

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRIDGEPORT PAIN CONTROL)	
CENTER, LTD.,)	
on behalf of plaintiff and)	
the class members defined herein,)	
)	
Plaintiff,)	No. 13 C 7465
)	
v.)	
)	Judge John R. Blakey
MEDPLUS, INC.,)	
QUEST DIAGNOSTICS INCORPORATED,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

RECITALS AND DEFINITIONS

1. Parties. Defendants MedPlus, Inc. (“MedPlus”) and Quest Diagnostics Incorporated (“Quest”) (collectively, “Defendants”) and Plaintiff Bridgeport Pain Control Center, Ltd. (“Plaintiff”) individually and as representative of the settlement class defined below (the “Settlement Class”), enter into this Settlement Agreement (“Settlement Agreement”).

2. Nature of Litigation. On October 17, 2013, Plaintiff filed a class action complaint captioned *Bridgeport Pain Control Center, Ltd. v. MedPlus, Inc., et al.*, Case No. 13 C 7465 in the United States District Court for the Northern District of Illinois (the “Litigation”). Plaintiff alleges that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”), and the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”), and committed common law torts (conversion, private nuisance, trespass to chattels) by purportedly transmitting via fax certain allegedly unsolicited advertisements that did not contain an opt out

notice in the form required by 47 U.S.C. § 227. The complaint also alleged these same claims against EMG3, LLC (“EMG3”), but those claims were voluntarily dismissed.

3. Mt. Lookout Litigation. On June 6, 2013, Mt. Lookout Chiropractic Center, Inc. filed a class action complaint against Quest, MedPlus, and Quest Diagnostics Clinical Laboratories, Inc., Case No. 13 CH 1790, in the Circuit Court of Lake County, Illinois, alleging violations of the TCPA for purportedly sending or causing to send allegedly unsolicited advertising faxes that did not contain compliant opt out notices (the “Mt. Lookout Litigation”). The Mt. Lookout Litigation was settled on a class basis and the settlement was finally approved by the court on November 22, 2013.

4. Definitions.

- a. "Settlement Class Counsel" means Edelman, Combs, Lattuner, & Goodwin LLC and its attorneys.
- b. "Class Period" means the period on or after October 17, 2009 through and including the date of the entry of the Preliminary Approval Order.
- c. "Plaintiff" means Bridgeport Pain Control Center, Ltd. and its heirs, successor and assigns.
- d. "Released Parties" means (i) MedPlus, EMG3, and Quest; and (ii) their respective past, present or future parents, subsidiaries, divisions, affiliates, associated entities, controlled companies, joint ventures, predecessors, predecessors-in-interest, successors, and successors in interest, and all of those entities' (including MedPlus, EMG3, and Quest) past, current, and future principals, managers, officers, directors, shareholders, partners, members, managing members, employees, agents, independent

contractors, partners, servants, trustees, insurers, co-insurers, reinsurers, assigns, advisors, consultants, attorneys, and personal or legal representatives (in such capacities as they relate to the actions that are the subject of the Litigation). The Parties expressly agree that all of these persons and entities that are not parties to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

- e. “Settlement Class” means a class defined as follows: All persons with fax numbers who during the Class Period, received a “Care360 Health Records Debate” fax or received any other fax advertising the commercial availability or quality of any property, good, or services of MedPlus or Quest that did not contain an opt out notice as described in 47 U.S.C. § 227. The Settlement Class excludes those persons on the settlement class list in the Mt. Lookout Litigation.
- f. “Settlement Class Member(s)” means Plaintiff and any member of the Settlement Class who is not excluded from the Settlement Class pursuant to the terms of this Settlement Agreement.
- g. “Released Claims” means any and all manner of causes of action, suits, claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, in law or in equity, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, direct or

indirect, contingent or fixed, which Plaintiff and Settlement Class Members now have, did have, or may have in the future against the Released Parties, or any of them, under any legal theory, arising from or in any way relating to the “Care360 Health Records Debate” faxes or any other fax advertising the commercial availability or quality of any property, good, or services of MedPlus or Quest sent during the Class Period that did not contain an opt out notice as described in 47 U.S.C. § 227. This includes, but is not limited to, all claims that were asserted or could have been asserted in the Litigation, including TCPA claims, other federal claims and any state law claims.

