

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into by Plaintiffs Associated Management Services, Inc. (“AMS”), and Charles D. Fuszner, D.M.D., P.C. (“Fuszner”) (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class Members, and by Defendants Medical Waste Services, LLC d/b/a Medical Waste Services and Larry D. Casey (“Defendants”), the “Parties.”

### **I. RECITALS**

1.01 On February 25, 2019, AMS filed a Class Action Junk-Fax Petition in the Missouri Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, *Associated Management Services, Inc. v. Medical Waste Services, LLC d/b/a Medical Waste Services*, Case No. 19SL-CC00832. AMS alleged that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), by sending unsolicited fax advertisements that did not contain the required opt-out notice and without prior express invitation or permission or an established business relationship, and that their actions also constituted conversion. Defendant Medical Waste Services LLC removed the case to the Eastern District of Missouri, where it was assigned to United States District Judge Rodney W. Sippel as Case No. 4:19-cv-00912-RWS (“Federal Action”). After some motion practice and discovery, the parties to the Federal Action mediated but failed to achieve a settlement. After rounds of further negotiations, they reached a tentative settlement and filed a Joint Motion to Remand. On November 25, 2019, the district court remanded the Federal Action, where it was assigned No. 19SL-CC00832-01 (“Action”). On January 7, 2020, Fuszner was added to the Action as an additional lead plaintiff through the filing of an Amended Class Action Junk-Fax Petition (“Petition”).

1.02 Defendants deny all material allegations of the Petition and specifically dispute that they sent unsolicited fax advertisements to Plaintiffs or putative class members without their consent and without the required opt-out notice, that they violated the TCPA, and that Plaintiffs and putative class members are entitled to any relief from Defendants. Defendants further contend that the Action would not be amenable to class certification if the case were to proceed in litigation. Nevertheless, given the risks, uncertainties, burden and expense of continued litigation, Defendants have agreed to settle the Action. The Parties acknowledge that any payment made pursuant to this Settlement Agreement shall not be construed as an admission of

liability on the part of Defendants who do hereby continue to deny liability, and that this Settlement Agreement has been made solely for the purpose of avoiding the expense and hazard of further litigation.

1.03 This Agreement resulted from many rounds of negotiation and many rounds of offers and counteroffers.

1.04 Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in this settlement and how best to serve the interests of the putative class. Class counsel further conducted an investigation of Defendants' financial conditions. Based on this investigation and the negotiations described above, Class Counsel has concluded, taking into account the sharply contested issues involved, the risks, uncertainty, and cost of further prosecution of this litigation, and the substantial benefits to be received by class members pursuant to this Agreement, that a settlement with Defendants on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class Members.

1.05 The Parties understand, acknowledge, and agree that the execution of this Agreement constitutes a settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any party except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any party to this Agreement. It is the Parties' desire and intention to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

1.06 The settlement contemplated by this Agreement is subject to preliminary and final approval by the Court, as set forth herein, including without limitation, the provisions of Sections 13.01 through 15.02. Except as otherwise provided herein, this Agreement is intended by the Parties to fully and finally resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

## **II. DEFINITIONS**

The following definitions apply to this Agreement and the Exhibits hereto:

2.01 "Action" means *Associated Management Services, Inc., et al. v. Medical Waste Services, LLC d/b/a Medical Waste Services, et al.*, Case No. 1611-CC01117-01.

2.02 "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release.

2.03 “Approved Claims” means claims that have been timely submitted and approved for payment and otherwise comply with the requirements of Sections 10.02 and 10.03.

2.04 “Claim Form” means the form attached hereto as **Exhibit E**.

2.05 “Claims Administrator” means Kurtzman Carson Consultants LLC (“KCC”).

2.06 “Claims Deadline” means the deadline by which Class Members must submit claims; claims submitted after the Claims Deadline will not be timely and will not qualify for approval pursuant to Section XI. The Claims Deadline shall be set by the Court in the Preliminary Approval Order and shall be consistent with Section 7.01.

2.07 “Class” or “Class Members” means all persons in the United States who from February 25, 2015, until the date of preliminary approval (1) were sent by or on behalf of Defendants a telephone facsimile message of material advertising the commercial availability or quality of any property, goods, or services, (2) with respect to whom Defendants cannot provide evidence of prior express invitation or permission for the sending of such fax or (3) with whom Defendants did not have an established business relationship, and (4) the fax identified in subpart (1) of this definition (a) did not display a clear and conspicuous opt-out notice on the first page stating that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under 47 C.F.R. § 64.1200(a)(4)(v) is unlawful, (b) did not display a clear and conspicuous opt-out notice on the first page with a telephone number for sending the opt-out request, or (c) did not display a clear and conspicuous opt-out notice on the first page with a facsimile number for sending the opt-out request.

