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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**

13 TIM CARROLL, an individual; ANNA GOOD,
14 an individual; PAULA HAMMA, an individual,
on behalf of themselves and the general public,

15 Representative Plaintiffs,

16
17 v.

18 HEALTHSOUTH ARTHROSCOPIC & LASER
SURGERY CENTER OF SAN DIEGO, L.P.;
19 SHC SAN DIEGO, INC.; HEALTHSOUTH
CORPORATION; HEALTHSOUTH
20 REHABILITATION; and DOES 1 through 30,
inclusive,
21

22 Defendants.

Case No GIC806908 (and related consolidated
action, Case No. GIC806902 - lead)

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AGREEMENT**

23 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AGREEMENT**

24 This Joint Stipulation of Class Action Settlement Agreement (“Agreement”) is made and
25 entered into by and between Plaintiffs TIM CARROLL, ANNA GOOD, and PAULA HAMMA
26 (“Plaintiffs “ or “Class Representatives”), as individuals and on behalf of all others similarly
27 situated, on the one hand; and Defendants ARTHROSCOPIC & LASER SURGERY CENTER OF
28 SAN DIEGO, L.P. (d/b/a HealthSouth Arthroscopic & Laser Surgery Center of San Diego, d/b/a

1 HealthSouth/Oasis Surgery Center and d/b/a Oasis Surgery Center); SHC SAN DIEGO, INC.;
2 HEALTHSOUTH CORPORATION, d/b/a HealthSouth Sports Medicine and Rehabilitation
3 Center, d/b/a HealthSouth, d/b/a HealthSouth Sports Medicine & Rehabilitation Center, d/b/a
4 HealthSouth Sports & Rehabilitation, and d/b/a HealthSouth Rehabilitation (erroneously named as
5 HealthSouth Rehabilitation, but collectively referred to herein as “HealthSouth Sports Medicine
6 and Rehabilitation Center”); and HEALTHSOUTH CORPORATION (all Defendants designated
7 above are collectively referred to as “Settling Defendants”), on the other hand. Plaintiffs and
8 Settling Defendants shall herein each be referred to as a “Party”, and collectively as the “Parties.”

9 **RECITALS**

10 WHEREAS, Plaintiffs filed the instant putative class action, with inclusive representatives
11 claims, currently entitled *Tim Carroll, et al. v. HealthSouth Arthroscopic & Laser Surgery Center*
12 *of San Diego, L.P., et al.*, San Diego Superior Court, Case No. GIC806908, on or about March 10,
13 2003, and filed Amended Complaints thereafter (the “Class Action”);

14 WHEREAS, counsel for Settling Defendants and Plaintiffs have engaged in extensive
15 investigation of the respective claims and defenses, and the exchange of documents and
16 information in connection with the Class Action has proceeded for over a decade;

17 WHEREAS, mediation of the above-entitled action was held over a two (2) day period and
18 conducted on July 7, 2015 and July 8, 2015 before mediators James A. Roberts, Esq., and Thomas
19 E. Sharkey, Esq. (the “Mediators”);

20 WHEREAS, Counsel for Plaintiffs, Marc O. Stern, Esq., of the Law Offices of Marc O.
21 Stern, A.P.C., and Will Lemkul, Esq. and Chase M. Stern, Esq., of the law firm of Morris Sullivan
22 & Lemkul LLP (collectively, and separately, referred to herein as “Class Counsel”) attended
23 mediation of the above-entitled action;

24 WHEREAS, Settling Defendants attended the mediation of the above-entitled action and
25 were represented by counsel William A. Miller, Esq. of Higgs, Fletcher & Mack LLP (“Counsel for
26 HealthSouth Corporation”);

27 WHEREAS, the Parties have reached a proposed settlement of the Class Action through
28 good-faith, arm’s-length negotiations, the terms of which are reflected below:

1 **TERMS**

2 NOW THEREFORE, in light of the foregoing, and in consideration of the terms and
3 conditions set forth herein, which Plaintiffs and Settling Defendants acknowledge are good and
4 valuable consideration for this Agreement, Plaintiffs and Settling Defendants agree and stipulate,
5 subject to Preliminary and Final Approval of the Court (as defined below), as required, and
6 described, herein as follows:

7 **A. Definitions.** The following definitions shall apply to this Agreement. Definitions
8 contained elsewhere in this Agreement will also apply as recited and be effective.