- h. “Court” means the United States District Court for the Northern District of Illinois.
 - i. “Opt-Out List” means the complete, final, and accurate list of all properly submitted exclusion requests received by Settlement Class Counsel and provided to counsel for Defendants, as required under the Settlement Agreement.
 - j. “Settlement” means the settlement of the Litigation between and among Plaintiff, on behalf of itself and the Settlement Class, and the Defendants, as set forth in this Settlement Agreement.
 - k. “Class Administrator” means KCC Class Action Services, LLC.
5. Denial of Liability. Defendants deny violating the TCPA or any other

federal or state law and deny wrongdoing and/or any liability to Plaintiff and the Settlement

Class. Defendants are entering into this Settlement Agreement solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest all Released Claims.

6. Plaintiff's Desire to Settle. Plaintiff, individually and on behalf of the Settlement Class, desires to settle its claims against Defendants, having taken into account through Plaintiff's counsel the risks, delay, and difficulties involved in establishing a right to recovery in excess of the amount to be paid pursuant to this Settlement Agreement and the likelihood that further litigation will be protracted and expensive. Plaintiff represents and warrants that it owned or leased the fax machine that received the fax that was attached as Exhibit A to the Amended Complaint in this Litigation.

7. Investigation. Settlement Class Counsel has investigated the facts and the applicable law. Based on this investigation, and upon an analysis of the substantial benefits afforded by this Settlement Agreement, Settlement Class Counsel considers it to be in the best interest of the Settlement Class to enter into this Settlement Agreement.

8. Agreement. In consideration of the foregoing, Plaintiff, Settlement Class Counsel, and Defendants agree to settle the claims of the Plaintiff and the Settlement Class, subject to the Court's approval, on the following terms and conditions.

TERMS

1. Incorporation of Recitals and Definitions. The recitals and definitions set forth above are incorporated into this Settlement Agreement.

2. Effective Date. This Settlement Agreement shall become effective (hereinafter the "Effective Date") upon the expiration of five (5) business days from the date upon which the Final Approval Order becomes final, which shall be (1) the date on which any and all appeals of the Final Approval Order are resolved in a manner that upholds the Final Approval Order, or (2) if no appeal of the Final Approval Order is filed, the expiration of five (5)

business days after the last date by which an appeal of the Final Approval Order could have been commenced. If there is an appeal from the Final Approval Order, Plaintiff's and Defendants' obligations under this Settlement Agreement, including, without limitation, payments to Settlement Class Members and payment of any award of attorneys' fees, costs, and expenses shall not commence unless and until all appellate proceedings are fully and finally resolved in a manner that upholds the Final Approval Order and this Settlement Agreement becomes effective.

3. Certification of Settlement Class. Solely for the purposes of settlement, the parties stipulate to the certification of the Settlement Class. Plaintiff shall be appointed class representative and Daniel A. Edelman and Heather Kolbus of Edelman, Combs, Lattuner & Goodwin, LLC shall be appointed Settlement Class Counsel. The Settlement Class shall be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. Defendants do not consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement. If this Settlement Agreement is not approved by the Court or is terminated pursuant to its terms or for any other reason, or is disapproved in a final order by any court of competent jurisdiction, (a) any order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated upon notice to the Court of this Settlement Agreement's termination or disapproval; (b) this Litigation will proceed as though the Settlement Class had never been certified and any related findings or stipulations had never been made and neither this Settlement Agreement, nor any of its Exhibits, nor any other associated settlement document may be used in seeking class certification; and (c) Defendants reserve all procedural or substantive rights as of the date of execution of this Settlement Agreement.

4. The Fax List. Defendants have provided to Settlement Class Counsel a list of the fax numbers for which they have records—provided to them by a third party fax broadcaster, Protus—to which any “Care360 Health Records Debate” fax may have been successfully sent, less those that Defendants represent include an opt out notice and those on the settlement class list in Mt. Lookout Litigation (the “Fax List”). According to Defendants’ records—which, to the best of Defendants’ knowledge after reasonable investigation, are accurate within 5%—this number totals 69,228 faxes sent to 28,471 numbers. Settlement Class Counsel has reviewed the list and determined that persons on the list were sent between 1 and 33 faxes. Defendants will provide to Settlement Class Counsel or the Class Administrator addresses corresponding to 26,250 of the 28,471 unique fax numbers on the Fax List. Defendants make no representations regarding the accuracy of any such addresses. Defendants are not obligated to search their records for any additional addresses or fax numbers of Settlement Class Members that may be in the possession of Defendants.