Excluded from the Class are (a) Defendants and their employees, agents, and representatives, (b) the judge to whom the Action is assigned; and (c) any member of the judge’s staff or immediate family.

2.08 “Class Counsel” means Ronald J. Eisenberg.

2.09 “Class Period” means February 25, 2015, until the date the Court preliminarily approves the Settlement.

2.10 “Class Representatives” mean Plaintiffs Associated Management Services, Inc., and Charles D. Fuszner, D.M.D., P.C.

2.11 “Court” means the Missouri Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, and the judge to whom the Action is assigned.

2.12 “Defendants” mean Medical Waste Services, LLC d/b/a Medical Waste Services and Larry D. Casey.

2.13 “Effective Date” means the date when the Judgment has become final as provided in Section XIV.

2.14 “Fax Advertisement” means an unsolicited telephone facsimile message of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of Defendants, which was sent by or on behalf of Defendants.

2.15 “Final Approval Hearing” means the hearing held by the Court to determine whether to finally approve the Settlement set forth in this Agreement as fair, reasonable, and adequate.

2.16 “Final Approval Order” means the Court’s Order entered in connection with the Final Approval Hearing, substantially in the form attached hereto as **Exhibit A**.

2.17 “Final Distribution Date” means the date set forth in Section 8.04(d).

2.18 “Funding Date” means the date, no later than 5 days after the Effective Date, on which Defendants shall cause a payment to be made into the Settlement Fund Account pursuant to Section V.

2.19 “Notice” means the notices to be provided to Class Members as set forth in Section IX, including, without limitation, the Q&A Notice (sometimes called the “Long Form Notice”) to be posted on the Settlement Website as set forth in Section 9.01 and the Direct Mail Notice (sometimes called the “Short Form Notice”) as provided for in Section 9.02. The Q&A Notice and the Direct Mail Notice forms are attached hereto as **Exhibits B** and **C**, respectively.

2.20 “Objection Deadline” means the deadline for Settlement Class Members to file and serve objections to the settlement pursuant to Section 12.02; objections filed and served after the Objection Deadline will not be timely and will not be considered. The Objection Deadline shall be set by the Court in the Preliminary Approval Order and shall be consistent with Section 7.01.

2.21 “Opt-Out Deadline” means the deadline for Class Members to opt out pursuant to Section 12.01; attempts to opt out after the Opt-Out Deadline will not be timely and will not be effective. The Opt-Out Deadline shall be set by the Court in the Preliminary Approval Order and shall be consistent with Section 7.01.

2.22 “Preliminary Approval Order” means the Court’s Order entered in connection with the Preliminary Approval Hearing, preliminarily approving this Agreement and the settlement, substantially in the form attached as **Exhibit D**.

2.23 “Q&A Notice” or “Long Form Notice” means the long-form Question & Answer form notice, attached hereto as **Exhibit B**, containing questions and answers relating to the terms of the settlement, which will be mailed with the Claim Form.

2.24 “Qualified Class Member” means a Settlement Class Member who submits a claim for a payment that meets the requirements of Section 10.03 and is approved pursuant to Section 11.01.

2.25 “Released Claims” means those claims released in Section XV.

2.26 “Released Parties” means Defendants, as well as their past and present directors, officers, members, managers, employees, agents, representatives, and attorneys, as well as all third party senders of the Fax Advertisements at issue, including but not limited to WestFax, Inc. WestFax, Inc., however, shall only be released as to fax advertisements it sent on behalf of Defendants.

2.27 “Settlement Class” or “Settlement Class Members” means those persons who are members of the Class, as set forth in the Class definition in Section 2.07 above, and who do not timely and validly request exclusion from the Class.

2.28 “Settlement Costs” means any attorney’s fees awarded to Class Counsel by the Court, any incentive fees awarded to Plaintiffs by the Court. Settlement Costs also include the cost of class administration through the Claims Administrator, which shall be paid out of the Settlement Fund.

2.29 “Settlement Fund” means the payment by Defendants to resolve the Action and shall be paid as set forth in Section 5.01.

