as the “MHT Program” in the complaints filed in the Action.

14. “Potential Class Member” means any person who is included within the definition of the Settlement Class (or succeeds to—or has succeeded to—the interests of such a person as an heir, executor, or administrator) before the deadline for seeking exclusion from the Settlement Class.

15. “Released Claims” means and includes any and all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses arising from or in any way related to any acts or omissions which have been alleged or

which could have been alleged in the Action by any of the Plaintiffs, the Settlement Class, and/or any Class Member, whether at law, in equity, or under any statute or regulation, including without limitation:

A. any and all direct or derivative claims, demands, actions, causes of action, and/or suits arising from or in any way relating to the MHT Program, regardless of the doctrine(s), statute(s), or regulation(s) under which they might arise and regardless of the nature or scope of the relief that might be requested; and

B. any and all Unknown Claims arising from or in any way relating to the MHT Program;

C. provided, however, that the Released Claims do not include any “Reserved Claim” defined below or any claim for enforcement of this Stipulation and/or the Final Judgment; and

D. notwithstanding anything to the contrary in this Stipulation, the Released Claims include all of the individual claims alleged against the Settling Defendants by the Plaintiffs in the Action.

16. “Released Persons” means:

A. all of the entities defined above as the “Settling Defendants;”

B. all of the past and present insurers, officers, directors, agents, attorneys, employees, owners, stockholders, divisions, subsidiaries, affiliates, and parents of any of the entities defined above as the “Settling Defendants;”

C. all of the insurers, successors, assigns, officers, directors, agents, attorneys, employees, owners, stockholders, and legal representatives of any of the entities listed in subparagraph(s) 16(A) and/or 16(B).

17. “Reserved Claim” means any claim that has been or could be asserted against any person or entity that is not a Released Person (including defendant(s) MHT, Balboa, and/or Scott Postle) that arises from or relates in any way to the MHT Program, regardless of the doctrine(s), statute(s), or regulation(s) under which such claim might arise and regardless of the nature or scope of the relief that might be requested, including any such claim asserted offensively or defensively against MHT, Balboa, and/or Postle.

18. “Settlement” means the settlement agreement described in this Stipulation.

19. “Settlement Administrator” means the third-party settlement administrator described in paragraph 30, below.

20. “Settlement Class” means the plaintiff class to be certified for settlement purposes only, and consisting of the “MHT Program Class” and four subclasses designated as “Subclass One,” “Subclass Two,” “Subclass Three,” and “Subclass Four,” which class and subclasses are defined as follows:

A. The “MHT Program Class” is defined as every person who is currently listed in Ascentium’s, Uninvest’s, Balboa’s, and/or MHT’s books and records (including without limitation MHT’s bankruptcy schedules) as a Guarantor and/or as an owner of a Doctor LLC.

B. “Subclass One” is defined as every member of the MHT Program Class who (a) is not a Guarantor of an Uninvest IPA but (b) is a Guarantor of an Ascentium IPA with (i) a “book date” of January 1, 2016, or later stated in Ascentium’s books and records and (ii) a balance outstanding on August 31, 2017.

C. “Subclass Two” is defined as every member of the MHT Program Class who (a) is a Guarantor of a Uninvest IPA and (b) is also a Guarantor of an Ascentium IPA with (i) a

“book date” of January 1, 2016, or later stated in Ascentium’s books and records and (ii) a balance outstanding on August 31, 2017.

D. “Subclass Three” is defined as every member of the MHT Program Class who is a Guarantor of an Ascentium IPA with (i) a “book date” of December 31, 2015, or earlier stated in Ascentium’s books and records and (ii) a balance outstanding on August 31, 2017.

E. “Subclass Four” is defined as every member of the MHT Program Class who is a Balboa Guarantor but not a Uninvest Guarantor or an Ascentium Guarantor.

F. Provided, however, that the Settlement Class excludes (a) all persons who timely opt out of the Settlement Class in accordance with the Court’s orders; and (b) all persons who (i) received more than \$25,000.00 from MHT (or entities affiliated with MHT) through referral fees and/or compensation not based on the profitability of their Doctor LLC, or (ii) met with Ascentium personnel in April 2015, December 2016, or February 2017 to discuss funding for the MHT Program. All persons believed by the Settling Parties to satisfy the definitions in subparagraph 20(F)(b)(i) and/or subparagraph 20(F)(b)(ii), are listed in Exhibit 1.

21. “Unknown Claim” means any claim arising out of newly discovered facts and/or facts found hereafter to be other than or different from the facts now believed to be true. The Released Claims defined in paragraph 15, above, include all Unknown Claims arising from or in any way related to any acts or omissions which have been alleged or which could have been alleged in the Action by Plaintiff, by the Settlement Class, and/or by any Class Member. Upon the entry of the Final Judgment, each Class Member shall be deemed to have expressly waived and released any and all Unknown Claims that he, she, or it has or might have arising from or in any way related to any acts or omissions which have been alleged or which could have been alleged in the Action by Plaintiff, by the Settlement Class, and/or by any Class Member.

II. SETTLEMENT CONSIDERATION.

22. In exchange for the releases and other consideration described in paragraphs 23-26, below, and on the terms set forth in this Stipulation, the Settling Defendants shall provide the following settlement consideration to members of the Settlement Class:

A. Consideration Flowing to the MHT Program Class as a Whole: Ascentium shall pay the amounts described in paragraphs 40-42 of this Stipulation, including (i) attorneys' fees, costs, and expenses payable to Class Counsel, and (ii) class-administration expenses payable to the Settlement Administrator. In addition, the Settling Defendants will release each member of the MHT Program Class from certain claims, as described in subparagraph 22(D), below.

B. Additional Consideration Flowing to Members of Subclass One, Subclass Two, and Subclass Three: The Settling Defendants will release each member of Subclass One, Subclass Two, and Subclass Three from his, her, or its obligation, if any, to guarantee any unsatisfied obligations of any Doctor LLC under any Ascentium IPA(s) and/or Univest IPA(s), including his, her, or its obligation to make any unpaid monthly payments under any such IPA(s) and his, her, or its obligation to pay any unpaid late charges, collection costs, and/or any other amounts under any such IPA(s). In addition, each of the Settling Defendants shall (i) refrain from making any negative credit report against any member of Subclass One, Subclass Two, or Subclass Three regarding conduct occurring on or before the Effective Date; (ii) retract any negative credit report previously made against any member of Subclass One, Subclass Two, or Subclass Three regarding conduct occurring on or before the Effective Date; (iii) refrain from making any efforts to collect from any member of Subclass One, Subclass Two, or Subclass Three any alleged indebtedness owed under any IPA; and (iv) dismiss with prejudice within 15 days after the Effective Date (and with each party to bear its own costs, expenses, and attorneys' fees) each and

every lawsuit in which it seeks to collect any such alleged indebtedness from any member of Subclass One, Subclass Two, or Subclass Three.

C. Additional Consideration Flowing to Members of Subclass Four. Ascentium will pay each member of Subclass Four within 45 days after the Effective Date a cash payment (a “Subclass Four Cash Payment”). Such payment shall be equal to $\$6,500 \times (a/b) \times (1/c)$, where a = the total of all payments due under the original terms of all Balboa IPAs for which such member is listed as a Guarantor (collectively, the “Member’s IPAs”), b = \$114,534 (the total of all monthly payments due under one Ascentium IPA covering the purchase of one MHT license in 2016), and c = the total number of persons listed in Balboa’s books and records as Guarantor(s) of the Member’s IPAs.

D. Claims to be Released under Subparagraph 22(A). The claims to be released in accordance with subparagraph 22(A), above, include any and all direct or derivative claims, demands, actions, causes of action, and/or suits arising from or in any way relating to the MHT Program that the Settling Defendants have, regardless of the doctrine(s), statute(s), or regulation(s) under which they might arise and regardless of the nature or scope of the relief that might be requested. As to each member of Subclass One, each member of Subclass Two, and each member of Subclass Three, this release will take effect upon such member’s payment in full of all Cash Settlement Consideration that he, she, or it is obliged to pay or cause to be paid under subparagraphs 23(B), 23(C), or 23(D), below. As to each member of Subclass Four, such release shall take effect on the Effective Date.

23. In exchange for the consideration described in paragraph 22, above, and on the terms set forth in this Stipulation, Plaintiffs and the members of the Settlement Class shall provide the following settlement consideration to the Settling Defendants:

A. Consideration Flowing from all Members of the MHT Program Class: Each member of the MHT Program Class, while reserving to himself, herself, or itself all Reserved Claims, shall (i) release all of the Released Persons from all of the Released Claims; (ii) dismiss with prejudice (and with all costs taxed to the party or parties incurring them) any other claims and/or lawsuit(s) in which he, she, or it has asserted any Released Claim against any Released Person; (iii) refrain from asserting, initiating, filing, commencing, prosecuting, or maintaining in any action or proceeding of any kind, whether before any court, agency, or arbitrator, any Released Claim against any Released Person; (iv) consent to the release and, as applicable, dismissal (with prejudice) of any and all claims that any Doctor LLC of which he, she, or it is a listed owner has or might have against any of the Released Persons (including any Unknown Claims) arising from or in any way related to the MHT Program or any IPA; and (v) consent to entry of the Final Judgment described in paragraph 35, below.

B. Additional Consideration Flowing from Members of Subclass One: In addition to the release and other consideration to be provided by all members of the MHT Program Class, each member of Subclass One shall (i) timely pay or cause to be paid to Ascentium the Cash Settlement Consideration described in paragraph 24, below, (ii) waive and forgo any and all defenses to such payment accrued on or before the Effective Date, including without limitation any defense based on the alleged invalidity, unconscionability, unenforceability, or illegality of any IPA or any guarantee of any IPA; and (iii) protect each of the Released Persons from the burden of duplicative litigation regarding the Released Claims and/or duplicative satisfaction of Released Claims by performing the duties described in paragraph 67, below.