5. Relief to Plaintiff and the Settlement Class. The following relief shall be provided to Plaintiff and the Settlement Class, subject to the Court’s approval:

- a. Defendants shall collectively fund the creation of a \$9,300,000.00 Settlement Fund (“Settlement Fund”) which shall be distributed as set forth below;
- b. The amount awarded to Plaintiff as an incentive award in recognition of its services as Class Representative, in an amount not to exceed \$15,000.00, shall be paid from the Settlement Fund;
- c. The amount awarded to Settlement Class Counsel for attorney’s fees and expenses, in an amount not to exceed 33.33% of the Settlement Fund less

Notice and administrative expenses, shall be paid from the Settlement Fund;

- d. all notice and administration expenses shall be paid from the Settlement Fund. Reasonable notice and administration expenses up to a maximum of \$100,000.00 will be advanced by Defendants to Settlement Class Counsel or the Class Administrator within ten (10) business days after entry of the Preliminary Approval Order, and Defendants shall be given a credit on the payment of the Settlement Fund in an amount equal to the amount advanced by Defendants;
- e. the amount available for distribution to the Settlement Class Members will consist of the Settlement Fund less the amounts set forth in subsections (b), (c), and (d) (“Distributable Settlement Fund”); and
- f. each Settlement Class Member who submits a valid Claim Form (defined below) will receive a distribution by check from the Distributable Settlement Fund. The amount of each such distribution will be no more than \$500.00 multiplied by the number of faxes the Settlement Class Member is determined to have received after conducting the validation and other procedures described in Paragraph 16 below. If the Distributable Settlement Fund is not sufficient to pay each Class Member with a valid claim \$500.00 per fax, then the amount of each such Settlement Class Member’s distribution will be adjusted downward so that each receives their proportionate share per fax of the Distributable Settlement Fund. If the number of valid claims (with each Settlement Class Member receiving

no more than \$500.00 multiplied by the number of faxes the Settlement Class Member is determined to have received after conducting the validation and other procedures described in Paragraph 16 below) is not sufficient to exhaust the Distributable Settlement Fund, then any remaining amounts in the Distributable Settlement Fund shall be considered Undistributed Settlement Funds pursuant to Paragraph 10 of this Settlement Agreement.

6. Any award of attorney's fees and costs and any incentive award to Plaintiff will be distributed within fourteen (14) days after the later of: (i) the Effective Date, (ii) the date that an order by the Court approving any award of fees and expenses becomes final and non-appealable, whether by performance or on exhaustion of any possible appeal or review, lapse of time or otherwise, or (iii) the date on which Defendants is provided with the payee's properly executed W-9 and wire transfer information. Within ninety (90) days following the Effective Date, Settlement Class Counsel or the Class Administrator shall distribute the Distributable Settlement Fund in accordance with Paragraphs 5 and 10 of this Settlement Agreement, unless this deadline is extended pursuant to Paragraph 16 of this Settlement Agreement. In the event that (i) the Settlement Agreement is terminated pursuant to its terms; (ii) Defendants withdraw from the Settlement Agreement; (iii) the Settlement Agreement does not become effective; or (iv) the Final Approval Order is reversed, vacated, or modified in any material respect which is not mutually acceptable to the Parties, then Settlement Class Counsel or the Class Administrator shall return \$9,300,000.00, less any reasonable costs not exceeding \$100,000.00, that were incurred by Settlement Class Counsel to issue notice to the Class

Members of the Settlement Agreement, to counsel of record for Defendants, within three business days of that event.

7. After entry of the Preliminary Approval Order, Settlement Class Members shall have sixty (60) days after the date on which the Class Notice (defined below) is sent to the Settlement Class to submit a claim, request exclusion from the Settlement Class or object to the Settlement Agreement.

8. Costs associated with notice, claims administration and distribution of settlement checks shall be paid from the Settlement Fund.