2.30 “TCPA” means the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any regulations promulgated under it.

### **III. BOTH SIDES RECOMMEND APPROVAL OF THE SETTLEMENT**

3.01 Defendants’ Position on the Conditional Certification of Settlement Class. Defendants believe that Plaintiffs’ legal and factual allegations in the Action are incorrect and specifically deny all liability to the Class or the Settlement Class. Defendants deny that Plaintiffs’ claims could be certified as a class action if this case were to proceed in litigation.

Defendants contend, among other deficiencies, that Plaintiffs' proposed class is not ascertainable, that individual issues predominate over any common ones, and that a class action would be neither superior nor manageable. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendants agree to certification of the Class defined in Section 2.07, for *settlement purposes only*, pursuant to Mo. S. Ct. R. 52.08. Preliminary certification of the Class for settlement purposes shall not be deemed a concession that certification of a litigation class would be appropriate. Moreover, Defendants reserve the right to challenge class certification in further proceedings in the Action or in any other action if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court, then Defendants' agreement to certification of the Class *for settlement purposes only* will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any proceedings involving Defendants. No agreements made by or entered into by Defendants in connection with the Settlement may be used by Plaintiffs, any person in the Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

3.02 Plaintiffs' Belief in the Merits of Case. Plaintiffs believe that the claims asserted in the Action have merit and that the evidence developed to date supports those claims. This Settlement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiffs that there is any infirmity in the claims asserted by Plaintiffs, or that there is any merit whatsoever to any of the contentions and defenses that Defendants have asserted. If this Settlement is not finally approved by the Court for any reason whatsoever, Plaintiffs shall maintain their right to litigate this Action both individually and on behalf of the putative class seeking the maximum damages allowed pursuant to the TCPA, including but not limited to continuing any and all efforts towards class certification.

3.03 All Parties Recognize the Benefits of Settlement. Plaintiffs and Defendants recognize and acknowledge the expense and amount of time that would be required to continue to pursue the Action, as well as the uncertainty, risk and difficulties of proof inherent in prosecuting or defending such claims, and potential issues related to execution and satisfaction of any judgment rendered. All Parties have concluded that it is desirable that the Action and any Released Claims be fully and finally settled and released as set forth in this Settlement. Plaintiffs

and Class Counsel believe that the agreement set forth in this Settlement confers substantial benefits upon the Class and is in the best interests of individual Class Members.

#### **IV. CLASS COUNSEL AND CLASS REPRESENTATIVES**

4.01 Class Representative and Class Counsel Appointment. For settlement purposes, and subject to Court approval, the Parties agree to the appointment of Plaintiffs as Class Representatives and to the appointment of Ronald J. Eisenberg as Class Counsel for the Settlement Class.

#### **V. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS**

5.01 Total Payment/Amount Per Approved Claim. Defendants shall pay \$250,000 (“Settlement Fund”) to settle the Action and obtain a release of all Released Claims in favor of the Released Parties. The Settlement Fund shall be used to pay Settlement Costs and fund the amounts eventually to be paid to Qualified Class Members as set forth in Section 8.04. After the Settlement Costs are deducted from the Settlement Fund, the remaining amount shall then be dedicated to pay each Qualified Class Member \$60 total for Fax Advertisements received by the Qualified Class Members. If any balance remains in the Settlement Fund after allocating \$60 to each Qualified Class Member, the remainder shall be returned to Defendants.

5.02 Qualifying for Payment. Settlement Class Members shall be entitled to submit a claim for a monetary payment pursuant to the process set forth in Section X. To qualify for payment, a claim must be timely submitted, meet the requirements for an Approved Claim set forth in Section 10.03, and be approved for payment under Section 11.01.

5.03 Prospective Relief. Defendants agree to injunctive relief requiring that all future unsolicited Fax Advertisements they send to recipients in the United States will comply with the TCPA and corresponding regulations and unless the TCPA and corresponding regulations are amended as to the opt-out notice requirements, such faxed advertisements shall include the following opt-out notice:

You may request that the sender not send any future advertisements to your telephone facsimile machine. In order for your request to be valid, (i) the request must clearly identify the facsimile number to which the request relates; (ii) the request must be communicated to sender by calling <insert domestic, toll-free number>, sending a facsimile of the request to <insert domestic facsimile number> or by emailing the request to <insert e-mail address>; and (iii) the requesting party must not have subsequently provided express invitation or

permission, whether written or unwritten, to sender to transmit advertisements to the telephone facsimile number identified in the request. Sender's failure to comply, within 30 days, with a proper request is unlawful.