C. Additional Consideration Flowing from Members of Subclass Two: In addition to the release and other consideration to be provided by all members of the MHT Program

Class, each member of Subclass Two shall (i) timely pay or cause to be paid to Ascentium the Cash Settlement Consideration described in paragraph 24, below, (ii) waive and forgo any and all defenses to such payment accrued on or before the Effective Date, including without limitation any defense based on the alleged invalidity, unconscionability, unenforceability, or illegality of any IPA or any guarantee of any IPA; and (iii) protect each of the Released Persons from the burden of duplicative litigation regarding the Released Claims and/or duplicative satisfaction of Released Claims by performing the duties described in paragraph 67, below.

D. Additional Consideration Flowing from Members of Subclass Three: In addition to the release and other consideration to be provided by all members of the MHT Program Class, each member of Subclass Three shall (i) timely pay or cause to be paid to Ascentium the Cash Settlement Consideration described in paragraph 25, below, (ii) waive and forgo any and all defenses to such payment accrued on or before the Effective Date, including without limitation any defense based on the alleged invalidity, unconscionability, unenforceability, or illegality of any IPA or any guarantee of any IPA; and (iii) protect each of the Released Persons from the burden of duplicative litigation regarding the Released Claims and/or duplicative satisfaction of Released Claims by performing the duties described in paragraph 67, below.

E. Additional Consideration Flowing from Members of Subclass Four: In addition to the release and other consideration to be provided by all members of the MHT Program Class, each member of Subclass Four shall protect each of the Released Persons from the burden of duplicative litigation regarding the Released Claims and/or duplicative satisfaction of Released Claims by performing the duties described in paragraph 67, below.

24. Cash Settlement Consideration Due from Members of Subclass One and Subclass Two: The Cash Settlement Consideration due from each member of Subclass One and each

member of Subclass Two shall be the lesser of (i) \$85,900.50 (75% of the total of all monthly payments due under one Ascentium IPA covering the purchase of one MHT license in 2016: $.75 \times \$114,534.00 = \$85,900.50$) and (ii) 80% of the total of all payments remaining due under the original terms of all Ascentium and Uninvest IPAs for which such subclass member is listed as a Guarantor. Such Cash Settlement Consideration shall be paid in sixty (60) monthly installments (the “Monthly Settlement Payments”), which shall be due beginning on the 30th day after the Effective Date and continuing thereafter at monthly intervals until the fifth anniversary of the Effective Date, when the final Monthly Settlement Payments shall be due.

25. Cash Settlement Consideration Due from Members of Subclass Three: The Cash Settlement Consideration due from each member of Subclass Three shall be the lesser of (i) \$114,534.00 (100% of the total of all monthly payments due under one Ascentium IPA covering the purchase of one MHT license in 2016: $1.00 \times \$114,534.00 = \$114,534.00$) and (ii) 80% of the total of all payments remaining due under the original terms of all Ascentium and Uninvest IPAs for which such subclass member is listed as a Guarantor. Such Cash Settlement Consideration shall be paid in forty-eight (48) monthly installments (the “Monthly Settlement Payments”), which shall be due beginning on the 30th day after the Effective Date and continuing thereafter at monthly intervals until the fourth anniversary of the Effective Date, when the final Monthly Settlement Payments shall be due.

26. Single-Payment Option: Notwithstanding the payment schedules described in paragraphs 24 and 25, above, each member of Subclass One, each member of Subclass Two, and each member of Subclass Three shall have the option to make or cause to be made a single, lump-sum payment on or before the 30th day after the Effective Date, equal to 80% of the total Cash Settlement Consideration that such member otherwise would be obligated to pay or cause to be

paid under paragraph 24 or 25, above, which lump-sum payment will fully satisfy such member's obligation for the payment of Cash Settlement Consideration and Monthly Settlement Payments under this Stipulation.

III. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS

27. For settlement purposes only, the Court may enter an order preliminarily approving this Stipulation, preliminarily certifying the Settlement Class, appointing the Settlement Administrator, preliminarily appointing Plaintiffs as representatives of the Settlement Class, and preliminarily appointing the following attorneys as Class Counsel:

E. Leon Carter
Joshua J. Bennett
Carter Scholer PLLC
8150 N. Central Expy, Suite 500
Dallas, Texas 75206
Telephone: (214) 550-8188

Robert E. Couhig, Jr.
Donald C. Massey
Couhig Partners, LLC
1100 Poydras St., Suite 3250
New Orleans, LA 70163
Telephone (504) 588-1288

Paul Crouch
The Crouch Firm, PLLC
5609 Masters Ct.
Flower Mound, TX 75022
Telephone: (817) 714-9820

To facilitate such preliminary approval, certification, and appointment, Plaintiffs will file on or before September 26, 2017, a motion asking the Court to enter an order substantially in the form attached hereto as Exhibit 2. The Settling Defendants will not oppose entry of such an order.

28. Preliminary certification of the Settlement Class and appointment of the class representatives and Class Counsel shall be made solely for purposes of the Settlement and shall be binding only with respect to the Settlement. In the event that the Settlement is not consummated for any reason, whether due to a termination of this Stipulation in accordance with its terms, a failure or refusal of the Court to approve the Settlement, a reversal or modification of the Court's approval of the Settlement on appeal, or any other reason, then the Court shall vacate the

certification of the Settlement Class and the parties may litigate the Action as though the Stipulation had never been entered and the Settlement Class had never been certified.

29. To conserve party and judicial resources and to protect the jurisdiction of the Court to award complete and effective relief through the proposed Settlement, Plaintiffs' motion for preliminary approval of this Stipulation and the Settlement shall request that the Court stay all proceedings on claims asserted by any Potential Class Members against any Settling Defendants in the Action or in any other proceeding, pending further order of the Court; provided, however, that nothing in this paragraph shall bar any of the Settling Parties from agreeing to conduct—or applying to the Court for permission to conduct—such limited proceedings as may be necessary to implement the Settlement or to effectuate the terms of this Stipulation.

IV. CLASS NOTICE

30. As soon as practicable after the preliminary approval of this Stipulation and the Settlement as provided in paragraphs 27-29, above, Ascentium and Univest shall make reasonable searches of their respective records to ascertain the name and last known address of each person included within the definition of the Settlement Class. Thereafter, the third-party administrator engaged by the Settling Defendants and appointed by the Court in the order preliminarily approving the Settlement (the "Settlement Administrator") shall send a copy of an Individual Notice by first-class mail to each potential member of the Settlement Class for whom Ascentium and/or Univest ascertains a name and an address. Ascentium, Univest, and the Settlement Administrator shall use their best efforts to complete the mailing of the Individual Notices to those potential Class Members within 30 days after the preliminary approval of this Stipulation and the Settlement.

31. The Settling Parties and the Settlement Administrator shall take the following steps to ensure that these mailings provide the best notice practicable under the circumstances:

A. Within 7 days after the preliminary approval of this Stipulation and the Settlement, the Settling Parties shall submit to the Court for approval a proposed form of the Individual Notice and a proposed form of the Detailed Notice. Such notices shall comply with the recommendations regarding class notice published by the Federal Judicial Center.

B. Within 14 days after the preliminary approval of this Stipulation and the Settlement, Ascentium and Univest shall provide to the Settlement Administrator listings of the last known addresses (“LKAs”) of all Potential Class Members. If possible, the listings shall segregate LKAs that were provided to Ascentium or Univest within the last four years from those that were provided to Ascentium or Univest more than four years ago.

C. Within 21 days after the preliminary approval of this Stipulation and the Settlement, the Settlement Administrator shall (i) run all of the LKAs received from Ascentium and Univest through the Postal Service’s National Change of Address Database (“NCOA”) to identify address changes within the last four years, (ii) set aside as ready to mail all addresses updated through the NCOA database, and (iii) run all addresses that were not updated by NCOA and not known to have been provided to Ascentium or Univest within the past four years through a third-party lookup program such as LexisNexis Accurant.

D. Within 28 days after the preliminary approval of this Stipulation and the Settlement, or as soon thereafter as the Court has approved forms of the Individual Notice and the Detailed Notice, the Settlement Administrator shall mail the Individual Notices to Potential Class Members by first class mail, addressed to the most current address produced through the updating protocol described in paragraph 30(C).

E. In the event that a Class Notice is returned by the postal service with a new address shown on a “yellow sticker” affixed to the Notice, the Settlement Administrator shall promptly (within 5 business days) re-mail the Notice to the address shown on the “yellow sticker.”

F. In the event that a Class Notice is returned by the postal service without a new address shown on a “yellow sticker” affixed to the Notice, the Settlement Administrator shall take the following steps to re-send the Notice: (i) if the returned notice was originally sent to an address that was not generated by a third-party lookup program such as LexisNexis Accurint, the Settlement Administrator shall run the LKA through the third-party lookup service and re-mail the Class Notice to the best address resulting from that research, or to the original LKA if no other address is found during that research; (ii) if the returned notice was originally sent to an address that was generated by a third-party lookup program such as LexisNexis Accurint, the Settlement Administrator shall re-mail the Notice to the next-best address resulting from that original research, or to the original LKA if no other address was found during that research.

32. In addition to the Individual Notices given in accordance with paragraphs 30-31, above, the Settlement Administrator shall—within 30 days after the preliminary approval of this Stipulation and the Settlement—establish a website for Potential Class Members to access for additional information and post on that website for review and printing by Potential Class Members a copy of this Stipulation, a copy of the order preliminarily approving this Stipulation and the Settlement, a copy of the Individual Notice, and a Detailed Notice in a form approved by the Court. The Settlement Administrator shall also establish and maintain a toll-free telephone number for Potential Class Members to call for additional information.

33. Upon request, Ascentium, Uninvest, and the Settlement Administrator shall provide Class Counsel with such reasonable access to the notice process as they may need to monitor compliance with paragraphs 30-32.

V. FINAL APPROVAL OF THE SETTLEMENT

34. After the mailings described in paragraphs 30-31, the deadline for seeking exclusion from the Settlement Class as provided in paragraph 49, and the deadline for filing a Notice of Objection to the Settlement as provided in paragraph 52, Plaintiffs and Class Counsel will file a motion seeking the Court's final approval of the Settlement at a Fairness Hearing to be held approximately ninety (90) days after the preliminary approval of this Stipulation and the Settlement, at a time, date, and location that will be stated in the Individual Notice, in the Detailed Notice, and in the order preliminarily approving the Settlement. The motion will ask the Court to enter a Final Judgment substantially in the form attached hereto as Exhibit 3. The Settling Defendants will not oppose entry of such a Final Judgment.

