



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PONTIAC GENERAL EMPLOYEES  
RETIREMENT SYSTEM, On Behalf of  
Itself and All Others Similarly Situated  
and On Behalf of Nominal Defendant  
HEALTHWAYS, INC.,

Plaintiff,

v.

C.A. No. 9789-VCL

JOHN W. BALLANTINE, J. CRIS  
BISGARD, MARY JANE ENGLAND,  
BEN R. LEEDLE JR., C. WARREN  
NEEL, WILLIAM D. NOVELLI,  
ALISON TAUNTON-RIGBY,  
DONATO TRAMUTO, JOHN A.  
WICKENS, KEVIN WILLS, and  
SUNTRUST BANK,

Defendants, and

HEALTHWAYS, INC.,

Nominal Defendant.

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT AND RELEASE**

The parties to the action captioned *Pontiac Gen. Employees Ret. Sys. v. Ballantine, et al.*, C.A. No. 9789-VCL (the “Action”), currently pending in the Chancery Court for the State of Delaware (the “Court”), by and through their respective undersigned counsel, have entered into this Stipulation and Agreement of Compromise, Settlement and Release (the “Stipulation”) which embodies the terms

and conditions of the settlement of the Action (the “Settlement”), subject to the approval of the Court.

**WHEREAS:**

A. On or about June 8, 2012, following approval by its board of directors, Healthways Inc. (“Healthways” or the “Company”) entered into its Fifth Amended and Restated Revolving Credit and Term Loan Agreement (the “2012 Loan Agreement”) with a syndicate of lenders (the “Lenders”), including defendant SunTrust Bank (“SunTrust”), which acted as administrative agent for the Lenders.

B. The 2012 Loan Agreement contains a change in control provision that provides as follows:

***“Change in Control”*** shall mean the occurrence of one or more of the following events: (a) any sale, lease, exchange or other transfer (in a single transaction or a series of related transactions) of all or substantially all of the assets of the Borrower to any Person or “group” (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder in effect on the date hereof), (b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or “group” (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of 35% or more of the outstanding shares of the voting Capital Stock of the Borrower; or (c) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals who are Continuing Directors.

C. The 2012 Loan Agreement contains a so-called proxy put provision that defines “Continuing Directors” to exclude the following:

[A]ny individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors

(the “Proxy Put provision”).

D. Under Section 8.1(m) of the 2012 Loan Agreement, if the Company’s board of directors ceases to have a majority of “Continuing Directors” within a consecutive 24-month period, the Lenders have the right to declare an “event of default” and, thus, could elect to terminate the Company’s loans and other credit facilities and to declare them immediately due and payable.

E. On June 19, 2014, following a voluntary production of documents in response to a Section 220 Demand Letter from Pontiac General Employees Retirement System (“Plaintiff” or “Pontiac”), Pontiac filed a complaint, captioned *Pontiac Gen. Employees Ret. Sys. v. Ballantine, et al.*, C.A. No. 9789-VCL (the “Complaint”), on behalf of itself, the Company, and all other similarly situated stockholders of the Company against the following defendants: John W. Ballantine, J. Cris Bisgard, Mary Jane England, Ben R. Leedle Jr., C. Warren Neel, William D. Novelli, Alison Taunton-Rigby, Donato Tramuto, John A. Wickens, Kevin Wills (the “Individual Defendants”), SunTrust and the Company (collectively, the “Defendants”), alleging, among other things, that the Company’s board of directors breached their fiduciary duties of loyalty and care when they did not obtain

“extraordinarily valuable economic benefits in exchange for agreeing to the . . . Proxy Put” provision as a part of the 2012 Loan Agreement, and that SunTrust aided and abetted said breach of fiduciary duty. Plaintiff also alleged that it was entitled to a declaratory judgment that the Proxy Put provision was “invalid and unenforceable under Delaware law.” Plaintiff sought, among other things, a permanent injunction barring enforcement of the Proxy Put provision.

F. On August 21, 2014, Healthways and the Individual Defendants moved to dismiss the Complaint based on ripeness grounds, and SunTrust also moved to dismiss the Complaint for failure to state a claim. On October 14, 2014, after briefing and oral argument, the Court denied the Defendants’ respective motions to dismiss the Complaint.