**VI. ATTORNEY'S FEES AND EXPENSES AND PAYMENT TO CLASS REPRESENTATIVES**

6.01 Attorney's Fees and Expenses. Class Counsel will move the Court for an award of attorney's fees and expenses to be paid from the Settlement Fund. Class Counsel agrees that its request for attorney's fees, inclusive of actual expenses, will not exceed \$82,500.00. Class Counsel further agrees that, if the Court awards attorney's fees or expenses in an amount greater than that requested, Class Counsel will not accept any amount greater than requested. The amount of any attorney's fees and expenses approved by the Court shall be paid from the Settlement Fund and not in addition thereto. Within 7 days of the Funding Date and after receipt of payee's completed W-9 form, the Claims Administrator shall pay to Class Counsel the amount of attorney's fees and expenses awarded to Class Counsel by the Court, in the manner directed by written instructions from Class Counsel.

6.02 Payments to Class Representatives. Class Representatives will move for incentive awards for the benefits they have caused to be made available to the Class and the time and effort that they have invested in this Action. Class Representatives agree that AMS will not request or accept an incentive award in excess of \$10,000 and Fuszner will not request or accept an incentive award in excess of \$5,000. The amount of any incentive award approved by the Court shall be paid from the Settlement Fund, not in addition thereto. Within 7 days of the Funding Date and after receipt of payee's completed W-9 form, the Claims Administrator shall pay to Class Representatives any incentive awards granted by the Court, in the manner directed by written instructions by Class Counsel.

6.03 Settlement Independent of Award of Fees, Expenses, and Incentive Payments. The payments of attorney's fees, expenses, and an incentive award set forth in Sections 6.01 and 6.02 are subject to and dependent upon the Court's approval as fair, reasonable, adequate, and in the best interests of Class Members. This settlement is not dependent upon the Court's approving Plaintiffs' requests for such payments or awarding the amounts sought by Plaintiffs. In the event the Court approves the settlement but declines to award Class Counsel's fees and

expenses or incentive awards in the amount requested by Class Counsel, the settlement will nonetheless be binding on the Parties and the Settlement Class Members.

## **VII. PRELIMINARY APPROVAL**

7.01 Order of Preliminary Approval. After the execution of this Agreement, Plaintiffs shall move for entry of the Preliminary Approval Order in substantially the form attached as **Exhibit D**. Pursuant to the motion for preliminary approval, Plaintiffs will request that the Court:

- (a) Conditionally certify the Class for settlement purposes only;
- (b) Conditionally appoint Class Counsel as counsel for the Class for settlement purposes and conditionally appoint Plaintiffs as Class Representatives;
- (c) Preliminarily approve the settlement and this Agreement as fair, adequate, and reasonable, and within the reasonable range of possible final approval;
- (d) Approve the form of Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances and satisfies due process and Mo. S. Ct. R. 52.08;
- (e) Authorize dissemination and publication of the Notice to the Class consistent with the notice program;
- (f) Approve the Claim Form;
- (g) Set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice; and,
- (h) Set appropriate deadlines, including the Claims Deadline (30 days after the Final Approval Hearing), the Objection Deadline (75 days after entry of the Preliminary Approval Order), the Opt-Out Deadline (75 days after entry of the Preliminary Approval Order), and deadlines for filing papers in connection with the Final Approval Hearing; and
- (i) Enjoin all Class Members from prosecuting separate actions against Defendants asserting any of the claims alleged in the Action.

## **VIII. ADMINISTRATION AND NOTIFICATION PROCESS**

8.01 Third-Party Claims Administrator. The Claims Administrator shall be responsible for all matters relating to the administration of this settlement, as set forth herein. Those responsibilities include, but are not limited to, establishing a Settlement Website, giving notice,

processing claims, acting as a liaison between Class Members and the Parties regarding claims information, approving claims, rejecting any claim form where there is evidence of fraud, directing the mailing of settlement payments to Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing. The Claims Administrator will provide at least bi-monthly updates on the claims status to counsel for the Parties.

8.02 Payment of Notice and Claims Administration Costs. Defendants shall pay all costs of providing notice and settlement administration through the Claims Administrator, which shall be paid from the Settlement Fund.