VI. DISMISSAL OF ACTION AND RELEASE OF CLAIMS

35. Among other things, the Final Judgment described in paragraph 34, above shall:

A. declare the obligations of the members of Subclass One, Subclass Two, and Subclass Three to pay or cause to be paid the Cash Settlement Consideration described in paragraphs 24-26, above,

B. discharge any and all defenses to such obligations that have accrued or will accrue on or before the Effective Date,

C. dismiss with prejudice all individual and class claims that Plaintiffs have asserted against the Settling Defendants in the Action,

D. approve and confirm each Settlement Class Member's consent to the release and dismissal of any and all claims that his, her, or its Doctor LLC has or might have against any

of the Released Persons arising from or in any way related to any the MHT Program or any IPA, as more fully described in paragraph 23(A)(iv), above,

E. determine Class Counsel's entitlement, if any, to an award of attorneys' fees, costs, and expenses, and

F. specifically reserve to every Class Member all Reserved Claims.

36. As of the Effective Date, each and every Class Member will be bound by each and every term of the Final Judgment and conclusively deemed to have fully released and discharged, to the fullest extent permitted by law, all of the Released Persons from all of the Released Claims.

37. The provisions of any state, federal, municipal, local or territorial law or statute (including, but not limited to, that of the District of Columbia) providing in substance that releases shall not extend to claims, demands, injuries, and/or damages that are unknown or unsuspected to exist at the time a settlement agreement is executed and/or approved by a court are hereby expressly, knowingly, and voluntarily waived by and on behalf of Plaintiffs and all members of the Settlement Class. Without limiting the foregoing in any way, Plaintiffs, on behalf of themselves and all members of the Settlement Class, expressly waive all rights under Section 1542 of the California Civil Code, realizing and understanding that Section 1542 provides as follows:

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.

VII. COMMUNICATIONS WITH MEMBERS OF THE SETTLEMENT CLASS

38. The Individual Notice and the Detailed Notice shall list the names, addresses, and telephone numbers of Class Counsel. Communications with Potential Class Members regarding the Settlement shall be handled through Class Counsel. In the event that the Settling Defendants or their counsel receive any communications from Potential Class Members regarding the

Settlement, those communications shall be relayed to Class Counsel; however, nothing in this paragraph shall be construed to prohibit communications between counsel for the Settling Defendants and counsel for any Potential Class Members who have retained their own attorneys.

VIII. COSTS OF NOTICE AND SETTLEMENT ADMINISTRATION

39. Ascentium agrees to pay, in addition to the settlement consideration provided to Class Members in accordance with paragraph 22, above, the costs of printing, reproducing, and mailing the Individual Notices and all other costs of class notice and settlement administration.

IX. ATTORNEYS' FEES AND COSTS

40. Ascentium agrees to pay, in addition to the settlement consideration provided to Class Members in accordance with paragraph 22, above, and the costs of notice and settlement administration in accordance with paragraph 39, above, an award of attorneys' fees, costs, and expenses to Class Counsel in a total amount not to exceed \$4,500,000.00; however, Class Counsel's entitlement, if any, to an award of attorneys' fees, costs, and/or expenses will be determined by the Court in accordance with paragraphs 41-42, below. Univest will not be responsible for any such fees, costs, or expenses.

41. The motion described in paragraph 27 will request (a) an award of attorneys' fees, costs, and expenses to be paid to Class Counsel in a total amount between \$2,000,000.00 and \$4,500,000.00. At the Fairness Hearing, Class Counsel will ask the Court to award an amount within that range. In no event shall Class Counsel request an award of attorneys' fees, costs, and expenses in excess of \$4,500,000.00; and in no event shall Ascentium or any of the other Settling Defendants be required to pay an award of attorneys' fees, costs, and/or expenses totaling more than \$4,500,000.00. Univest will not be responsible for any such fees, costs, or expenses.

42. The Settling Defendants will not object to a request by Class Counsel for an award of attorneys' fees, costs, and expenses in a total amount less than or equal to \$2,000,000.00;

however, Ascentium may object to any request for an award of attorneys' fees, costs, and expenses in a total amount greater than \$2,000,000.00. Neither Ascentium nor any other Settling Defendant shall have any responsibility for the allocation of any award of attorneys' fees and expenses among Class Counsel and/or any other person who may claim a right to any portion of any such award.

X. REPRESENTATION OF OPT-OUTS / CONFIDENTIALITY AGREEMENT / MUTUAL NON-DISPARAGEMENT

43. Class Counsel agree that any representation, encouragement, or solicitation of any person seeking exclusion from the Settlement Class or any person seeking to litigate any Released Claims with any of the Released Persons might place Class Counsel in an untenable conflict of interest with the class. Accordingly, Class Counsel will not engage in any such representation, encouragement, or solicitation. This paragraph, however, shall not affect Class Counsel's ability to respond to inquiries from members of the Settlement Class about this Settlement and/or their options to participate; nor shall it affect Class Counsel's ability to represent any person should the Settlement contemplated by this Stipulation be disapproved by the Court or terminated in accordance with Article XII.

44. In discovery in this and other matters and in negotiation and review of the Stipulation, Class Counsel have received confidential information regarding the Settling Defendants' internal practices and procedures and the Settling Defendants' confidential financial information, including financial information compiled solely for purposes of negotiating and implementing the Stipulation and the Settlement. Class Counsel agree to keep such information confidential and not to use it or, unless ordered by a court after reasonable notice to the Settling Defendants, allow it to be used in the Action or in any other litigation.

45. The names, addresses, and other data concerning Potential Class Members compiled by the Settling Defendants in effectuating the Settlement, the electronic data processing

and other record keeping procedures and materials to be utilized by the Settling Defendants in identifying the Potential Class Members and performing the Settling Defendants' other obligations under the Stipulation and/or the Settlement, and all documents produced by any of the Settling Defendants to the Settlement Administrator or to Class Counsel and/or other attorneys for Plaintiffs in this Action and/or in any similar action constitute highly confidential and proprietary business information. The confidentiality of all such information (the "Proprietary Information") shall be protected from disclosure as provided in paragraphs 46-47, below; provided, however, that Proprietary Information shall not include materials, documents, or information that Class Counsel have lawfully acquired or developed—or in the future may lawfully acquire or develop—through or from sources other than one or more of the Settling Defendants and/or one or more of the Released Persons.

46. No persons shall be allowed access to any Proprietary Information except counsel for the Settling Defendants and clerical personnel employed by such counsel, the Settlement Administrator and clerical personnel employed by the Settlement Administrator, Class Counsel and clerical personnel employed by Class Counsel, and such other persons as the Court may order after hearing on notice to all counsel of record.

47. Within 30 days after the Effective Date, the Settlement Administrator and Class Counsel shall return to the Settling Defendant(s) who produced it all Proprietary Information in their possession, custody, or control and any other documents (exclusive of documents filed with the Court) provided by Ascentium or Univest to Class Counsel or anyone they employed or retained in this Action or any other similar action. Within 45 days after the Effective Date, the Settlement Administrator and Class Counsel shall deliver a letter to the Settling Defendants, confirming their compliance with this paragraph. In the event that any Proprietary Information or

documents have already been destroyed, the Settlement Administrator and Class Counsel will include in their respective letters the name(s) and address(es) of the person(s) who destroyed the Proprietary Information and/or documents.

48. No Settlement Class Member may make any oral or written statement about any of the Settling Defendants that is intended or reasonably likely to disparage such Settling Defendant(s) or otherwise degrade the reputation of such Settling Defendant(s) in the business or legal community. Similarly, no Settling Defendant may make any oral or written statements about any Class Member(s) that is intended or reasonably likely to disparage such Class Member(s) or otherwise degrade the reputation of such Class Member(s) in the business or legal community.

XI. OBJECTIONS TO THE SETTLEMENT AND REQUESTS FOR EXCLUSION

49. Potential Class Members who wish to exclude themselves from the Settlement Class must submit written requests for exclusion. To be effective, such a request must include the Potential Class Member's name and address, a clear and unequivocal statement that the Potential Class Member wishes to be excluded from the Settlement Class, and the signature of the Potential Class Member or, in the case of a Potential Class Member who is deceased or incapacitated only, the signature of the legal representative of the Potential Class Member. The request must be mailed to the Settlement Administrator at the address provided in the Class Notice and must be postmarked no later than 14 days before the date set for the Fairness Hearing.

50. The Settlement Administrator shall promptly log each request for exclusion that it receives and provide copies of the log and all such requests for exclusion to the Settling Defendants and Class Counsel as requested. Any Potential Class Member who submits a request for exclusion to the Settlement Administrator may withdraw that request by serving a written and signed notice of such withdrawal on Class Counsel and counsel for the Settling Defendants by email or fax at any time before 5:01 pm Central Time on the day before the Fairness Hearing.

51. Class Members who do not request exclusion from the Settlement Class may object to the Settlement. A Class Member who chooses to object to the Settlement must file a written notice of intent to object (a “Notice of Intention to Object”). The right to object to the Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

52. To be effective, a Notice of Intent to Object must be:

- A. filed with the Clerk of the Court not later than 14 days before the date set in the Class Notice for the Fairness Hearing; and
- B. sent to Class Counsel by first-class mail, postmarked no later than 14 days before the date set in the Class Notice for the Fairness Hearing.

53. In addition, a Notice of Intent to Object must contain:

- A. a heading which refers to the Action;
- B. a statement whether the objector intends to appear at the Fairness Hearing, either in person or through counsel, and, if through counsel, a statement identifying that counsel by name, address, bar number and telephone number;
- C. a detailed statement of the specific legal and factual basis for each and every objection;
- D. a list of any and all witnesses whom the objector intends to call at the Fairness Hearing, with the address of each witness and a summary of his or her proposed testimony; and
- E. photocopies of any and all exhibits which the objector intends to introduce at the Fairness Hearing.