G. Commencing in late October and/or early November 2014, counsel for the respective parties began arm’s length negotiations about a possible resolution to the Action. Thereafter, counsel for the parties reached an oral agreement-in-principle to dismiss the Complaint and settle the Action that provides for certain revisions to the 2012 Loan Agreement, including the removal of the Proxy Put provision.

H. Based upon their investigation and prosecution of the Action, Plaintiff and its counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiff and the other members of the Class. Based

on Plaintiff's direct oversight of the prosecution of this matter, and with the advice of its counsel, Plaintiff has agreed to settle and release all of the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (i) the substantial benefits and protections provided under the proposed Settlement; (ii) the uncertain outcome, inherent delays, and significant risks of continued litigation and trial; and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

I. Each of the parties recognizes and acknowledges that (i) the Action has been initiated, filed and prosecuted by Plaintiff in good faith and defended by Defendants in good faith; (ii) the Action is being voluntarily settled with the advice of counsel; (iii) the terms contained in this Stipulation are fair and adequate to the Class; and (iv) that it is reasonable to pursue and consummate the Settlement of the Action based upon the benefits provided to the Class pursuant to this Stipulation.

**NOW, THEREFORE, IT IS STIPULATED AND AGREED**, subject to approval by the Court, and for good and valuable consideration, that the Action shall be dismissed with prejudice pursuant to Delaware Court of Chancery Rule 23 as to all claims brought by all members of the Class (as defined below) against all Defendants, and all Released Plaintiff Claims (as defined below) shall be completely, fully, finally and forever compromised, settled, released, discharged, extinguished and dismissed with prejudice and without costs (except as provided by Paragraphs 9

and 17 below) as to all Released Defendant Parties (as defined below) upon the following terms and conditions.

### **DEFINITIONS**

1. In addition to the terms defined above, the following additional terms shall have the meanings specified below:

(a) “Class” means the following non-“opt-out” class, for Settlement purposes only, pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2): all Persons who held Healthways common stock at any time during the period from June 8, 2012 through and including the close of trading on February 10, 2015 (the “Class Period”) and that continued to hold Healthways common stock as of the end of the Class Period, but excluding (i) the Individual Defendants and their respective immediate family members; (ii) the Company, SunTrust and each of the other Lenders, as well as each of their respective subsidiary companies, officers, directors and affiliates; and (iii) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any of the foregoing excluded parties.

(b) “Effective Date” with respect to the Settlement means the date on which all of the events and conditions specified in Paragraph 13 of this Stipulation have occurred and been met.

(c) “Final Court Approval” means the date on which the Order and Final Judgment approving the Settlement and dismissing the Action with prejudice

becomes final and no longer subject to further appeal or review, whether by the passage of time, affirmance on appeal or otherwise.

(d) “Notice” means the Notice of Pendency and Proposed Settlement of Class Action, substantially in the form attached hereto as Exhibit 1 to Exhibit A.

(e) “Order and Final Judgment” or “Judgment” means the order and final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court approving the Settlement and dismissing the Action with prejudice and without costs to any party (except as provided in Paragraphs 9 and 17 below).

(f) “Parties” means Defendants and Plaintiff, on behalf of itself and the Class.

(g) “Person” or “Persons” means an individual, corporation, limited liability company, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, or any other business or legal entity.

(h) “Plaintiff’s Counsel” means the law firms of Bernstein Litowitz Berger & Grossmann LLP and Friedlander & Gorris, P.A.

(i) “Released Defendant Claims” means any and all manner of claims, demands, rights, actions or causes of action, liabilities, damages, losses,

obligations, judgments, suits, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, accrued or unaccrued, apparent or unapparent, arising out of or based upon the institution, prosecution, or settlement of the claims asserted by the Plaintiff or the Class in the Action against the Defendants. Released Defendant Claims do not include any claims to enforce the Settlement, which are expressly excluded from the Released Defendant Claims.

(j) “Released Defendant Parties” means (i) the Company, the Individual Defendants, SunTrust and the other Lenders; (ii) any person or entity who is or was affiliated with any or all of the persons or entities identified in subpart (i) above; (iii) any person or entity in which any or all of the persons or entities identified in subpart (i) above has or had a controlling interest; and (iv) the respective past or present immediate family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, shareholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, controlling persons, representatives, financial or

investment advisors, advisors, consultants, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers and associates of each and all of the persons and entities identified in subpart (i) above.