8.03 Funding of the Settlement Fund. Within 5 days after the Effective Date (“Funding Date”), Defendants shall provide the Settlement Fund to the Claims Administrator. The Settlement Fund shall be maintained in a non-interest bearing account.

8.04 Distribution of the Settlement Fund. The Claims Administrator shall do the following:

(a) within 21 days of the Funding Date, pay monetary benefits to the Qualified Class Members pursuant to Section 5.01;

(b) within 7 days of the Funding Date, pay to Class Counsel any award of attorney’s fees and expenses ordered by the Court, as described in Section 6.01; and

(c) within 7 days of the Funding Date, pay to the Class Representatives any incentive awards ordered by the Court, as described in Section 6.02; and

(d) on the Final Distribution Date, which is the earlier of (i) the date as of which all the checks to Qualified Class Members for monetary benefits have been cashed or (ii) 180 days after the date on which the last check to a Qualified Class Member for monetary benefits was initially issued, the Claims Administrator shall pay the amount remaining in the Settlement Fund Account to Defendants.

## **IX. NOTICES**

9.01 Settlement Website. No later than 10 days after entry of the Preliminary Approval Order, the Claims Administrator shall:

(a) Create and activate a Settlement Website, which shall contain downloadable copies of the Settlement Agreement, Preliminary Approval Order, Long Form Notice, and Claim Form, and a toll-free telephone number; and

(b) Post on the Settlement Website a Long Form Notice substantially in the form attached as **Exhibit B** which shall set forth in a question-and-answer format the details of the settlement and the rights of Class Members to participate in the settlement, exclude themselves, or to object to the settlement.

The Claims Administrator shall also post on the Settlement Website any subsequent notices agreed to by the Parties or Court orders, as well as Plaintiffs' Motion for an Award of Attorney's Fees and Expenses and Incentive Awards to the Class Representatives.

9.02 Direct Mail Notice. Within 3 days of the Preliminary Approval Order, Defendants shall provide the Claims Administrator and Class Counsel with spreadsheets, to the extent possessed by Defendants, which include the name, fax number, last known address, telephone number, and email address of those who have been determined to be potential Class Members. The Direct Mail Notice will be provided by the Claims Administrator to all persons on the spreadsheets within 14 days following entry of the Preliminary Approval Order. The Direct Notice shall be substantially in the form set forth as **Exhibit C**, provided, however, that the Parties shall have the discretion to make agreed-upon non-material minor revisions to the notice before sending it. For any Direct Notice that is returned undeliverable, the Claims Administrator shall attempt to locate an updated mailing address and re-send the Direct Notice.

## **X. CLAIMS PROCESS**

10.01 Potential Claimants. Each Class Member who does not timely and validly request exclusion from the settlement as required in this Agreement shall be a Settlement Class Member, entitled to make a claim and bound by this release. Each Settlement Class Member shall be entitled to make only one claim.

10.02 How to Make a Claim. In order to make a claim, a Settlement Class Member must submit the completed Claim Form to the Claims Administrator by mail. All claims must be submitted by the Claims Deadline as set forth in the Settlement Notice. Any Claim Form postmarked after the Claims Deadline shall be deemed untimely and an invalid claim.

10.03 Requirements for Approval. To obtain a monetary benefit, a Settlement Class Member must, in addition to following the procedures set forth in Section 10.02, provide sufficient information to confirm membership in the Settlement Class. Specifically, the Settlement Class Member must provide the Settlement Class Member's name, address, and facsimile number at which he/she/it received the Fax Advertisement at issue, and must also sign

the claim attesting that he/she/it received at least one unsolicited fax advertisement from Defendants during the Class Period. A Settlement Class Member must also provide a current address to which the monetary payment may be mailed. If a Settlement Class Member submits a claim and qualifies for a monetary payment, he/she/it is a “Qualified Class Member.”

## **XI. CLAIM REVIEW PROCESS**

11.01 Review of Claims. Each Settlement Class member who does not seek exclusion from the class and who makes a timely claim shall have the claim reviewed by the Claims Administrator. The Claims Administrator shall review the claims and will make all determinations regarding the sufficiency and validity of Claims Forms. If necessary, the Claims Administrator will consult with Class Counsel and Defendants’ counsel to answer any questions or resolve any disputes that arise regarding the validity of submitted Claim Forms.