9. Checks issued to Settlement Class Members for payment of claims under this Settlement Agreement will be void after sixty (60) days from the date of issuance. Any Settlement Class Member who does not negotiate the settlement check issued to them within sixty (60) days of the date of issuance agrees that they rescind and withdraw their claim for monetary compensation under this Settlement Agreement but remain a member of the Settlement Class and are bound by the terms of this Agreement.

10. Undistributed Settlement Funds. Within thirty (30) days after the last void date of all settlement checks issued to Settlement Class Members, the Settlement Class Administrator will report to the Parties if there are any uncashed checks or unclaimed or undistributed amounts remaining in the Distributable Settlement Fund. Any such unclaimed or undistributed amounts remaining in the Distributable Settlement Fund after all payments required under this Settlement Agreement have been made shall be distributed to a *cy pres* recipient, selected by the Defendants and approved by the Court.

11. Release. Upon the Effective Date, Plaintiff and all Settlement Class Members who have not been excluded from the Settlement Class shall be deemed to have fully and finally waived and released the Released Claims.

12. This Settlement Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that may be instituted or prosecuted with respect to the Released Claims. Without admitting that California law or the laws of any other state apply to this Settlement Agreement or that the release provided by Plaintiff and the Settlement Class is a general release, the Parties agree that upon the Effective Date, the Settlement Class shall be deemed to have waived the provisions and benefits of California Civil Code §1542, which provides that 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, might have materially affected his or settlement with the debtor. Further, Plaintiff and the Settlement Class Members expressly waive any and all provisions and rights or benefits which may be conferred upon them by any law, statute, ordinance or regulation which is similar, comparable or equivalent to California Civil Code §1542.

13. If this Settlement Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

14. Attorneys' Fees, Notice Costs and Related Matters. Settlement Class Counsel or the Class Administrator will administer the Distributable Settlement Fund for the benefit of the Settlement Class and will pay the reasonable costs of notice and settlement administration out of the Settlement Fund. Settlement Class Counsel must seek approval from

the Court to withdraw from the Settlement Fund any amount greater than \$100,000.00 for costs related to notice and administration. Settlement Class Counsel will not request any fees or costs from Defendants or the Settlement Class other than as set forth in this Settlement Agreement. Defendants agree not to oppose a request by Settlement Class Counsel of fees and expenses of no more than 1/3 or thirty-three and one third percent (33.33%) of the Settlement Fund less notice and administrative expenses (the "Fee and Expense Application"). Final resolution of the Fee and Expense Application shall not be a precondition to the settlement or dismissal of the Litigation in accordance with the Settlement Agreement, and the Fee and Expense Application may be considered separately from the Settlement. Any failure by the Court to approve the Fee and Expense Application, in whole or in part, shall have no impact on the effectiveness of the Settlement. Defendants agree not to oppose payment from the Settlement Fund of reasonable expenses incurred in sending notice to the Settlement Class and in administering the Distributable Settlement Fund pursuant to the terms of this Settlement Agreement.

15. Class Notice. Within five (5) days after entry of the Preliminary Approval Order, Defendants' Counsel shall provide the Fax List in MS Word or Excel format to the Class Administrator. Within thirty-five (35) days after entry of the Preliminary Approval Order, the Class Administrator shall cause actual notice in the form of Exhibit 1 (the "Class Notice") which includes a claim form (the "Claim Form") to be sent to the fax numbers identified on the Fax List. Settlement Class Members shall have at least sixty (60) days after this first date on which actual Notice is sent to the fax numbers identified on the Fax List to submit a Claim Form, request exclusion from the Settlement Agreement, or object to the Settlement Agreement. The Class Administrator shall make at least two attempts to transmit the Class Notice by fax to those numbers where the initial transmission fails.

Within twenty-one (21) days after the date that the Class Notice was first sent by fax, the Class Administrator may send the Class Notice and Claim Form either by fax and/or U.S. Mail (if addresses are ascertainable) to each Settlement Class Member identified on the Fax List who did not submit a Claim Form or otherwise respond to the Class Notice by that date. In the event notice is sent by fax, the Class Administrator shall make at least two attempts to transmit the Class Notice by fax to those numbers where the initial transmission fails. In the event the Class Notice is sent by U.S. Mail to addresses provided by Defendants, the addresses shall be run through a National Change of Address database prior to being mailed. The postage rate selected for the mailing of the Class Notice shall provide for notification of forwarding addresses. If the Class Notices are returned by the Postal Service as undeliverable, Settlement Class Counsel or the Class Administrator may undertake further reasonable efforts to locate that person or entity to re-send the Class Notice to that Settlement Class Member. If the Class Notice is returned by the Postal Service with a forwarding address or other error that can be ascertained and corrected, then Settlement Class Counsel or the Class Administrator shall re-send the Class Notice by first class mail to that new address within five (5) days.