(k) “Released Plaintiff Claims” means any and all manner of claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future could have or might have been asserted in the Action or in any other court, tribunal or proceeding by Plaintiff or any of the other members of the Class against the Defendants or any of the other Released Defendant Parties, whether direct, derivative, individual, class, representative, legal, equitable or of any other type or asserted in any other capacity, that relate in any way to the Class member’s ownership of Healthways common stock during the Class Period and that arise out of or are based upon the facts, events, transactions, acts, matters, occurrences, statements, representations, misrepresentations, omissions or any other matter, thing or cause whatsoever, or any series thereof, involved in, set forth in or referred to in the allegations in the Complaint, including, without limitation, the allegations in the Complaint concerning the 2012 Loan Agreement, the deliberations and decision making

process of the Company's board of directors in connection with the 2012 Loan Agreement, or any disclosures (including the adequacy and completeness of such disclosures) made in connection with the 2012 Loan Agreement. Released Plaintiff Claims do not include any claims to enforce the Settlement, which are expressly excluded from the Released Plaintiff Claims.

(l) "Released Plaintiff Parties" means (i) Plaintiff and all other members of the Class; (ii) any person or entity who is or was affiliated with Plaintiff or any of the other members of the Class; (iii) any person or entity in which Plaintiff or any other member of the Class has or had a controlling interest; and (iv) the respective past or present immediate family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, shareholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, controlling persons, representatives, financial or investment advisors, advisors, consultants, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers and associates of Plaintiff and all other members of the Class.

(m) “Releases” means the releases set forth in Paragraphs 3 and 4 below.

(n) “Scheduling Order” means an order in substantially the form attached hereto as Exhibit A providing for, among other things, preliminary approval of the Settlement, certification of the Class for Settlement purposes, approval of the notice to the Class, and scheduling of the Settlement Hearing (as defined below).

(o) “Settlement Hearing” means the hearing at which the Court will consider, among other things, the fairness, reasonableness and adequacy of the Settlement, the entry of the Order and Final Judgment and an award of attorneys’ fees and expenses to Plaintiff’s Counsel.

(p) “Summary Notice” means the Summary Notice of Pendency and Proposed Settlement of Class Action, substantially in the form attached hereto as Exhibit 2 to Exhibit A.

(q) “Unknown Claims” means any and all Released Plaintiff Claims that Plaintiff or any other member of the Class does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendant Claims which any Defendant or any other Released Defendant Party does not know or suspect to exist in his, her or its favor at the time of the release of such

claims, including without limitation those that, if known, might have affected his, her or its decision to enter into or to object to the Settlement.

### **SETTLEMENT CONSIDERATION**

2. In consideration of the full settlement and dismissal with prejudice of the Action and the release of the Released Plaintiff Claims against Defendants and the other Released Defendant Parties, Defendants agree to the following:

(a) Defendants shall eliminate the Proxy Put provision by amending the 2012 Loan Agreement's definition of "Continuing Directors" to delete the following: *"(excluding, in the case of both clauses (B) and (C), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors) "*.

(b) No fees of any kind shall be paid to SunTrust or the other Lenders for eliminating the Proxy Put provision. The Company, SunTrust and the other Lenders reserve the right to negotiate and agree upon fees for amendments or other transactions unrelated to the elimination of the Proxy Put provision.

(c) The Healthways Board shall issue a resolution instructing senior management and its General Counsel that any material corporate contract containing

a “change of control” provision must be brought to the attention of and explained to the Board, including its impact on the shareholder franchise, prior to its execution. It is agreed that “material” be defined as any credit agreement or contract in excess of \$20 million annually that contains a change of control provision that impacts a stockholder’s ability to nominate or elect a director via an actual or threatened proxy contest.

(d) Healthways shall conduct a review of all of its material contracts, as defined in subparagraph (c) immediately above, for provisions that contain a change of control provision and shall disclose to the Board any such provisions that are identified.