11.02 Mailing of Settlement Check. Settlement checks shall be sent to Qualified Class Members by the Claims Administrator by U.S. Mail no later than 21 days after the Funding Date. If any settlement checks are returned with forwarding information from the United States Post Office, the Claims Administrator shall update addresses based on the forwarding information received. The Claims Administrator shall also update addresses based on any requests received from Class Members. If, after a second mailing, the settlement check is again returned, no further efforts need be taken by the Claims Administrator to resend the check. The Claims Administrator shall advise Class Counsel and counsel for Defendants of the names of the claimants whose checks are returned by the postal service as soon as practicable. Each settlement check will be negotiable for 180 days after it is initially issued, regardless of whether it is subsequently reissued. Any funds remaining in the Settlement Fund Account as the result of uncashed settlement checks, or because the sum of the Settlement Costs and amounts paid to Qualified Class Members does not equal or exceed the Settlement Fund, shall be paid out to Defendants as set forth in Section 8.04(d), if and when that occurs.

## **XII. OPT-OUTS AND OBJECTIONS**

12.01 Opting Out of the Settlement. Any Class Members who wish to exclude themselves from the Settlement Class (“opt out”) must advise the Claims Administrator in a signed writing of that intent, and their opt-out request must be postmarked no later than the Opt-Out Deadline. The Claims Administrator shall provide the Parties with copies of all opt-out

requests it receives and shall provide a list of all Class Members who timely and validly opted out of the settlement in their declaration filed with the Court, as required by Section 13.01. Class Members who do not properly and timely submit an opt-out request will be bound by this Agreement and the judgment, including the releases in Section XV below.

(a) In the written request for exclusion, the Class Member must state the Class Member's full name, address, telephone number, and the fax number(s) to which the Class Member subscribed, and to which a Fax Advertisement was received, during the Class Period. Further, the Class Member must include a statement in the written request for exclusion that the Class Member wishes to be excluded from the settlement.

(b) Any Class Member who submits a valid and timely request for exclusion will not be a Settlement Class Member and shall not be bound by the terms of this Agreement.

(c) The Parties shall submit a list of valid opt outs to the Court at or before the Final Approval Hearing.

(d) If the Parties decide that any ambiguity exists as to whether a Class Member's communication constitutes a request to opt out, the Parties shall, if possible, resolve such ambiguity by agreement and shall inform the Court of their position at or prior to the Final Approval Hearing. Defendants or Class Counsel may dispute an exclusion request, and the Parties shall, if possible, resolve the disputed exclusion request by agreement and shall inform the Court of their position at or prior to the Final Approval Hearing. The Court shall retain jurisdiction to resolve any disputed exclusion requests.

(e) Any Class Member who does not timely comply with all requirements for opting out contained in this Agreement shall be a Settlement Class Member, bound by this Agreement, this settlement, and the Release set forth in Section XV herein.

12.02 Objections. Any Class Member may object to the Settlement Agreement and appear in person or through counsel, at his, her or its own expense. The Objection Deadline shall be set by the Court in the Preliminary Approval Order and the Parties shall propose 75 days after entry of the Preliminary Approval Order. Any Class Member may object to the Settlement Agreement by filing with the Court and mailing a copy of the signed objection to Plaintiffs' Counsel and Defendants' Counsel. Any objection must include (i) the name, address, and facsimile phone number of the person or entity objecting to the Settlement Agreement; (ii) a statement of the objection to the Settlement Agreement; (iii) an explanation of the legal and

factual basis for the objection; and (iv) documentation, if any, to support the objection. Any Class Member who has timely filed an objection must appear at the settlement approval hearing, in person or by counsel and the Class Member or his, her, or its attorney intending to make an appearance at the Final Approval Hearing must file a notice of appearance with the Court no later than 10 days prior to the Final Approval Hearing. The right to object to the proposed settlement must be exercised individually by an individual member of the Settlement Class, not as a member of a group or subclass. Any Class Member who fails to comply with the provisions of this Section 12.02 shall waive and forfeit any and all rights to appear separately or to object, and shall be bound by all the terms of this settlement, and by all proceedings, orders, and judgments in the litigation.

### **XIII. FINAL APPROVAL AND JUDGMENT ORDER**

13.01 No later than 7 days prior to the Final Approval Hearing, the Claims Administrator shall serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order, along with a report stating (a) the total number of Notices mailed to potential class members, (b) the number of such Notices that were returned as undeliverable and could not be forwarded as provided by this Agreement, and (c) a list of the exclusion requests received by the Claims Administrator pursuant to this Agreement. Class Counsel shall file the declaration with the Court no later than the Final Approval Hearing.