54. Any Class Member who does not file a timely Notice of Intent to Object in accordance with paragraphs 52 and 53 shall waive the right to do so and shall be forever barred from making any objection to the Settlement.

55. At least 7 days before the Fairness Hearing, Class Counsel shall provide the Settling Defendants a copy of each Notice of Intent to Object received by Class Counsel.

XII. TERMINATION OF THE SETTLEMENT

56. Any of the Settling Parties, in its sole discretion, may terminate the Settlement if:

A. the Court refuses to enter a preliminary approval order substantially in the form attached hereto as Exhibit 2;

B. the Court refuses to enter a final judgment substantially in the form attached hereto as Exhibit 3;

C. the Court modifies or strikes any material provision of this Stipulation; and/or

D. the Final Judgment is reversed or materially modified on appeal; provided, however, that no appeal relating to the amount of any attorneys' fees, costs, or expenses awarded to Class Counsel shall (i) provide grounds for termination by Plaintiffs under this paragraph or (ii) delay the Effective Date of a Final Judgment approving the Settlement and this Stipulation.

57. In addition, Ascentium, in its sole discretion, may terminate the Settlement if:

A. any financial obligation is imposed upon Ascentium in addition to and/or greater than those specifically accepted by Ascentium in this Stipulation,

B. Ascentium is unable to secure from each Doctor LLC for which one or more members of Subclass One, Subclass Two, Subclass Three, or Subclass Four is a listed owner a release and, as applicable, dismissal with prejudice of any and all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or

losses arising from or in any way related to any acts or omissions which have been alleged or which could have been alleged by such Doctor LLC against any of the Released Persons, whether at law, in equity, or under any statute or regulation, including without limitation (i) any and all direct or derivative claims, demands, actions, causes of action, and/or suits arising from or in any way relating to the MHT Program, regardless of the doctrine(s), statute(s), or regulation(s) under which they might arise and regardless of the nature or scope of the relief that might be requested; and (ii) any and all Unknown Claims arising from or in any way relating to the MHT Program; or

C. Potential Class Members who would be liable in the aggregate for more than 10% of the total Cash Settlement Consideration due under the terms of this Stipulation timely opt out of the Settlement Class.

58. In addition, Ascentium, in its sole discretion, may terminate the Settlement as to the members of Subclass Four only, if (i) more than 10% of the Potential Class Members satisfying the definition of Subclass Four timely request exclusion from the Settlement Class, or (ii) the total of all Subclass Four Cash Payments due under paragraph 22(C), above, exceeds \$400,000; provided, however, that (i) an election by Ascentium to terminate the Settlement as to Subclass Four under this paragraph must be exercised by filing a Notice of Termination in the Action and serving copies of such Notice on all Settling Parties before 5:01 pm Central Time on the day before the Fairness Hearing, (ii) such an election shall terminate the Settlement only as to the members of Subclass Four, who shall be deemed to have timely and properly requested exclusion from the Settlement, and (iii) such an election shall not terminate the Settlement as to any other Settling Party or any other member of the Settlement Class.

59. Univest, in its sole discretion, may terminate the Settlement as to itself and as to the members of Subclass Two only, if:

A. any financial obligation is imposed upon Uninvest in addition to and/or greater than those specifically accepted by Uninvest in this Stipulation;

B. More than 6 members of Subclass Two timely opt out of the Settlement Class; and/or

C. Uninvest is unable to secure from each Doctor LLC for which one or more members of Subclass Two is a listed owner a release and, as applicable, dismissal with prejudice of any and all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses arising from or in any way related to any acts or omissions which have been alleged or which could have been alleged by such Doctor LLC against any of the Released Persons, whether at law, in equity, or under any statute or regulation, including without limitation (i) any and all direct or derivative claims, demands, actions, causes of action, and/or suits arising from or in any way relating to the MHT Program, regardless of the doctrine(s), statute(s), or regulation(s) under which they might arise and regardless of the nature or scope of the relief that might be requested; and (ii) any and all Unknown Claims arising from or in any way relating to the MHT Program;

D. Provided, however, that (i) an election by Uninvest to terminate its participation in the Settlement under subparagraph 59(B) must be exercised by filing a Notice of Termination in the Action and serving copies of such Notice on all Settling Parties before 5:01 pm Central Time on the day before the Fairness Hearing, (ii) such an election shall also terminate the Settlement as to all Members of Subclass Two, who shall be deemed to have timely and properly requested exclusion from the Settlement, (iii) such an election shall not terminate the Settlement as to any other Settling Party or any other member of the Settlement Class, but such an election

shall discharge the obligations of Class Members to release any claims against Uninvest or to provide any other consideration to Uninvest under the Settlement.

60. An election to terminate the Settlement under paragraph 56, 57, 59(A), or 59(C) must be exercised by filing a Notice of Termination in the Action and serving copies of such Notice on all Settling Parties before 5:01 pm Central Time on the 3rd day before the day that, in the absence of such termination, would be the Effective Date.

61. In the event of a termination of the Settlement under paragraphs 56, 57, 58, or 59, above, no Settling Defendant(s) shall receive any refund or discharge of any amount paid or owed by such Settling Defendant(s) under paragraph 39. In the event of a termination of the Settlement as to Subclass Four under paragraph 58, Ascentium shall bear the cost, if any, of preparing and distributing any notice of such termination that the Court might require. In the event of a termination of Uninvest's participation in the Settlement under paragraph 59(B), Uninvest shall bear the cost, if any, of preparing and distributing any notice of such termination that the Court might require.

62. Any Settling Party may agree in writing at any time to waive his or its right to terminate the Settlement under paragraphs 56, 57, 58, or 59, above.

XIII. DENIAL OF LIABILITY

63. The Settling Defendants vigorously contest each and every claim in the Action. The Settling Defendants maintain that they have consistently acted in accordance with the governing laws and regulations of the United States and each State in which they do business, at all times. The Settling Defendants deny all the material allegations in the Action. The Settling Defendants nonetheless have concluded that it is in their best interests that the Action be settled on the terms and conditions set forth in this Stipulation. The Settling Defendants reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a

final resolution of the Action, and the expense that would be necessary to defend the Action through trial and through any appeals that might be taken.

64. Plaintiffs admit no liability or obligation with regard to the contracts at issue in the Action or to any indebtedness to the Settling Defendants. Plaintiffs vigorously deny any responsibility or accountability for Doctor LLCs created in their names, or that they ever had any control over them. Plaintiffs nonetheless have concluded that it is in their best interests that the Action be settled on the terms and conditions set forth in this Stipulation. Plaintiffs reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, and the expense that would be necessary to prosecute the Action through trial and through any appeals that might be taken.

65. As a result of the foregoing, Plaintiffs and the Settling Defendants enter this Stipulation without in any way admitting, conceding or acknowledging any fault, liability, or wrongdoing of any kind. Neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it shall be construed as an admission or concession by any Plaintiff or any Released Person of the truth of any of the allegations in the Action or of any liability, fault, or wrongdoing of any kind on the part of any Plaintiff or any Released Person. Except as necessary to enforce the Settlement and/or the Final Judgment, this Stipulation shall not be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as an admission or concession of liability or wrongdoing of any nature on the part of any Plaintiff or any Released Person or any other person.

66. Neither this Stipulation, nor the negotiations of the Settlement, nor the Settlement procedures, nor any act, statement or document related in any way to the Settlement negotiations or settlement procedures, nor any pleadings, or other document or action related in any way to the

Stipulation shall be (1) offered into evidence in the Action or in any other case or proceeding in support of or in opposition to a motion to certify a contested class or (2) otherwise used in any case or proceeding whatsoever in support of or in opposition to a motion to certify a contested class. In the event the Settlement is not finally approved for any reason, (a) every Released Person shall retain the right to object to the maintenance of the Action and/or any other case as a class action and to contest the Action and/or any other case on any ground and (b) every Plaintiff shall retain the right to contest any indebtedness to any Settling Defendant, any obligation under any subject contract, and/or any responsibility for any Doctor LLC.

XIV. PROTECTION OF RELEASED PERSONS

67. To protect each of the Released Persons from the burden of duplicative litigation regarding the Released Claims and/or duplicative satisfaction of Released Claims, as agreed in paragraphs 23(A) through 23(E), above:

A. To the extent not prohibited by the U.S. Bankruptcy Court for the Eastern District of Texas in Case No. 17-41047 (*In re America's MHT, Inc.*), Plaintiffs shall join with the Settling Defendants in moving the Court at least 30 days before the Fairness Hearing for entry of a settlement bar order barring the non-settling defendants in the Action, as well as any of their agents, affiliates, successors, and assigns, from asserting any claim against any Released Person (whether for contribution, indemnification, or otherwise) to recover any amount (whether as losses, damages, costs, interest, attorneys' fees, or expenses) that such person might incur or be adjudged liable to pay as a result of the assertion of a Reserved Claim against such person by any Class Member; and

B. If (a) the Court does not enter the settlement bar order described in paragraph 67(A) (or any such order is reversed on appeal), (b) one or more of the members of Subclass One, Subclass Two, Subclass Three, or Subclass Four obtain(s) a judgment against any

person based on a Reserved Claim (a “Subject Judgment”), and (c) the person against whom that Subject Judgment is obtained (the “Judgment Debtor”) asserts against any Released Person any claim related to or based upon that Subject Judgment, whether for indemnification, contribution, reimbursement, or otherwise (a “Subject Claim”), then the member(s) of Subclass One, Subclass Two, Subclass Three, and/or Subclass Four who obtained that Subject Judgment (the “Judgment Creditor(s)”) shall be obliged, jointly and severally, to protect such Released Person against that Subject Claim as follows:

(i) The Judgment Creditor(s) shall indemnify and defend the Released Person or otherwise satisfy the Subject Claim by giving the Judgment Debtor a credit against, or otherwise reducing, the Subject Judgment. The amount of that credit or reduction shall be the lesser of (1) the full amount of the Subject Claim or (2) the full amount of the Subject Judgment. The credit provided in this section shall not apply to a Subject Judgment against the bankruptcy estate of MHT unless MHT’s bankruptcy trustee asserts a Subject Claim against a Released Person that is specifically based upon the Subject Judgment.