(e) The resolutions set forth in subparagraphs (c) and (d) immediately above shall remain in place for at least three years from the Effective Date of the Settlement.

### **RELEASES**

3. Upon the Effective Date of the Settlement, Plaintiff and each and every other member of the Class, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors and assigns in their capacities as such, shall be deemed to have and by operation of law and of the Judgment shall have, completely, fully, finally and forever released, relinquished, settled and discharged each and all of the Defendants and the other Released Defendant Parties

from any and all of the Released Plaintiff Claims, and shall be forever barred from commencing, instituting or prosecuting any action or other proceeding, in any forum, that asserts any Released Plaintiff Claims against any of the Released Defendant Parties.

4. Upon the Effective Date of the Settlement, Defendants and each and every other Released Defendant Party, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors and assigns in their capacities as such, shall be deemed to have and by operation of law and of the Judgment shall have, completely, fully, finally and forever released, relinquished, settled and discharged each and all of Plaintiff and the other Released Plaintiff Parties from any and all of the Released Defendant Claims, and shall be forever barred from commencing, instituting or prosecuting any action or other proceeding, in any forum, that asserts any Released Defendant Claims against any of the Released Plaintiff Parties.

5. Notwithstanding Paragraphs 3-4 above, nothing in this Stipulation or the Judgment shall prevent any of the Defendants, the other Released Defendant Parties, Plaintiff or the other Released Plaintiff Parties from enforcing the terms of this Stipulation, the Settlement or the Judgment; nor shall Paragraphs 3-4 above prevent SunTrust or the other Lenders from enforcing their respective rights arising from the 2012 Loan Agreement as amended.

## **EFFECT OF RELEASES**

6. The Releases include any and all Unknown Claims, and the Parties expressly stipulate and agree that, upon the Effective Date of the Settlement, Plaintiff, each and every other member of the Class, Defendants and each and every other Released Defendant Party shall be deemed to have waived, relinquished and released any and all provisions, rights and benefits conferred by or under any law of the United States or any state or territory of the United States, or principle of common law or foreign law, that may have the effect of limiting the Releases. In particular, Plaintiff, each and every other member of the Class, Defendants, and each and every other Released Defendant Party shall be deemed by operation of law to have waived, relinquished and released, to the fullest extent permitted by law, the provisions, rights and benefits 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.

Plaintiff, each and every other member of the Class, Defendants and each and every other Released Defendant Party shall also be deemed by operation of law to have waived, relinquished and released, to the extent they are applicable, and to the fullest extent permitted by law, the provisions, rights and benefits of any law of any state or

territory of the United States, federal law or principle of common law, that is similar, comparable or equivalent to section 1542 of the California Civil Code. Plaintiff and Defendants acknowledge, and each and every other member of the Class and Released Defendant Party shall be deemed by operation of law to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Plaintiff Claims and Released Defendant Claims, but that it is their intention to hereby completely, fully, finally and forever compromise, settle, release, discharge and extinguish any and all Released Plaintiff Claims and Released Defendant Claims, suspected or unsuspected, which previously existed, now exist or may hereafter exist, and without regard to the subsequent discovery or existence of additional or different facts. Plaintiff and Defendants acknowledge, and each and every other member of the Class and Released Defendant Party shall be deemed by operation of law to have acknowledged, that the waiver of Unknown Claims was separately bargained for and was a material element of the Settlement, and was relied upon by each and all of the Parties in entering into this Stipulation and the Settlement.

### **CLASS CERTIFICATION**

7. Solely for purposes of the Settlement and for no other purpose, Defendants stipulate and agree to: (i) certification of the Action as a non-“opt-out” class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and

23(b)(2) on behalf of the Class; (ii) appointment of Pontiac General as Class Representative for the Class; and (iii) appointment of Bernstein Litowitz Berger & Grossman LLP and Friedlander & Gorris, P.A., as Class Counsel for the Class.

### **SCHEDULING ORDER**

8. Promptly after this Stipulation has been executed, the Parties shall jointly submit the Stipulation, together with its Exhibits, to the Court and request entry of the Scheduling Order, substantially in the form attached hereto as Exhibit A.