13.02 If the settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, no later than 7 days prior to Final Approval Hearing:

(a) The Parties shall request, individually or collectively, that the Court enter the Final Approval Order in substantially the form attached as **Exhibit A**, with Class Counsel filing a Motion for Final Approval of Class Action Settlement, with supporting authorities.

(b) Class Counsel and Defendants may file a memorandum addressing any Objections submitted to the settlement.

13.03 At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be approved, whether the settlement should be finally approved as fair, reasonable, and adequate, whether any objections to the settlement should be

overruled, whether the fee award and incentive payments to the Class Representatives should be approved, and whether a judgment finally approving the settlement should be entered.

13.04 This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order which grants final approval of this Agreement and:

(a) Finds that the Notice provided satisfies the requirements of due process and Mo. S. Ct. R. 52.08(a)(1);

(b) Finds that Settlement Class Members have been adequately represented by the Class Representatives and Class Counsel;

(c) Finds that the Settlement Agreement is fair, reasonable and adequate to the Settlement Class, that each Settlement Class Member shall be bound by this Agreement, including the releases in Section XV, and the covenant not to sue in Section 15.02, and that this Settlement Agreement should be and is finally approved;

(d) Dismisses on the merits and with prejudice the Action, including all claims of the Settlement Class Members asserted against Defendants, with all Parties waiving all rights to appeal and waiving all rights to seek reimbursement of attorneys' fees or costs (except as expressly provided in this Agreement);

(e) Permanently enjoins each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against Released Parties; and,

(f) Retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this settlement.

#### **XIV. FINAL JUDGMENT**

14.01 The judgment entered at the Final Approval Hearing shall be deemed final on the last date on which all of the following have occurred ("Effective Date"):

(a) The Court enters a Final Approval Order and Judgment that is consistent with Section XIII and that (i) dismisses all claims in the Action with prejudice and (ii) finally approves settlement of the Action without any material modification of the terms of this Agreement; and

(b) Either (i) 40 days have passed after entry of the judgment described in Section 14.01(a) and no appeal is taken after the judgment's entry and no motion or other pleading has been filed with the Court seeking to set aside, enjoin, or in any way alter the judgment or Final Approval Order or to toll the time for appeal of the judgment or Final Approval Order; or (ii) all

appeals, reconsideration, rehearing, or other forms of review and potential review of the Court's judgment and Final Approval Order are exhausted, and the Court's judgment and Final Approval Order are upheld without material modification of the terms of this Agreement.

## **XV. RELEASE OF CLAIMS**

15.01 Released Claims. Plaintiffs and each Settlement Class Member, as well as their respective assigns, heirs, executors, administrators, successors and agents, release, resolve, relinquish and discharge each and all of the Released Parties from each of the Released Claims (as defined below). The Settlement Class Members further agree that they will not institute any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, arising from or reasonably related to the Released Claims. The release does not apply to Class Members who timely opt out of the settlement.

(a) "Released Claims" means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of or relate in any way to the use of a telephone facsimile machine, computer, or other device to send a facsimile advertisement to Settlement Class Members, to the fullest extent that those terms are used, defined or interpreted by the TCPA, relevant regulatory or administrative promulgations, and case law, including, but not limited to, claims under or for a violation of the TCPA, and any other statutory or common law claim arising from the use of a telephone facsimile machine, computer, or other device to send a facsimile advertisement.

(b) Waiver of Unknown Claims. The Released Claims specifically extend to claims that Plaintiffs and Settlement Class Members do not know or suspect to exist in their favor at the time that the settlement and the releases contained therein become effective. This Section

constitutes a waiver, without limitation as to any other applicable law, of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and Settlement Class Members understand and acknowledge the significance of these waivers of California Civil Code § 1542 and similar federal and state statutes, case law, rules or regulations relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs and the Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the settlement, but that it is their intention to release fully, finally and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the releases of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

15.02 Covenant Not To Sue. Plaintiffs agree and covenant, and each Settlement Class Member will be deemed to have agreed and covenanted, not to sue any Released Party or to participate as class members in any lawsuit, arbitration, or legal proceeding with respect to any of the Released Claims, and agree to be forever barred from doing so, in any court of law or equity or in any other forum.