(ii) No Judgment Creditor may accept, distribute, pledge, or otherwise dispose of any proceeds of any Subject Judgment unless and until the Judgment Creditor has satisfied his, her, or its duties under this paragraph.

XV. MISCELLANEOUS PROVISIONS

68. Unless a different Effective Date is specified by paragraph 6, above, the Effective Date of the Settlement shall be the first date on which all of the following statements are true:

- A. all parties have executed this Stipulation;
- B. no party has terminated the Stipulation;

C. the Court has preliminarily approved this Stipulation and the Settlement as provided in paragraphs 27 through 29, above;

D. Class Notice has been given to Potential Class Members as provided in paragraphs 30 through 32, above;

E. the Court has entered a Final Judgment substantially in the form of Exhibit 3 hereto, approving this Stipulation and the Settlement without material alteration, releasing all of the Released Persons from all of the Released Claims, and dismissing the Action with prejudice and without leave to amend; and

F. (i) the time to file an appeal from the Final Judgment has expired without the filing of any appeal(s) or (ii) any appeal(s) from the Final Judgment has/have been dismissed or the Final Judgment has been affirmed without material alteration and (iii) the passage of time and/or a decision of a superior appellate court has/have made further appellate review unavailable.

69. The Settling Parties and their undersigned counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Stipulation and the terms of the Settlement, including taking all steps and efforts contemplated by this Stipulation, and any other reasonable steps and efforts which may become necessary by order of the Court or otherwise.

70. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients.

71. Neither Class Counsel nor any of the Plaintiffs shall make any statements to the media about the Action or the Settlement, except to refer media inquiries to the public record of the Action.

72. Except as otherwise provided, this Stipulation contains the entire agreement of the Plaintiffs and the Settling Defendants and supersedes any prior agreements or understandings

between them. All terms of this Stipulation are contractual and not mere recitals and shall be construed as if drafted by all Settling Parties. The terms of this Stipulation are and shall be binding upon each of the Settling Parties, upon each of their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereof through any of the Settling Parties, including any Class Member. No provision in this Stipulation shall be construed to release any right, claim, or obligation created by this Stipulation, including without limitation the obligation of each member of Subclass One, Subclass Two, and Subclass Three to pay or cause to be paid the Cash Settlement Consideration described in paragraphs 23(B), 23(C), and 23(D), above, or the obligations created under Article XIV.

73. This Stipulation may be amended or modified only by a written instrument signed by counsel for all Settling Parties. Amendments and modifications may be made without additional notice to the Potential Class Members and/or Class Members unless such notice is required by the Court.

74. This Stipulation shall be subject to, governed by, construed in light of, and enforced pursuant to the laws of the State of Texas.

75. The exhibits to this Stipulation are integral parts of the Settlement and are hereby incorporated and made parts of this Stipulation.

76. To the extent permitted by law, this Stipulation may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Stipulation. The Court shall retain jurisdiction over the parties, the Settlement Class, and the subject matter of the Action to enforce this provision.

77. This Stipulation shall be deemed to have been executed upon the last date of execution by all the undersigned parties and/or counsel.

78. This Stipulation may be executed in counterparts, each of which shall constitute an original.

Date: September 26, 2017

Respectfully submitted,

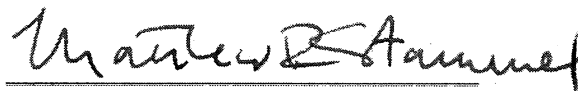


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ASCENTIUM CAPITAL LLC AND
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**ATTORNEYS FOR DEFENDANT
UNIVEST CAPITAL, INC.**

EXHIBIT 1
PERSONS EXCLUDED FROM SETTLEMENT CLASS UNDER ¶ 20(F)

1. Casagrande, Michael G.
2. Giarrizzi, Dana
3. Ho, Nhue
4. Ho, Tao
5. Lone, Jamal
6. Spangler, Gary
7. Walpole, Horace E., Jr.

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DR. DEREK MELBY, and DANILO	§	
POLICARPIO as individuals and on	§	
behalf of all others similarly situated,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 3:17-CV-155-M
v.	§	(Consolidated with Civil Action Nos.
	§	3:17-CV-732-M; 3:17-CV-868-M; and
AMERICA’S MHT, INC., SCOTT	§	3:17-CV-963-M)
POSTLE, ASCENTIUM CAPITAL, LLC,	§	
and CLIFF MCKENZIE,	§	
	§	
Defendants.	§	

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT

WHEREAS all of the named plaintiffs in all of the putative class actions consolidated in this Court under Civil Action No. 3:17-cv-155 (“Plaintiffs”), on behalf of themselves and the proposed Settlement Class defined below, and defendants Ascentium Capital LLC (“Ascentium”), Univest Capital, Inc., (“Univest”), and Cliff McKenzie (“McKenzie”) (collectively, the “Settling Defendants”) have agreed, subject to Court approval, to settle all claims among them upon the terms and conditions stated in the Stipulation of Settlement filed on September __, 2017 (the “Stipulation”);

NOW, THEREFORE, based upon the Stipulation and the presentations of counsel on the record during the preliminary settlement hearing held on September __, 2017, and it appearing that that the Court should hold a hearing to determine whether the proposed Class Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class,

IT IS HEREBY ORDERED THAT:

1. The terms defined in the Stipulation will have the same meanings in this Order.

2. For purposes of determining whether the terms of the proposed Settlement should be finally approved as fair, reasonable and adequate, the Court conditionally certifies the Settling Parties' proposed Settlement Class for settlement purposes only. The Settlement Class so certified consists of the "MHT Program Class" and four subclasses designated as "Subclass One," "Subclass Two," "Subclass Three," and "Subclass Four," which class and subclasses are defined as follows:

A. The "MHT Program Class" is defined as every person who is currently listed in Ascentium's, Univest's, Balboa's, and/or MHT's books and records (including without limitation MHT's bankruptcy schedules) as a Guarantor and/or as an owner of a Doctor LLC.

B. "Subclass One" is defined as every member of the MHT Program Class who (a) is not a Guarantor of a Univest IPA but (b) is a Guarantor of an Ascentium IPA with (i) a "book date" of January 1, 2016, or later stated in Ascentium's books and records and (ii) a balance outstanding on August 31, 2017.

C. "Subclass Two" is defined as every member of the MHT Program Class who (a) is a Guarantor of a Univest IPA and (b) is also a Guarantor of an Ascentium IPA with (i) a "book date" of January 1, 2016, or later stated in Ascentium's books and records and (ii) a balance outstanding on August 31, 2017.

D. "Subclass Three" is defined as every member of the MHT Program Class who is a Guarantor of an Ascentium IPA with (i) a "book date" of December 31, 2015, or earlier stated in Ascentium's books and records and (ii) a balance outstanding on August 31, 2017.

E. "Subclass Four" is defined as every member of the MHT Program Class who is a Balboa Guarantor but not a Univest Guarantor or an Ascentium Guarantor.

F. Provided, however, that the Settlement Class excludes (a) all persons who timely opt out of the Settlement Class in accordance with the Court's orders; and (b) all persons who (i) received more than \$25,000.00 from MHT (or entities affiliated with MHT) through referral fees and/or compensation not based on the profitability of their Doctor LLC, or (ii) met with Ascentium personnel in April 2015, December 2016, or February 2017 to discuss funding for the MHT Program.

3. In addition, the Court conditionally appoints Plaintiffs as representatives of the Settlement Class and the following attorneys as Class Counsel:

E. Leon Carter
Joshua J. Bennett
Carter Scholer PLLC
8150 N. Central Expy, Suite 500
Dallas, Texas 75206
Telephone: (214) 550-8188

Robert E. Couhig, Jr.
Donald C. Massey
Couhig Partners, LLC
1100 Poydras St., Suite 3250
New Orleans, LA 70163
Telephone (504) 588-1288

Paul Crouch
The Crouch Firm, PLLC
5609 Masters Ct.
Flower Mound, TX 75022
Telephone: (817) 714-9820

4. Based on the Stipulation, the conditional certification of the Settlement Class, the conditional appointment of the Class Representative and Class Counsel, and the presentations of counsel at the preliminary settlement hearing held on September __, 2017, the Court preliminarily approves the proposed Settlement as within the range of possible approval as fair, reasonable, adequate, and in the best interests of the Class Members.

5. If the Proposed Settlement is not finally approved as provided below, the conditional certification of the Settlement Class and the conditional appointments of Class Representatives and Class Counsel shall be vacated.

6. Pending a final determination whether the proposed Settlement should be approved as fair, reasonable, and adequate, neither Plaintiffs nor any other person comprised within the definition of the Settlement Class defined in paragraph 2, above, whether directly, indirectly, representatively or in any other capacity, shall commence or join any other lawsuit, arbitration, or administrative or regulatory proceeding in any state or federal court or in any arbitration forum against any Released Person that is based on, relates to, or involves any Released Claim or any of the claims, facts, circumstances, or subject matters of this Action or the Stipulation. Further, no such person shall continue to prosecute against any Released Person in this Action or in any other action pending in any federal court any claim that is based on, relates

to, or involves any Released Claim or any of the claims, facts, circumstances, or subject matters of this Action or the Stipulation. The Court finds that this injunction is necessary and appropriate to preserve the Court's jurisdiction over the claims asserted in this Action and to protect the Court's ability to grant complete and effective relief to Plaintiffs, Potential Class Members, and the Settling Defendants.

7. As soon as practicable after the entry of this Order, Ascentium and Univest shall make reasonable searches of their records to ascertain the name and last known address of each person included within the definition of the settlement Class. Thereafter, _____, a third-party class-action administrator engaged by the Settling Defendants and hereby approved and appointed by the Court (the "Settlement Administrator") shall send a copy of the Individual Notice by first-class mail to each Potential Class Member for whom Ascentium and/or Univest ascertains a name and an address through such searches. Ascentium, Univest, and the Settlement Administrator shall use their best efforts to complete the mailing of the Individual Notice to such Potential Class Members within 30 days after the entry of this Order.