Settlement Class Counsel will also post the Class Notice in the form of Exhibit 1, excluding the Claim Form, and this Settlement Agreement (excluding exhibits), on their firm's website. Settlement Class Counsel or the Class Administrator shall provide a copy of the Class Notice and Claim Form to any Settlement Class Member who contacts either of them and requests a copy of the Class Notice or Claim Form.

The Class Administrator may create a website which allows for electronic submission of Claim Forms. Any website created by the Class Administrator may also post the Class Notice, Claim Form, Preliminary Approval Order and Settlement Agreement (excluding exhibits).

Notice to Class Members whose prior or current fax numbers are not on the Fax List shall be by a publication notice (the “Publication Notice”). Specifically, Publication Notice in the form of Exhibit 2 will be published one time in American Family Physician. The Publication Notice shall be in the form of Exhibit 2 and shall be no less than ¼ page. The Publication Notice will refer to a website created and maintained by the Class Administrator that posts the documents identified above and provides a method to submit a Claim Form electronically only. Within 14 days of entry of the Preliminary Approval Order, the Class Administrator shall contract for the Publication Notice to be published in the aforementioned publication. The Publication Notice shall appear in the publication identified herein on or near the same date that the Class Notice by fax is initially transmitted (i.e., within 35 days after entry of the Preliminary Approval Order).

Settlement Class Counsel and/or the Class Administrator shall retain all documents and records generated during the administration of the Settlement, including records of notice given to Settlement Class Members, confirmations of transmittals of such notices by fax, unconfirmed fax transmissions, records of undelivered mail, claim forms, and payment to Settlement Class Members, for a period of one year following the Effective Date. Settlement Class Counsel or the Class Administrator shall provide counsel for Defendants with copies of any such documents to inspect and copy, upon reasonable request by counsel for Defendants. The Fax List and all other documents and records generated during the administration of the Settlement shall be used for purposes consistent with notice and administration of this Settlement Agreement and for no other purpose.

16. Claim Validation. For any Settlement Class Member who receives the Class Notice (as opposed to the Publication Notice), the Class Administrator shall match the fax

number provided by the Settlement Class Member on a returned Claim Form to a fax number on the Fax List. If the fax number does not match, then Settlement Class Counsel or the Class Administrator shall follow up with the Settlement Class Member and inquire if they employed other fax numbers during the Class Period (to ascertain if any different fax number is a number on the Fax List), in an effort to determine whether the claim is a valid claim.

If the fax number or fax numbers provided on a Claim Form do not match the list, and the follow-up with the Settlement Class Member has not resolved the issue, Settlement Class Counsel or the Class Administrator shall disallow the claim. If a claim is deemed disallowed by the Class Administrator, the Class Administrator must communicate that disallowance of the claim to Settlement Class Counsel and allow Settlement Class Counsel an opportunity to investigate the basis for disallowing the claim. Settlement Class Counsel shall advise counsel for Defendants of all claim disallowances. In the event the Parties disagree as to the validity of any Claim Form or whether to disallow a claim, then Settlement Class Counsel will present the disputed claim to the Court for resolution.

Settlement Class Members who are submitting claims pursuant to the Publication Notice will be able to submit an electronic Claim Form only and each Publication Notice will contain a generic username and password, so that these claims may be separately accounted for and validated.

Settlement Class Members submitting a valid Claim Form pursuant to either the Class Notice or Publication Notice shall be paid a pro rata share of the Distributable Settlement Fund in accordance with the terms of Paragraph 5.f. of this Settlement Agreement. Settlement Class Members may submit a Claim Form for more than one fax number and more than one settlement share. If the Fax List does not indicate how many faxes were sent to a Settlement Class Member,

and the Settlement Class Member cannot provide proof of the number of faxes received, then the Settlement Class Member shall be entitled to a single fax payment of no more than \$500.00 (this includes those who submit claims in response to the Publication Notice). Defendants retain the right to oppose the proof submitted by the Settlement Class Member.