9 1. “Attorneys’ Fees and Costs” means Attorneys’ Fees and Costs agreed upon by the
10 Parties and approved by the Court for Class Counsel’s litigation and resolution of the Class Action.
11 In no event shall Class Counsel move the Court for Attorneys’ Fees and Costs in excess of Two
12 Million Dollars (\$2,000,000.00). Any portion of the Attorneys’ Fees and Costs not awarded to
13 Class Counsel shall become part of the Net Settlement Amount (as defined below). Any and all
14 Attorneys’ Fees and Costs ordered by the Court to be paid shall be paid, as directed by the Court,
15 from the Class Settlement Amount (as defined below), once funded, and no additional monies are
16 to be paid by Settling Defendants for this, or any other, purpose.

17 2. “Claim Form” means the document, substantially in the form attached as Exhibit B,
18 that Class Members must complete and postmark or fax by the Response Deadline (as defined
19 below) to receive a proportional share of the Net Settlement Amount.

20 3. “Claims Administrator” means Classaura LLC, or any third-party class action
21 settlement claims administrator agreed to by the Parties and approved by the Court for purposes of
22 administering this Agreement. The Parties represent they do not have any financial interest in the
23 Claims Administrator or otherwise have a relationship with the Claims Administrator that could
24 create a conflict of interest.

25 4. “Claims Administration Costs” means the costs payable from the Class Settlement
26 Amount to the Claims Administrator for administering this settlement, including, but not limited
27 to, publication or notice services and costs, printing, distributing, and tracking documents for this
28 settlement, calculating estimated amounts per Class Member, tax reporting, distributing the Class

1 Settlement Amount, and providing necessary reports and declarations, and other duties and
2 responsibilities set forth herein to process this settlement, and as requested by the Parties or Court.
3 The Claims Administration Costs will be paid exclusively from the Class Settlement Amount. The
4 Claims Administration Costs are currently estimated to be no greater than Thirty-Five Thousand
5 Dollars (\$35,000.00). To the extent the actual Claims Administrations Costs are greater than
6 \$35,000.00, such excess amounts will be deducted from the Class Settlement Amount subject to a
7 declaration by the Claims Administrator, and approval by the Court.

8 5. “Class Action” shall mean the action currently entitled *Tim Carroll, et al. v.*
9 *HealthSouth Arthroscopic & Laser Surgery Center of San Diego, L.P., et al.*, San Diego Superior
10 Court, Case No. GIC806908, filed on or about March 10, 2003, and includes all amended
11 complaints, and amendments to complaints, therein;

12 6. “Class Counsel” means Marc O. Stern, Esq., of the Law Offices of Marc O. Stern,
13 A.P.C., and Will Lemkul, Esq. and Chase M. Stern, Esq., of Morris Sullivan & Lemkul, LLP.

14 7. “Class List” means a list of all Class Members, as defined below, which
15 HealthSouth Corporation will diligently and in good faith compile from records available to it, in
16 its possession and control, with such list to be provided to the Claims Administrator and Class
17 Counsel within sixty (60) calendar days after Preliminary Approval of this settlement. The Class
18 List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class
19 Member’s name; whether the Class Member was a surgery patient, rehabilitation/physical therapy
20 patient, or both; and to the extent available to HealthSouth Corporation, and to the extent
21 ascertainable, the last known: Class Member’s mailing address and telephone number, Social
22 Security number, general time frame as to procedure and/or treatment date, and other relevant
23 information reasonably needed to calculate settlement payments. The Parties, and Class Counsel,
24 expressly agree this Class List, and the information contained therein, shall be used solely for the
25 purposes of effectuating the tasks necessary for this Agreement, and for no other purpose.