### **NOTICE TO STOCKHOLDERS**

9. In accordance with the terms of the Scheduling Order to be entered by the Court, Healthways (or its successor-in-interest) shall be responsible for providing notice of the Settlement to the members of the Class, and shall pay any and all costs and fees associated with providing such notice regardless of whether the Court approves the Settlement. In no event shall Plaintiff, any other member of the Class, or their respective attorneys be responsible for any of the costs or fees associated with providing such notice. The Notice and Summary Notice shall be substantially in the forms attached as Exhibits 1 and 2, respectively, to Exhibit A hereto and shall be provided to the Class members in the manner provided in the Scheduling Order, or as otherwise directed by the Court.

### **STAY OF PROCEEDINGS**

10. The Parties agree to stay the proceedings in the Action and not to initiate any proceedings other than those related to the Settlement. To the extent necessary, Plaintiff and Plaintiff's Counsel shall cooperate with Defendants' efforts to prevent, stay or seek dismissal of, or oppose entry of any interim or final relief in favor of, any member of the Class in any other litigation against any of the Released Defendant Parties that challenges the Settlement or otherwise involves any Released Plaintiff Claims.

11. The Parties agree that, if any action is filed in any court asserting any Released Plaintiff Claims against any of the Released Defendant Parties prior to the Effective Date of the Settlement, Defendants shall seek to obtain the dismissal or withdrawal of such related litigation, including where appropriate, filing a motion to dismiss or demurrer to such litigation, and Plaintiff and Plaintiff's Counsel shall cooperate with Defendants' efforts to obtain the dismissal or withdrawal of such litigation.

### **DISMISSAL OF THE ACTION WITH PREJUDICE**

12. If the Settlement is approved by the Court as fair, reasonable, adequate and in the best interests of the Class, the Parties shall jointly and promptly request that the Court enter an Order and Final Judgment substantially in the form attached hereto as Exhibit B.

### **EFFECTIVE DATE/TERMINATION OF SETTLEMENT**

13. The Settlement shall become effective on the Effective Date, which shall be the date on which all of the following conditions have occurred: (i) following notice to the Class and the Settlement Hearing, the Court has entered the Order and Final Judgment approving the Settlement and dismissing the Action with prejudice; and (ii) the Settlement has obtained Final Court Approval.

14. If the Settlement is terminated pursuant to the terms of Paragraph 15 below, all of the Parties shall be deemed to have reverted to their respective litigation status immediately prior to November 23, 2014, and they shall proceed in all respects as if this Stipulation had not been executed and the related orders had not been entered; and, in that event, all of the Parties' respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way. In the event that the Settlement is terminated, the Class shall automatically be decertified and Defendants reserve the right to oppose the certification of any plaintiff class in any future proceedings (including, but not limited to, in the Action). Further, in the event that the Settlement is terminated, neither the existence of the Settlement, the Stipulation nor their contents (with the exception of this Paragraph 14 and Paragraphs 17, 21, 22 and 36 below) shall be admissible in evidence or shall be referred to for any purpose in the Action or in any other litigation or proceeding.

15. Plaintiff and Defendants shall each have the right to terminate the

Settlement and this Stipulation, by providing written notice of their election to do so (“Termination Notice”) to the other Parties within thirty (30) days of: (i) the Court’s declining to enter the Scheduling Order in any material respect; (ii) the Court’s refusal to approve the Settlement or any material part thereof; (iii) the Court’s declining to enter the Judgment in any material respect as to the Settlement; or (iv) the date upon which an order modifying or reversing the Judgment in any material respect becomes final and no longer subject to appeal or review, whether by the passage of time, affirmance on appeal or otherwise. However, any decision or proceeding, whether in this Court or any appellate court, solely with respect to a request for an award of attorneys’ fees and reimbursement of litigation expenses by Plaintiff’s Counsel shall not be considered material to the Settlement, shall not affect the finality of the Judgment and shall not be grounds for termination of the Settlement.

### **ATTORNEYS’ FEES AND EXPENSES**

16. Plaintiff’s Counsel will apply to the Court for an award of attorneys’ fees and reimbursement of litigation expenses based on the benefits conferred upon the Class as result of the prosecution of the Action and the Settlement. Plaintiff’s Counsel’s application for an award of attorneys’ fees and reimbursement of litigation expenses shall seek no more than \$1,200,000.00 (the “Fee and Expense Application”), and Defendants agree that they will not object to or otherwise oppose

the Fee and Expense Application.