## **XVI. TERMINATION OF AGREEMENT**

16.01 Either Side May Terminate the Agreement. Plaintiffs and Defendants shall each have the right to terminate this Agreement unilaterally by providing written notice of their election to do so (“Termination Notice”) to all other Parties hereto within 7 days of any of the following occurrences:

- a. The Court rejects, materially modifies, materially amends, or declines to approve preliminarily or finally the Settlement Agreement;
- b. An appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;
- c. Any Court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement Agreement in

a way that Plaintiffs or Defendants reasonably consider material, unless such modification or amendment is accepted in writing by all Parties;

d. The Effective Date does not occur; or

e. Any other ground for termination provided for elsewhere in this Agreement occurs.

16.02 Revert to Status Quo. If Plaintiffs or Defendants terminate this Agreement as provided herein, the Agreement shall be of no force and effect, and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement shall be vacated. However, any payments made to the Claims Administrator for services rendered to the date of termination shall not be refunded to Defendants.

## **XVII. NO ADMISSION OF LIABILITY**

17.01 Defendants deny any liability or wrongdoing of any kind associated with the alleged claims in the Petition and all amendments thereto. Nothing herein shall constitute an admission by Defendants of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein shall constitute an admission by Defendants that the Action is properly brought on a class or representative basis, or that a class could be certified in the Action, other than for settlement purposes. To this end, the settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the settlement: (i) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the allegations in the Action; (ii) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal or administrative proceeding in any court, arbitration forum, administrative agency or other tribunal; and, (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

17.02 Neither this Agreement nor any related documents filed or created in connection with this Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret, or enforce this Agreement or by Court Order.

## **XVIII. TAXES**

18.01 Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

## **XIX. MISCELLANEOUS**

19.01 Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the Parties. No representations, warranties or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Agreement.

19.02 Governing Law. This Agreement shall be governed by the laws of the State of Missouri without regard to choice of law principles.

19.03 Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiffs and all Settlement Class Members, for purposes of the administration and enforcement of this Agreement.

19.04 No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

19.05 Headings. Section titles or headings are inserted as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement. Each term of this Agreement is contractual and not merely a recital.

19.06 Resolution of Disputes. The Parties shall cooperate in good faith in administering this settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the Court or decided by a mediator upon agreement of the Parties.

19.07 Counterparts. This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. The Parties agree that electronic signatures may be provided and shall have the full force and effect as handwritten signatures.

19.08 Time Periods. The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

19.09 Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

19.10 No Oral Modifications. This Agreement may not be amended, modified, altered or otherwise changed in any manner, except by a writing signed by a duly authorized agent of Defendants and Plaintiffs, and approved by the Court.

19.11 Notices. Unless otherwise stated herein, any notice required or provided for in this Agreement shall be in writing and may be sent by mail, fax, or hand delivery as follows:

If to Class Counsel:

Ronald J. Eisenberg  
SCHULTZ & ASSOCIATES LLP  
640 Cepi Drive, Ste. A  
Chesterfield, MO 63005-1221  
Fax: (636) 537-2599

If to Counsel for Defendants:

Matthew H. Noce  
HEPLERBROOM LLC  
211 N. Broadway, Ste. 2700  
St. Louis, MO 63102  
Fax: (314) 241-6116

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this Agreement to be executed as dated below.

Associated Management Services, Inc.,  
Plaintiff and Class Representative

Charles D. Fuszner, D.M.D., P.C.,  
Plaintiff and Class Representative

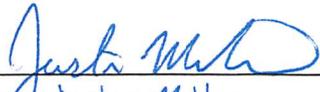
By: Janet L. Weisberg  
Name: Janet L. Weisberg  
Title: President

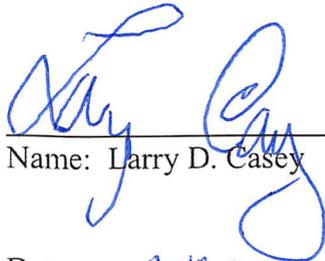
By: Charles D. Fuszner  
Name: Charles D. Fuszner, D.M.D.  
Title: President

Date: 2/5/2020

Date: 2/5/2020

Medical Waste Services, LLC  
d/b/a Medical Waste Services

By:   
Name: Justin Methwin  
Title: CFO  
Date: 2-6-2020

  
Name: Larry D. Casey  
Date: 2-10-2020