26 8. “Class Members” means all patients who were treated at Arthroscopic & Laser
27 Surgery Center of San Diego, L.P. (and all affiliated entities operating under fictitious business
28 names related thereto); SHC San Diego, Inc., for treatment and care rendered at Arthroscopic &

1 Laser Surgery Center of San Diego, L.P.; or HealthSouth Corporation at the HealthSouth Sports
2 Medicine and Rehabilitation Center formerly located at or about 5471 Kearny Villa Road, Suite
3 202 (sometimes also erroneously referred to as 5471 Kearney Villa Road), San Diego, California;
4 and/or who received any surgery or treatment from Defendant Gary Losse, M.D. at the
5 aforementioned Arthroscopic & Laser Surgery Center of San Diego, L.P. or Kearny Villa/Kearney
6 Villa locations of Settling Defendants, directly or not, within the Class Period (defined below).

7 9. “Class Period” means the time period from January 1, 1996 through December 15,
8 2000.

9 10. “Class Representative Enhancement Payments” means amounts to potentially be
10 paid to Plaintiffs for their effort and work in prosecuting the Class Action on behalf of Class
11 Members, and for their release of claims. Subject to the Court granting Final Approval (as defined
12 below) of this Agreement, Plaintiffs will request Court approval of Class Representative
13 Enhancement Payments of Twenty Five Thousand Dollars (\$25,000.00), each, to Tim Carroll,
14 Anna Good, and Paula Hamma. Any portion of the Class Representative Enhancement Payments
15 not awarded to the Plaintiffs will remain in the Net Settlement Amount (as defined below). Any
16 Class Representative Enhancement Payments shall be paid, as directed by the Court, from the
17 Class Settlement Amount (as defined below), once funded. No additional monies are to be paid by
18 Settling Defendants for this, or any other, purpose.

19 11. “Class Settlement Amount” means the maximum total amount of Five Million
20 Dollars (\$5,000,000.00), to be funded by HealthSouth Corporation, in full satisfaction of any and
21 all claims arising from the Class Action, which includes, but is not limited to, all Individual
22 Settlement Payments (as defined below) to Participating Class Members (as defined below), the
23 Class Representative Enhancement Payments to Plaintiffs, Claims Administration Costs to the
24 Claims Administrator, all Attorneys’ Fees and Costs, and any other costs and expenses.

25 12. “Court” means the Superior Court of the State of California for the County of San
26 Diego, or any appellate court properly invoking jurisdiction of the Class Action.

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1 13. “Effective Date” means the latter of: (a) the date the Court grants Final Approval (as
2 defined below) of this settlement and Agreement, or (b) if any timely appeals are filed, the date of
3 any final appellate ruling approving this settlement and Agreement.

4 14. “Final Approval” means final approval by the Court of this Agreement, and either
5 expiration of the time for appeal of the final approval by the Court, or final appellate order re-
6 affirming the final approval of this Agreement, whichever is later.

7 15. “Individual Settlement Payment” means each Class Member’s share of the Net
8 Settlement Amount, to be distributed to the Class Members who submit valid and timely Claim
9 Forms.

10 16. “Net Settlement Amount” means the portion of the Class Settlement Amount
11 remaining after deduction of the approved Class Representative Enhancement Payments, Claims
12 Administration Costs, Attorneys’ Fees and Costs, and any and all other costs. The Net Settlement
13 Amount will be distributed to Participating Class Members who submit timely Claim Forms (as
14 defined below). Any unclaimed amounts of the Net Settlement Amount, if any, will be distributed
15 in accordance with section I.14, “Residue,” below.

16 17. “Notice of Objection” means a Class Member’s valid and timely written objection
17 to the Agreement. For the Notice of Objection to be valid, it must include: (a) the objector’s full
18 name, signature, address, and telephone number, (b) a written statement of all grounds for the
19 objection accompanied by any legal support for such objection; and (c) copies of any papers,
20 briefs, or other documents upon which the objection is based.

21 18. “Notice Packet” means the Notice of Class Action Settlement, Claim Form, and
22 Mailing Envelope, in the forms attached as Exhibits A, B, and C, respectively.

23 19. “Participating Class Members” means all Class Members who submit valid and
24 timely Claim Forms and who do not submit valid and timely Requests for Exclusion (as defined
25 below).