8. The Settling Parties shall take the following steps to ensure that these mailings provide the best notice practicable under the circumstances:

A. Within 7 days after the entry of this Order, the Settling Parties shall submit to the Court for approval a proposed form of the Individual Notice and a proposed form of the Detailed Notice. Such notices shall comply with the recommendations regarding class notice published by the Federal Judicial Center.

B. Within 14 days after the entry of this Order, Ascentium and Univest shall provide to the Settlement Administrator a listing of the last known addresses ("LKAs") of all Potential Class Members. If possible, the listing shall segregate LKAs that were provided to Ascentium and/or Univest within the last four years from those that were provided to Ascentium and/or Univest more than four years ago.

C. Within 21 days after the entry of this Order, the Settlement Administrator shall (i) run all of the LKAs received from Ascentium and Univest through the Postal Service's National Change of Address Database ("NCOA") to identify address changes within the last four years, (ii) set aside as ready to mail all addresses updated through the

NCOA database, and (iii) run all addresses that were not updated by NCOA and not known to have been provided to Ascentium or Univest within the past four years through a third-party lookup program such as LexisNexis Accurint.

D. Within 28 days after the entry of this Order, or as soon thereafter as the Court has approved forms of the Individual Notice and the Detailed Notice, the Settlement Administrator shall mail the Individual Notices to Potential Class Members by first class mail, addressed to the most current address produced through the updating protocol described in paragraph 8(C).

E. In the event that an Individual Notice is returned by the postal service with a new address shown on a “yellow sticker” affixed to the Notice, the Settlement Administrator shall promptly (within 5 business days) re-mail the Notice to the address shown on the “yellow sticker.”

F. In the event that an Individual Notice is returned by the postal service without a new address shown on a “yellow sticker” affixed to the Notice, the Settlement Administrator shall take the following steps to re-send the Notice: (i) if the returned notice was originally sent to an address that was not generated by a third-party lookup program such as LexisNexis Accurint, the Settlement Administrator shall run the LKA through the third-party lookup service and re-mail the Class Notice to the best address resulting from that research, or to the original LKA if no other address is found during that research; (ii) if the returned notice was originally sent to an address that was generated by a third-party lookup program such as LexisNexis Accurint, the Settlement Administrator shall re-mail the Notice to the next-best address resulting from that original research, or to the original LKA if no other address was found during that research.

9. In addition to the Individual Notices given in accordance with paragraphs 7-8, above, the Settlement Administrator shall—within 30 days after the entry of this Order—establish a website for Potential Class Members to access for additional information and post on that website for review and printing by Potential Class Members a copy of this Stipulation, a copy of this Order preliminarily approving this Stipulation and the Settlement, a copy of the Individual Notice, and a Detailed Notice substantially in the form attached hereto as Exhibit B. The Settlement Administrator shall also establish and maintain a toll-free telephone number for Potential Class Members to call for additional information.

10. Upon request, Ascentium, Univest, and the Settlement Administrator shall provide Class Counsel with such reasonable access to the notice process as they may need to monitor compliance with paragraphs 7-9.

11. The Court will hold a hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement (the "Fairness Hearing") at _____.m., _____, 201__, in Courtroom No. _____ of the _____, as set forth in the Individual Notice and the Detailed Notice. During the Fairness Hearing, the Court will consider whether the proposed Settlement described in the Stipulation, including the proposed award of attorneys' fees, costs, and expenses to Class Counsel, should be approved as fair, reasonable, and adequate, and whether the Court should enter the proposed Final Judgment approving the proposed Settlement and dismissing this Action on the merits, with prejudice, and without leave to amend. Upon a showing of good cause, the Fairness Hearing may be postponed, adjourned, or rescheduled by Order of the Court without further notice to the members of the Settlement Class.

12. Potential Class Members who wish to exclude themselves from the Settlement Class must submit written requests for exclusion complying with the provisions of and containing the information requested by the Detailed Notice and the Stipulation. To be effective, such a request must be sent by first-class mail to the Settlement Administrator at the address provided in the Class Notice and postmarked not later than 14 days before the date set for the Fairness Hearing.

13. At least 7 days before the date set for the Fairness Hearing, the Settlement Administrator shall serve upon Class Counsel a declaration (a) confirming distribution of the Individual Notice in accordance with paragraphs 7-9 of this Order, (b) confirming establishment of a website and toll-free telephone number in accordance with paragraph 9 of this Order, and

(c) reporting the number and status of any requests for exclusion. Class Counsel shall file and serve that declaration in this Action at least 5 days before the date set for the Fairness Hearing.

14. Potential Class Members who submit timely and valid requests for exclusion in the manner set forth in the Individual Notice, the Detailed Notice, and the Stipulation shall be excluded from the Settlement Class. Such persons shall have no rights under the proposed Settlement, shall not share in any distribution of funds or any other form of consideration provided under the proposed Settlement, and shall not be bound by the proposed Settlement or by any Final Judgment approving the proposed Settlement.

15. All Settlement Class Members who do not request exclusion in the manner set forth in the Individual Notice, in the Detailed Notice, and in the Stipulation shall be bound by any Final Judgment entered pursuant to the Stipulation, and shall be barred and enjoined, now and in the future, from asserting any of the Released Claims against any Released Persons. Upon entry of a Final Judgment approving the proposed Settlement, all Settlement Class Members shall be conclusively deemed to have fully and finally released all of the Released Persons from any and all Released Claims.

16. Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement by filing written notices of intent to object complying with the provisions of and containing the information requested by the Detailed Notice and the Stipulation. The right to object to the proposed Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a corporation, a limited-liability company, or a deceased or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity. Unless the Court in its discretion shall otherwise direct, an objection to the proposed Settlement shall be

heard, and any papers or briefs submitted in support of said objection shall be considered, only if the objection and all supporting information required by the Stipulation are electronically filed and served in the Action via ECF at least 14 days before the date set for the Fairness Hearing.

17. This Order preliminarily certifies the Settlement Class for settlement purposes only. Neither this Order, nor the Stipulation, nor the negotiations of the Settlement, nor any act, statement, or document related in any way to the Settlement negotiations, nor any pleadings or other document or action related in any way to the Stipulation shall be (a) offered into evidence in the Action or in any other case or proceeding in support of or in opposition to a motion to certify a contested class or (b) otherwise used in any case or proceeding whatsoever in support of or in opposition to a motion to certify a contested class. In the event that the Settlement is not finally approved for any reason, (a) the Settling Defendants shall retain the right to object to the maintenance of the Action and/or any other case as a class action and to contest the Action and/or any other case on any ground, and (b) every Plaintiff shall retain the right to contest any indebtedness to any Settling Defendant, any obligation under any subject contract, and/or any responsibility for any Doctor LLC.

18. Neither this Order, nor the Stipulation, nor the proposed Settlement is to be deemed or construed as a finding or admission of liability, wrongdoing, or fault on the part of any Released Person, any Settling Party, or any other person. No person comprised within the definition of the Settlement Class defined in paragraph 2, above, and no person acting in concert with any such person, may offer this Order, the Stipulation, the proposed Settlement, or any documents or statements submitted to the Court in furtherance of the proposed Settlement into evidence in any action or proceeding in any court or other tribunal as a finding, admission,

concession, or suggestion of liability or wrongdoing on the part of any Released Person, any Settling Party, or any other person.

19. Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

20. It is hereby ordered that this Action shall be stayed as to the Settling Defendants pending further proceedings in connection with the effectuation of the Proposed Settlement.

IT IS SO ORDERED.

Dated this _____ day of September, 2017.

EXHIBIT

Barbara M.G. Lynn, United States District Judge

US 5154677

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DR. DEREK MELBY, and DANILO	§	
POLICARPIO as individuals and on	§	
behalf of all others similarly situated,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 3:17-CV-155-M
v.	§	(Consolidated with Civil Action Nos.
	§	3:17-CV-732-M; 3:17-CV-868-M; and
AMERICA’S MHT, INC., SCOTT	§	3:17-CV-963-M)
POSTLE, ASCENTIUM CAPITAL, LLC,	§	
and CLIFF MCKENZIE,	§	
	§	
Defendants.	§	

**[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING SETTLEMENT
AND DISMISSING CERTAIN CLAIMS WITH PREJUDICE**

This matter came before the Court on the ____ day of _____, 2017, on the Motion of the named plaintiffs in the putative class actions consolidated in this Court under Civil Action No. 3:17-cv-155 (“Plaintiffs”) for final approval of their proposed class-action Settlement with the following “Settling Defendants”: Ascentium Capital LLC (“Ascentium”), Uninvest Capital, Inc., (“Uninvest”), and Cliff McKenzie (“McKenzie”). Having reviewed and considered all timely submissions made in connection with the proposed Settlement, and having reviewed and considered the files and records herein, the Court finds and concludes as follows:

1. The Court has jurisdiction over the subject matter of this Action, the Plaintiffs, the members of the Settlement Class, and the Settling Defendants.
2. All capitalized terms used herein shall have the same meaning as set forth in the Stipulation, which is incorporated herein by reference.
3. The complaint filed in this Action (Dkt. 57) alleges, among other things, that the Settling Defendants violated the law and committed actionable torts in connection with a home

healthcare business program developed by America's MHT, Inc. ("MHT"). The complaint further asserts that the Settling Defendants caused or contributed to causing Plaintiffs to become obligated to—or allegedly obligated to—Ascentium, Uninvest, Balboa Capital Corporation ("Balboa"), MHT, and/or one or more Doctor LLCs under various contracts (including, without limitation, license agreements, management services agreements, loans, installment payment agreements, and other contractual arrangements). Continuing, the complaint also alleges that such contracts are subject to rescission, and Plaintiffs seek or have sought several different forms of relief, including monetary damages, declarations of equitable estoppel prohibiting enforcement of such contracts, declarations of unconscionability and unenforceability prohibiting enforcement of such contracts, declarations of novation to extinguish certain alleged obligations from Plaintiffs and Settlement Class members to Ascentium and/or Uninvest, and injunctive relief barring Ascentium and Uninvest from seeking enforcement of such contracts. *See* Dkts. 1 and 57.