If multiple persons submit a valid claim for the same fax number, then the amount to be distributed shall be divided evenly among such claimants (e.g., if five people share a fax machine and each submit a valid claim for having received one fax at their shared fax number, each such claimant will receive \$100.00).

If a Settlement Class Member is entitled to receive more than \$599.99 as its total pro rata share, then such Settlement Class Member will be required to complete and submit a W-9 form or have the taxes withheld from their settlement check. The W-9 forms will be issued to Settlement Class Members as required after entry of the Final Approval Order and before any settlement checks are issued. Settlement Class Members will have thirty (30) days to respond to a request to complete a W-9 form. If a Settlement Class Member does not submit a W-9 form, the Class Administrator will withhold taxes from their settlement check. If W-9 forms need to be collected, certain dates set forth in Paragraphs 6, 9, and 10 are reset and calculated as follows: within thirty (30) days following the expiration of time for class members to complete a W-9 form, Settlement Class Counsel or the Class Administrator shall distribute the Distributable Settlement Fund to the Settlement Class Members who have submitted valid claims in accordance with Paragraph 16; settlement checks to the Settlement Class Members will be void sixty (60) days from date of issuance; and within thirty (30) days following the void date on the Settlement Class Members' checks, any uncashed checks or unclaimed or undistributed funds will be distributed to a *cy pres* recipient as set forth in Paragraph 10 of this Settlement

Agreement. A Settlement Class Member who is entitled to receive more than \$599.99 and fails to submit a completed and valid W-9 form with the Claim Form, shall have the taxes withheld from their settlement check.

17. Right to Object. Any Settlement Class Member may object to this Settlement Agreement. The deadline to object shall be set by the Court in the Preliminary Approval Order and the Parties shall propose that it be at least sixty (60) days after the initial date of transmission of the Class Notice and publication of the Publication Notice. Any Settlement Class Member may object to the Settlement Agreement by filing their objection with the Court and mailing a copy of the objection to Plaintiff's Counsel and counsel for Defendants at the addresses listed in Paragraph 34 below. Any objection must include: (a) the name, address, and fax number of the person(s) or entity objecting to the Settlement Agreement; (b) a statement of the objection to the Settlement Agreement; (c) an explanation of the legal and factual basis for the objection; and (d) documentation, if any, to support the objection. Objecting Settlement Class Members may also appear and be heard at the hearing held by the Court to consider final approval of this Settlement Agreement, personally or through counsel, at their own expense.

18. Right of Exclusion. All Settlement Class Members who properly file a timely written request for exclusion from the Settlement Class shall be excluded from the Settlement Class and shall have no rights as Settlement Class Members pursuant to this Settlement Agreement. A request for exclusion must be in writing and state the name, address, and fax number (to which a fax was sent) of the person(s) or entity seeking exclusion. Each request must also contain a signed statement providing that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Litigation." The request must be mailed or

faxed to Settlement Class Counsel or the Class Administrator at the address or fax number provided in the Class Notice and Publication Notice and postmarked or received by Settlement Class Counsel or the Class Administrator on or before the deadline for requests for exclusion set by the Court. Only individual Settlement Class Members may submit requests for exclusion; requests for exclusion may not be submitted on behalf of a putative class or subclass of similarly situated Settlement Class Members. Neither the Parties, nor Counsel for Defendants nor Settlement Class Counsel shall take affirmative action to encourage Settlement Class Members to exclude themselves from the Settlement Class. Beginning on the Friday immediately following the date of the initial transmission of the Class Notice and the publication of the Publication Notice, and on every Friday until the time for requesting exclusion has expired, Settlement Class Counsel will direct the Class Administrator to provide to counsel for the Defendants complete and accurate copies of all exclusion requests submitted to the Court during the week ending on the previous Friday. In addition, within ten (10) days after expiration of the deadline for Settlement Class Members to request exclusion from the Settlement Class, Settlement Class Counsel shall furnish the Opt-Out List to counsel for Defendants. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Class Notice and Publication Notice, or that is not postmarked or received by Settlement Class Counsel or the Class Administrator within the time specified, shall be invalid and the person(s) serving such a request shall remain a Settlement Class Member and shall be bound by the terms of this Settlement Agreement, if approved. Settlement Class Members shall have at least sixty (60) days from the initial date of the transmission of the Class Notice and publication of the Publication Notice to submit requests for exclusion.

19. Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Settlement Class Counsel shall file a Motion for Preliminary Approval of this Settlement Agreement and shall present such motion to the Court requesting the entry of a Preliminary Approval Order substantially in the form of Exhibit 3 or in such other form as is mutually acceptable to the Parties.

20. Final Approval. Settlement Class Counsel shall file a memorandum in support of final approval of this Settlement Agreement, which shall include Settlement Class Counsel's request for an award of attorney's fees and costs, prior to the date the Court sets for the final approval hearing. The Parties shall request that the Court enter a Final Approval Order substantially in the form of Exhibit 4, or in another form which is mutually acceptable to the Parties. Pursuant to the Class Action Fairness Act of 2005 ("CAFA") within ten (10) days after the filing of the Motion for Preliminary Approval, counsel for Defendants shall provide notice of the proposed Settlement, including the information required by 28 U.S.C. § 1715(b), to the "appropriate Federal official" and all "appropriate State officials," as those terms are defined in 28 U.S.C. § 1715(a). Defendants shall file a notice of compliance with CAFA no later than fourteen (14) days prior to the date the Court sets for the final approval hearing. The Final Approval Order shall not be entered until the expiration of at least ninety (90) days from the latest date on which such notice is provided. Entry of a Final Approval Order substantially in the form of Exhibit 4 or in another form which is mutually acceptable to the Parties is a condition precedent to this Settlement Agreement becoming effective. The Settlement Agreement is expressly contingent on entry of the Final Approval Order substantially in the form of Exhibit 4. In the event a Final Approval Order substantially in the form of Exhibit 4 or in another form

which is mutually acceptable to the Parties is not entered, then this Settlement Agreement shall be null and void and is rescinded.

21. The fact that the Court may require non-substantive changes to documents attached as Exhibits 1 through 4 shall not invalidate this Settlement Agreement.

22. Release of Attorneys' Lien. In consideration of this Settlement Agreement, Settlement Class Counsel hereby waives, discharges and releases the Released Parties of and from any and all claims for attorneys' fees, by lien or otherwise, for legal services rendered by Settlement Class Counsel in connection with this Litigation.

23. Applicable Law. This Settlement Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Illinois without regard to its conflict of laws and/or choice of law provisions.

24. Miscellaneous Provisions. The Parties and their attorneys agree to cooperate fully with one another in seeking approval of this Settlement Agreement, and to use their best efforts to effect the consummation of this Settlement Agreement and the Settlement provided for herein. Whether or not this Settlement Agreement and the Settlement contemplated hereunder are consummated, this Settlement Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of Defendants of any liability or wrongdoing whatsoever.

25. Benefit of this Settlement Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Released Parties and Settlement Class Members, and each of their respective successors and personal representatives, predecessors, affiliates, heirs, executors and assigns. It is expressly understood by the Parties

that all Released Parties who are not parties to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

26. Representations and Warranties. The Parties each represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights that they may have with respect to the claims released in this Settlement Agreement and that they have received independent legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations. Each of the individuals executing this Settlement Agreement warrants that he or she has the authority to enter into this Settlement Agreement and to legally bind the party for which he or she is signing.

27. Right to Set Aside Settlement Agreement. Defendants shall have the right, but not the obligation, to terminate or withdraw from this Settlement Agreement, if Settlement Class Members who collectively have received 200 or more “Care360 Health Records Debate” faxes or any other faxes advertising the commercial availability or quality of any property, good, or services of MedPlus or Quest that did not contain an opt out notice as described in 47 U.S.C. § 227 submit non-duplicative, timely and valid requests for exclusion from the Settlement Class or if there is an objection to the Settlement by either a federal or state government agency or official. Defendants must timely exercise their right to rescind the Settlement Agreement by filing a Notice of Termination with the Clerk of the Court within seven days prior to the entry of a Final Approval Order by the Court.