17. Healthways (or its successor-in-interest) shall pay or cause its insurance carrier(s) to pay any attorneys' fees and expenses awarded by the Court to Plaintiff's Counsel (the "Fee and Expense Award"). The Fee and Expense Award shall be paid to Plaintiff's Counsel within fifteen (15) calendar days after entry of the Court's order awarding the Fee and Expense Award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof; provided, however, that Plaintiff's Counsel are obligated to make appropriate refunds or repayments to Healthways (or its successor-in-interest) or any applicable insurance carrier if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the award has become final and no longer subject to appeal or review, whether by the passage of time, affirmance on appeal or otherwise. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than fifteen (15) calendar days after (i) receiving from Defendants' Counsel notice of the termination of the Settlement; or (ii) any order reducing or reversing the Fee and Expense Award has become final.

18. An award of attorneys' fees and/or litigation expenses is not a necessary term of this Stipulation and is not a condition of the Settlement embodied

herein, and neither Defendants nor any of the other Released Defendant Parties shall have responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or litigation expenses. Neither Plaintiff nor Plaintiff's Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or litigation expenses. Notwithstanding any of the foregoing, in the event that the Settlement is terminated pursuant to the terms of this Stipulation, Plaintiff's Counsel reserve the right to seek an award of any attorneys' fees and reimbursement of litigation expenses based on the benefits conferred upon the Class as a result of the prosecution of the Action and the Settlement.

#### **COOPERATION AMONG THE PARTIES**

19. The Parties and their respective counsel agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement and to use their best efforts to effect the consummation of this Stipulation and the Settlement (including, but not limited to, resolving any objections raised with respect to the Settlement).

20. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

### **STIPULATION NOT AN ADMISSION**

21. Each Defendant expressly denies any wrongdoing or liability with respect to all claims asserted in the Action, including that they have committed any violations of law, that they have acted improperly in any way, that they have any liability or owe any damages of any kind to Plaintiff or any other member or the Class. Defendants are entering into this Stipulation solely because they consider it desirable that the Action be settled and dismissed with prejudice in order to, among other things, (a) eliminate the burden, inconvenience, expense, risk and distraction of further litigation; and (b) finally put to rest and terminate all the claims that were or could have been asserted against Defendants in the Action. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiff or any other member of the Class of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit.

22. The existence of this Stipulation, its contents, and any negotiations, statements, or proceedings in connection therewith will not be argued, construed or deemed to be a presumption, concession or admission by any of the Released Defendant Parties or any other person of any fault, liability or wrongdoing as to any facts or claims alleged or asserted in the Action or otherwise, or that Plaintiff or any other member of the Class has suffered any damage attributable in any manner to

any of the Released Plaintiff Claims. Nor shall the existence of this Stipulation and its contents or any negotiations, statements or proceedings in connection therewith be argued, construed or deemed to be as a presumption, concession or admission by Plaintiff, any other member of the Class, or Plaintiff's Counsel of any lack of merit of the Released Plaintiff Claims. The existence of the Stipulation, its contents or any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked or otherwise used by any person for any purpose in the Action or in any other action or proceeding, whether civil, criminal or administrative, except for any litigation or judicial proceeding arising out of or relating to this Settlement. Notwithstanding the foregoing, any of the Released Defendant Parties or Released Plaintiff Parties may file the Stipulation or any judgment or order of the Court related hereto in any other action that may be brought against them exclusively for the purpose of supporting any and all defenses or counterclaims based on res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. This provision shall remain in force in the event that the Settlement is terminated.

### **NO WAIVER**

23. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver

of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party.

24. No waiver, express or implied, by any Party of any breach or default in the performance by the other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

#### **AUTHORITY**

25. This Stipulation will be executed by counsel to the Parties, each of whom represents and warrants that he or she has been duly authorized and empowered to execute this Stipulation on behalf of such Party, and that it shall be binding on such Party in accordance with its terms.

#### **SUCCESSORS AND ASSIGNS**

26. This Stipulation is and shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, administrators, heirs, successors and assigns, including, without limitation, any corporation or other entity with which any Party hereto may merge or otherwise consolidate.