4. The Settling Defendants deny that they have acted improperly or fraudulently and have asserted several defenses, including (without limitation) that Plaintiffs' allegations fail to state any claim on which relief can be granted against the Settling Defendants, that the terms of the applicable contracts are enforceable as written and compliant with all applicable laws, and that prior payments, settlements, and judgments have or might have resolved or reduced some of Plaintiffs' claims.

5. On or about September ____, 2017, Plaintiffs and the Settling Defendants entered into a Stipulation of Settlement, which Plaintiffs promptly filed as an exhibit to Plaintiffs' Motion for Preliminary Approval of Proposed Class Settlement (Dkt.___) on September ____, 2017. The Stipulation provides for the settlement of this Action between the Settling Defendants and a proposed Settlement Class, subject to Court approval.

6. On September __, 2017, the Court held a hearing to consider preliminary approval of the Stipulation and the proposed Class Settlement and granted such preliminary approval.

7. For purposes of determining whether the terms of the proposed Settlement should be finally approved as fair, reasonable and adequate, the Court conditionally certified a Settlement Class for settlement purposes only. The Settlement Class so certified consists of the “MHT Program Class” and four subclasses designated as “Subclass One,” “Subclass Two,” “Subclass Three,” and “Subclass Four,” which class and subclasses are defined as follows:

A. The “MHT Program Class” is defined as every person who is currently listed in Ascentium’s, Univest’s, Balboa’s and/or MHT’s books and records (including without limitation MHT’s bankruptcy schedules) as a Guarantor and/or as an owner of a Doctor LLC.

B. “Subclass One” is defined as every member of the MHT Program Class who (a) is not a Guarantor of a Univest IPA but (b) is a Guarantor of an Ascentium IPA with (i) a “book date” of January 1, 2016, or later stated in Ascentium’s books and records and (ii) a balance outstanding on August 31, 2017.

C. “Subclass Two” is defined as every member of the MHT Program Class who (a) is a Guarantor of a Univest IPA and (b) is also a Guarantor of an Ascentium IPA with (i) a “book date” of January 1, 2016, or later stated in Ascentium’s books and records and (ii) a balance outstanding on August 31, 2017.

D. “Subclass Three” is defined as every member of the MHT Program Class who is a Guarantor of an Ascentium IPA with (i) a “book date” of December 31, 2015, or earlier stated in Ascentium’s books and records and (ii) a balance outstanding on August 31, 2017.

E. “Subclass Four” is defined as every member of the MHT Program Class who is a Balboa Guarantor but not a Univest Guarantor or an Ascentium Guarantor.

F. Provided, however, that the Settlement Class excludes (a) all persons who timely opt out of the Settlement Class in accordance with the Court’s orders; and (b) all persons who (i) received more than \$25,000.00 from MHT (or entities affiliated with MHT) through referral fees and/or compensation not based on the profitability of their Doctor LLC, or (ii) met with Ascentium personnel in April 2015, December 2016, or February 2017 to discuss funding for the MHT Program.

See Dkt. __.

8. In addition, the Court conditionally appointed Plaintiffs as representatives of the Settlement Class and the following attorneys as Class Counsel:

E. Leon Carter
Joshua J. Bennett
Carter Scholer PLLC
8150 N. Central Expy, Suite 500
Dallas, Texas 75206
Telephone: (214) 550-8188

Robert E. Couhig, Jr.
Donald C. Massey
Couhig Partners, LLC
1100 Poydras St., Suite 3250
New Orleans, LA 70163
Telephone (504) 588-1288

Paul Crouch
The Crouch Firm, PLLC
5609 Masters Ct.
Flower Mound, TX 75022
Telephone: (817) 714-9820

Id. The Court also (a) approved the form of the Settling Parties' proposed plan for distributing the Class Notice, (b) directed that the Class Notice distributed in accordance with the terms of the Stipulation and the Court's orders, and (c) scheduled a hearing to consider the fairness of the Settlement. *Id.*

9. On or about December ___, 2017, Class Counsel applied to the Court for final approval of the terms of the proposed Settlement and for the entry of this Final Judgment. In support of that application, Class Counsel submitted, among other things, evidence concerning the dissemination and adequacy of Class Notice, evidence regarding the names of potential Class Members who have submitted requests for exclusion from the Settlement Class, evidence regarding the negotiation of the proposed Settlement, and evidence regarding the fairness, reasonableness, and adequacy of the substantive terms of the proposed Settlement.

10. Pursuant to the Class Notice and the orders described above, a hearing was held before this Court, on December ___, 2017, to consider the motion for final approval and to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate

and whether the Court should enter this Final Judgment approving the Settlement and dismissing the Action on the merits, with prejudice, and without leave to amend.

11. During the hearing, the Settling Parties provided additional evidence that the Class Notice was disseminated in accordance with the Court's orders. In addition, the Settling Parties provided additional evidence regarding the adequacy of the notice so given, the negotiation of the proposed Class Settlement, the substantive fairness, reasonableness, and adequacy of its terms, and the identities of Potential Class Members who submitted timely Requests for Exclusion from the Settlement Class. The Settling Parties also provided evidence regarding the identities of the members of each of the four subclasses described in paragraphs 7(B) through 7(E), above, and the identities of persons to be excluded from the Settlement Class pursuant to paragraph 7(F), above.

12. The Court previously found and now reaffirms that dissemination of the Class Notice in accordance with the terms of the Order constitutes the best notice practicable under the circumstances. The evidence confirming dissemination and content of the Class Notice demonstrates that the parties complied with this Court's orders regarding class notice, that the notice given informed members of the Settlement Class of the pendency and terms of the proposed Settlement, of their opportunity to request exclusion from the Settlement Class, and of their right to object to the terms of the proposed Settlement, that the notice given was the best notice practicable under the circumstances, and that it constituted valid, due and sufficient notice to members of the Settlement Class. The Court further finds and concludes that the notice program described in the Order and completed by the parties complied fully with the requirements of due process, the Federal Rules of Civil Procedure, and all other applicable laws.

13. The Court also finds that the proposed Settlement is the result of good-faith, arms-length negotiations by the parties thereto. In addition, the Court finds that approval of the Stipulation and the Settlement embodied therein will result in substantial savings in time and resources to the Court and the litigants and will further the interests of justice.

14. The Court finds, for settlement purposes only, that the Settlement Class meets the requirements of FED.R.CIV.P. 23(a), as well as the requirements of FED.R.CIV.P. 23(b)(2) & 23(b)(3), because, among other factors: (1) the Settlement Class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact – *i.e.*, whether Ascentium and Univest participated in a fraud allegedly perpetrated by MHT – that are common to the Settlement Class; (3) in light of the proposed Settlement, those common questions predominate over any questions affecting only individual members of the Settlement Class, and the claims of the Plaintiffs are typical of those of other Settlement Class Members, (4) Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Settlement Class; (5) the proposed Class Settlement is superior to other potential methods for the fair and efficient resolution of this controversy; and (6) the claims and defenses of the Settling Parties make the Stipulation’s proposed injunction regarding credit reporting by Ascentium and Univest (*see* Stipulation, ¶ 22(B)) and its proposed reformation of certain Ascentium IPAs and Univest IPAs (*see id.*, ¶¶ 22(B), 23(B), 23(C), and 23(D)) appropriate and principal forms of relief. Further, the Court finds that the proposed Settlement is fair, reasonable and adequate as to the Settlement Class Members as a result of discovery and due diligence undertaken by Plaintiffs, as reflected in counsel’s presentations at the Fairness Hearing.

15. The Court finds that the Potential Class Members listed in Exhibits 1 hereto submitted timely Requests for Exclusion. In addition, the Court finds that (a) the persons listed

on Exhibit 2 are members of the Settlement Class and Subclass One, (b) the persons listed on Exhibit 3 are members of the Settlement Class and Subclass Two, (c) the persons listed on Exhibit 4 are members of the Settlement Class and Subclass Three, and (d) the persons listed on Exhibit 5 are members of the Settlement Class and Subclass Four. The Court finds further that the persons listed on Exhibit 6 are excluded from the Settlement Class pursuant to paragraph 7(F), above.

NOW, THEREFORE, GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED, ADJUDGED AND DECREED THAT:

16. The Court hereby confirms the definition of the Settlement Class for purposes of this Final Judgment and certifies this Action, for settlement purposes only, as a Class Action.

17. The persons listed on Exhibits 1 and 6 are excluded from the Settlement Class. All Potential Class Members other than those listed on Exhibits 1 and 6 are adjudged to be Settlement Class Members and are bound by this Final Judgment and by the Stipulation of Settlement incorporated herein, including the releases provided for in the Stipulation and in this Final Judgment.

18. The Court overrules all objections to the Stipulation and the proposed Class Settlement and approves all provisions and terms of the Stipulation and the proposed Class Settlement in all respects. The Court specifically finds and concludes that the proposed Class Settlement is fair, adequate, and reasonable for the Settlement Class.

19. Plaintiffs, the Settling Defendants, and the Settlement Class are ordered to consummate the Class Settlement in accordance with the terms of the Stipulation and this Final Judgment.