28. Entire Agreement. Any and all prior understandings and agreements between the Parties with respect to the subject matter of this Settlement Agreement are merged

into and with this Settlement Agreement, which fully and completely expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof. This Settlement Agreement may be amended, modified or changed only by a written instrument or instruments executed by duly authorized officers or other representatives of the Parties expressly amending, modifying or changing this Settlement Agreement and may not be amended, modified or changed orally.

29. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Signatures provided by fax or e-mail shall be deemed legal and binding for all purposes.

30. Headings. The headings in this Settlement Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Settlement Agreement, nor to control or affect meanings, constructions or the effect of this Settlement Agreement.

31. Mutual Interpretation. The Parties agree and stipulate that this Settlement Agreement was negotiated on an arm's length basis between Parties of equal bargaining power. Also, Settlement Class Counsel and counsel for Defendants have drafted the Settlement Agreement jointly. Accordingly, no ambiguity shall be construed in favor of or against any of the Parties. Plaintiff acknowledges, but does not concede to or agree with, Defendants' statements regarding the merits of the claims, and Defendants acknowledge, but do not concede to or agree with, Plaintiff's statements regarding the merits of the claims.

32. Severability. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held invalid, illegal, or unenforceable in any

respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Settlement Agreement.

33. Delivery of the Settlement Fund. Within seven days following the Effective Date, Quest shall wire the Settlement Fund less any reasonable notice and administration expenses up to a maximum of \$100,000.00 that have been advanced by Defendants to the Client Trust Account of Class Counsel, and Class Counsel agrees to hold such funds in trust for the benefit of the Settlement Class and shall not disburse any funds from the Settlement Fund unless in accordance with this Agreement or as ordered by the Court. Class Counsel is to provide Sidley Austin LLP with wire instructions for said transfer upon entry of the Final Approval Order.

34. Dismissal. The Parties shall file with the Court a Stipulation of Dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1) dismissing the Litigation without prejudice within ten (10) days after the Effective Date. The Parties agree that the Stipulation of Dismissal without prejudice shall be converted to a Stipulation of Dismissal with prejudice within sixty (60) days after the later of (a) the date on which the final payment from the Distributable Settlement Fund has been made by Settlement Class Counsel or the Class Administrator in accordance with this Settlement Agreement, or (b) the date on which the final contribution has been made to an authorized *cy pres* organization or charity in accordance with this Settlement Agreement. Subsequent to the filing of such Stipulation of Dismissal, the Court shall retain jurisdiction solely to enforce the terms of the Settlement Agreement consistent with the Releases executed as part of the Settlement Agreement. The Stipulation of Dismissal without

prejudice shall include language stating that the judgment is being entered to allow the Parties to enforce the terms of the Agreement and that the "without prejudice" language shall not allow either party to reopen issues resolved by the judgment.

35. Notices. Requests for exclusion and objections to the Settlement Agreement or Settlement shall be sent to:

Settlement Class Counsel:

Heather Kolbus
Edelman, Combs, Lattuner & Goodwin, LLC
20 South Clark Street, Suite 1500
Chicago, Illinois 60603
Phone: (312) 739-4200
→ Fax: (312) 419-0379

Counsel for Defendants:

Mark B. Blocker
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603
Phone: (312) 853-7000
Fax: (312) 853-7036

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFF:

Bridgeport Pain Control Center, Ltd.

By: Paul Long
President

Its: _____

Date: 3/25/15

DEFENDANTS:

MedPlus, Inc.

By: _____

Its: _____

Date: _____

Quest Diagnostics Incorporated

By: _____

Its: _____

Date: _____



Daniel A. Edelman
James O. Lattuner
Heather Kolbus
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
Counsel for Plaintiff and the Class

Mark B. Blocker
Kathleen L. Carlson
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7000
*Counsel for Defendants MedPlus, Inc.
and Quest Diagnostics
Incorporated*

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PLAINTIFF:

Bridgeport Pain Control Center, Ltd.

By: _____

Its: _____

Date: _____

DEFENDANTS:

MedPlus, Inc.

By: Dr. Mark _____

Its: Chief Litigation Counsel

Date: 3/24/15 _____

Quest Diagnostics Incorporated

By: Dina Mack

Its: Chief Litigation Counsel

Date: 3/24/15

Mark B. Blocker

Mark B. Blocker
Kathleen L. Carlson
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7000
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Chicago, IL 60603
(312) 739-4200
Counsel for Plaintiff and the Class