#### **GOVERNING LAW AND FORUM**

27. The Stipulation and the Settlement contemplated by it, and any dispute arising out of or relating in any way to the Stipulation or the Settlement, whether in

contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the state of Delaware, without regard to conflict of laws principles. Each of the Parties (a) irrevocably submits to the personal jurisdiction or venue selection of the Court in any suit, action or proceeding arising out of or relating to the Stipulation and/or the Settlement; (b) agrees that all claims in respect of such suit, action or proceeding shall be brought, heard and determined exclusively in the Court; (c) agrees that it shall not make any effort to deny or defeat such personal jurisdiction by motion or other request for leave from the Court; and (d) EXPRESSLY WAIVES, AND AGREES NOT TO PLEAD OR TO MAKE ANY CLAIM THAT ANY SUCH ACTION OR PROCEEDING IS SUBJECT (IN WHOLE OR IN PART) TO A JURY TRIAL. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding brought in accordance with this paragraph. Each of the Parties further consents and agrees that process in any such suit, action or proceeding may be served on such Party by certified mail, return receipt requested, addressed to such Party or such Party's registered agent in the state of its incorporation or organization, or in any other manner provided by law.

#### **NOTICE TO THE PARTIES**

28. All notices required or permitted to be given under this Stipulation shall be in writing and shall be deemed delivered upon receipt of hand delivery, overnight

courier, facsimile, with confirmation of receipt. All notices shall be addressed (i) if to Plaintiff or Plaintiff's Counsel, to each of the undersigned counsel for Plaintiff; and (ii) if to Defendants, to each of the undersigned counsel for Defendants.

### **CONSTRUCTION**

29. This Stipulation shall be construed in all respects as jointly drafted and shall not be construed, in any way, against any Party on the ground that the Party or its counsel drafted this Stipulation.

### **WARRANTY**

30. Plaintiff represents that (i) it is a member of the Class; and (ii) none of its Released Plaintiff Claims has been assigned, encumbered or in any manner transferred in whole or in part, and that it will not attempt to assign, encumber or in any manner transfer, in whole or in part, any of its Released Plaintiff Claims. Each Party represents and warrants that the Party has made such investigation of the facts pertaining to the Settlement provided for in this Stipulation, and all of the matters pertaining thereto, as the Party deems necessary and advisable.

### **ENTIRE AGREEMENT**

31. This Stipulation and the attached Exhibits constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral or written agreements, understandings or representations. All of the Exhibits hereto are incorporated herein by reference as if

set forth herein verbatim, and the terms of all Exhibits are expressly made part of this Stipulation.

### **INTERPRETATION**

32. Each term of this Stipulation is contractual and not merely a recital. Section and/or Paragraph titles have been inserted for convenience only and will not be used in determining the terms of this Stipulation.

33. The terms and provisions of this Stipulation are intended solely for the benefit of the Parties, the Class and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other person or entity, except any attorneys' fees and expenses to be paid pursuant to the terms of this Stipulation.

### **AMENDMENTS**

34. This Stipulation may not be amended, changed, waived, discharged or terminated (except as explicitly provided herein), in whole or in part, except by an instrument in writing signed by the Parties or their respective successors-in-interest.

### **COUNTERPARTS**

35. This Stipulation may be executed in any number of actual or electronically mailed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. This Stipulation will become effective when the actual or electronically mailed

counterparts have been signed by counsel for each of the Parties and delivered to the other Parties. The executed signature page(s) from each actual or electronically mailed counterpart may be joined together and attached and will constitute one and the same instrument.

### **CONFIDENTIALITY**

36. Whether or not this Stipulation is approved by the Court and whether or not this Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with this Stipulation confidential.

37. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive the Settlement.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have caused this Stipulation,  
dated as of February 10, 2015, to be executed by their duly authorized attorneys.

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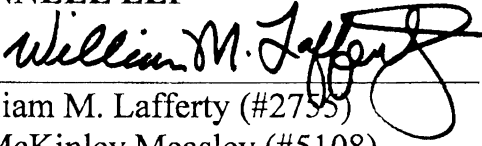
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