20. In light of the covenants made in the Stipulation, including without limitation the covenants made in paragraph 22 of the Stipulation, and without limiting the injunction in paragraph 19, above, in any way, it is specifically ordered, adjudged, and decreed that:

A. Ascentium shall pay the Subclass Four Cash Payments described in paragraph 22(C) of the Stipulation as follows: Ascentium will pay each member of Subclass Four within 45 days after the Effective Date a cash payment (a “Subclass Four Cash Payment”). Such payment shall be equal to $\$6,500 \times (a/b) \times (1/c)$, where a = the total of all payments due under the original terms of all Balboa IPAs for which such member is listed as a Guarantor (collectively, the “Member’s IPAs”), b = \$114,534 (the total of all monthly payments due under one Ascentium IPA covering the purchase of one MHT license in 2016), and c = the total number of persons listed in Balboa’s books and records as Guarantor(s) of the Member’s IPAs;

B. Ascentium shall also pay the additional amounts described in paragraphs 39-40 of the Stipulation, including (i) attorneys’ fees and costs, as awarded below, and (ii) class-administration expenses payable to the Settlement Administrator; and

C. In addition, each of the Settling Defendants shall (i) refrain from making any negative credit report against any member of Subclass One, Subclass Two, or Subclass Three regarding conduct occurring on or before the Effective Date; (ii) retract any negative credit report previously made against any member of Subclass One, Subclass Two, or Subclass Three regarding conduct occurring on or before the Effective Date; (iii) refrain from making any efforts to collect from any member of Subclass One, Subclass Two, or Subclass Three any alleged indebtedness owed under any IPA; and (iv) dismiss with prejudice within 15 days after the Effective Date (and with each party to bear its own costs, expenses, and attorneys’ fees) each and every lawsuit in which he, she, or it seeks to collect any such alleged indebtedness from any member of Subclass One, Subclass Two, or Subclass Three.

21. In light of the covenants made in the Stipulation, including without limitation the covenants made in paragraphs 23, 24, and 25 of the Stipulation, and without limiting the injunction in paragraph 19, above, in any way, it is specifically ordered, adjudged, and decreed that:

A. Each member of the MHT Program Class shall (i) dismiss with prejudice (and with all costs taxed to the party or parties incurring them) any other claims and/or lawsuits in which he, she, or it has asserted any Released Claim against any Released Person; (ii) refrain from asserting, initiating, filing, commencing, prosecuting, or maintaining in any action or proceeding of any kind, whether before any court, agency, or arbitrator, any Released Claim against any Released Person; and (iii) refrain from

opposing the release or, as applicable, dismissal (with prejudice) of any and all claims that any Doctor LLC of which he, she, or it is a listed owner has or might have against any of the Released Persons (including any Unknown Claims) arising from or in any way related to the MHT Program or any IPA;

B. Each member of Subclass One and each member of Subclass Two shall also (i) timely pay or cause to be paid to Ascentium the Cash Settlement Consideration described in paragraph 22, below, (ii) waive and forgo any and all defenses to such payment accrued on or before the Effective Date, including without limitation any defense based on the alleged invalidity, unconscionability, unenforceability, or illegality of any IPA or any guarantee of any IPA; and (iii) protect each of the Released Persons from the burden of duplicative litigation regarding the Released Claims and/or duplicative satisfaction of Released Claims by performing the duties described in paragraph 67 of the Stipulation;

C. Each member of Subclass Three shall also (i) timely pay or cause to be paid to Ascentium the Cash Settlement Consideration described in paragraph 23, below, (ii) waive and forgo any and all defenses to such payment accrued on or before the Effective Date, including without limitation any defense based on the alleged invalidity, unconscionability, unenforceability, or illegality of any IPA or any guarantee of any IPA; and (iii) protect each of the Released Persons from the burden of duplicative litigation regarding the Released Claims and/or duplicative satisfaction of Released Claims by performing the duties described in paragraph 67 of the Stipulation; and

D. Each member of Subclass Four shall also protect each of the Released Persons from the burden of duplicative litigation regarding the Released Claims and/or duplicative satisfaction of Released Claims by performing the duties described in paragraph 67 of the Stipulation.

22. The Cash Settlement Consideration due from each member of Subclass One and each member of Subclass Two, as provided in paragraph 21(B), above, shall be the lesser of (i) \$85,900.50 and (ii) 80% of the total of all payments remaining due under the original terms of all Ascentium and Univest IPAs for which such subclass member is listed as a Guarantor. Such Cash Settlement Consideration shall be paid in sixty (60) monthly installments (the “Monthly Settlement Payments”), which shall be due beginning on the 30th day after the Effective Date and continuing thereafter at monthly intervals until the fifth anniversary of the Effective Date, when the final Monthly Settlement Payments shall be due. The Cash Settlement Consideration that each such member must pay or cause to be paid, as well as the amount of each Monthly

Settlement Payment that each such member must pay or cause to be paid are listed on Exhibit __ to the Stipulation.

23. The Cash Settlement Consideration due from each member of Subclass Three as provided in paragraph 21(C), above, shall be the lesser of (i) \$114,534.00 and (ii) 80% of the total of all payments remaining due under the original terms of all Ascentium and Univest IPAs for which such subclass member is listed as a Guarantor. Such Cash Settlement Consideration shall be paid in forty-eight (48) monthly installments (the “Monthly Settlement Payments”), which shall be due beginning on the 30th day after the Effective Date and continuing thereafter at monthly intervals until the fourth anniversary of the Effective Date, when the final Monthly Settlement Payments shall be due. The Cash Settlement Consideration that each such member must pay or cause to be paid, as well as the amount of each Monthly Settlement Payment that each such member must pay or cause to be paid are listed on Exhibit __ to the Stipulation.

24. Notwithstanding the payment schedules described in paragraphs 22 and 23, above, each member of Subclass One, each member of Subclass Two, and each member of Subclass Three shall have the option to make or cause to be made a single, lump-sum payment on or before the 30th day after the Effective Date equal to 80% of the total Cash Settlement Consideration that such member otherwise would be obligated to pay or cause to be paid under paragraphs 21-23, above, which lump-sum payment will fully satisfy such member’s obligation for the payment of Cash Settlement Consideration and Monthly Settlement Payments under the Stipulation and this Final Judgment.

25. All claims that have been or could have been asserted by Plaintiffs and/or any Class Member against any of the Settling Defendants in the Action are hereby dismissed, on the merits, with prejudice and without leave to amend. Each of the Plaintiffs and each Class

Member is forever barred and permanently enjoined from starting, continuing, litigating, participating in, or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative or regulatory proceeding asserting any Released Claim against any Released Person. There being no just cause for delay in finally resolving such claims, the Court certifies this order and judgment under FED.R.CIV.P. 54(b) as a final judgment fully resolving them.

26. Upon the entry of this Rule 54(b) Final Judgment,

A. Each Class Member shall be conclusively deemed and adjudged to have fully released and discharged, to the fullest extent permitted by law, all of the Released Persons from all of the Released Claims; however, each Class Member shall be conclusively deemed and adjudged to have reserved all Reserved Claims;

B. Each Class Member shall be conclusively deemed and adjudged to have consented to the release and, as applicable, dismissal (with prejudice) of any and all claims that any Doctor LLC of which he, she, or it is a listed owner has or might have against any of the Released Persons (including any Unknown Claims) arising from or in any way related to the MHT Program or any IPA;

C. Each Settling Defendant shall be conclusively deemed and adjudged to have released each member of Subclass One, Subclass Two, and Subclass Three from his, her, or its obligation, if any, to guarantee any unsatisfied obligations of any Doctor LLC under any Ascentium IPA(s) and/or Univest IPA(s), including any obligation to make any unpaid monthly payments under any such IPA(s) and any obligation to pay any unpaid late charges, collection costs, and/or any other amounts under any such IPA(s); such Ascentium and Univest IPAs are hereby reformed to eliminate any such obligation on the part of any member of Subclass One and/or any member of Subclass Two; and

D. All defenses arising before the Effective Date to the obligation of any member of Subclass One, Subclass Two, or Subclass Three to pay or cause to be paid the Cash Settlement Consideration described in paragraphs 21-23, above, shall be conclusively deemed and adjudged to be discharged.

27. Class Counsel have stipulated, and the Court agrees, that any representation, encouragement, or solicitation of any person seeking exclusion from the Settlement Class or any person seeking to litigate any Released Claim with any released Person might place Class Counsel in an untenable conflict of interest with the class. Accordingly, Class Counsel shall not engage in any such representation, encouragement, or solicitation. This paragraph, however,

shall not affect Class Counsel's ability to respond to inquiries from members of the Settlement Class about this Settlement and/or their options to participate; nor shall it affect Class Counsel's ability to represent any person should the Settlement contemplated by this Stipulation be disapproved on appeal or terminated in accordance with Article XII of the Stipulation.

28. In discovery in this and other matters and in negotiation and review of the Stipulation, Class Counsel have received confidential information regarding the Settling Defendants' internal practices and procedures and the Settling Defendants' confidential financial information, including financial information compiled solely for purposes of negotiating and implementing the Stipulation and the Settlement. Class Counsel shall keep such information confidential and shall not use it or, unless ordered by a court after notice to the Settling Defendants, allow it to be used in any other litigation.

29. The Stipulation, the Settlement and this Final Judgment are not to be deemed admissions of liability or fault by any Settling Party or any Settlement Class Member or a finding of the validity of any claims in the Action or of any wrongdoing or violation of law by any Settling Party or any Settlement Class Member. The Stipulation and Settlement are not a concession by the parties and, to the extent permitted by law, neither this Final Judgment nor the Stipulation of Settlement or any other documents, exhibits or materials submitted in furtherance of the settlement, shall be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as an admission or concession of liability or wrongdoing of any nature on the part of any Settling Party, any Settlement Class Member, or any other person.

30. Class Counsel are hereby awarded—and shall receive from Ascentium pursuant to the Stipulation—attorneys' fees and costs in the total amount of \$_____. Ascentium

shall pay this amount to Class Counsel within 35 days after the Effective Date defined in paragraph __ of the Stipulation.

31. As stated above, this Rule 54(b) Final Judgment finally adjudicates and dismisses with prejudice all individual and class claims that Plaintiffs have asserted against the Settling Defendants in the Action. Nevertheless, and without in any way affecting the finality of this Rule 54(b) Final Judgment, the Court shall retain continuing jurisdiction over the dismissed claims for purposes of:

- A. Enforcing the Stipulation, the Class Settlement, and this Final Judgment;
- B. Hearing and determining any application by any party to the Stipulation for a settlement bar order; and
- C. Any other matters related or ancillary to any of the foregoing, including (without limitation) any dispute concerning the meaning or enforcement of any provision of this Final Judgment.

Dated: December __, 2017

EXHIBIT

Barbara M.G. Lynn, United States District Judge

US 5154587