26 20. “Settlement Class Members” means all Class Members who do not submit valid and
27 timely Requests for Exclusion (as defined below).

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1 21. “Preliminary Approval” means the Court Order granting preliminary approval of the
2 Agreement and its terms.

3 22. “Request for Exclusion” means a timely letter submitted by a Class Member
4 indicating a request to be excluded from the Agreement. The Request for Exclusion must: (a) be
5 signed by the Class Member; (b) contain the name, address, telephone number and the last four
6 digits of the Social Security Number of the Class Member; (c) clearly state that the Class Member
7 does not wish to be included in the settlement; (d) be returned by fax or mail to the Claims
8 Administrator at the specified address and/or facsimile number; and, (e) be faxed or postmarked on
9 or before the Response Deadline. The date of the fax or postmark on the return mailing envelope
10 will be the exclusive means to determine whether a Request for Exclusion has been timely
11 submitted. A Class Member who does not timely request exclusion from the settlement will be
12 deemed a “Settlement Class Member” and will be bound by all terms of the Agreement when the
13 settlement is granted Final Approval by the Court.

14 23. “Response Deadline” means the deadline by which Class Members must postmark
15 to the Claims Administrator valid Claim Forms, Requests for Exclusion, or file and serve
16 objections to the settlement. The Response Deadline will be sixty (60) calendar days from the
17 initial mailing of the Notice Packet by the Claims Administrator, or notice by publication, unless
18 the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
19 extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
20 Claim Forms or Requests for Exclusion will be extended fifteen (15) calendar days for any Class
21 Member who is re-mailed a Notice Packet by the Claims Administrator, unless the 15th day falls
22 on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
23 day on which the U.S. Postal Service is open. The Response Deadline may also be extended by
24 express agreement between Class Counsel and HealthSouth Corporation. Under no circumstances,
25 however, will the Claims Administrator have the authority to unilaterally extend the deadline for
26 Class Members to submit a Claim Form, Request for Exclusion, or objection to the settlement.

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1 **B. Funding of the Class Settlement Amount.**

2 1. HealthSouth Corporation, on behalf of Arthroscopic & Laser Surgery Center of San
3 Diego, L.P. (d/b/a HealthSouth Arthroscopic & Laser Surgery Center of San Diego, d/b/a
4 HealthSouth/Oasis Surgery Center, and also d/b/a Oasis Surgery Center); SHC San Diego, Inc.; and
5 HealthSouth Corporation (d/b/a HealthSouth Sports Medicine and Rehabilitation Center
6 [erroneously named as HealthSouth Rehabilitation]), shall make a one-time deposit of the Class
7 Settlement Amount into a Qualified Settlement Account (“QSA”), to be established by the Claims
8 Administrator, following the occurrence of both: (a) the passage of 24 months from August 8,
9 2015, or the passage of 30 days from the date that the insurance coverage dispute between Settling
10 Defendants and St. Paul/Travelers is finally resolved, whichever is earlier; and (b) Final Approval
11 of this Agreement by the Court and the expiration of any applicable appeal rights, whichever is
12 later. With the exception of the above provision regarding timing of the funding of the Class
13 Settlement Amount, this Agreement is not contingent on any potential resolution of the coverage
14 dispute between Settling Defendants and St. Paul/Travelers. Only HealthSouth Corporation is
15 responsible for paying the Class Settlement Amount. Neither Arthroscopic & Laser Surgery Center
16 of San Diego, L.P. (d/b/a HealthSouth Arthroscopic & Laser Surgery Center of San Diego, d/b/a
17 HealthSouth/Oasis Surgery Center, and also d/b/a Oasis Surgery Center) nor SHC San Diego, Inc.
18 shall have any obligation to make any payment under this Agreement, although they shall get the
19 full benefit of this Agreement nonetheless.

20 2. Within sixty (60) calendar days of the funding of the Class Settlement Amount, but
21 no earlier than forty-five (45) calendar days of the funding of the Class Settlement Amount, the
22 Claims Administrator will issue payments to (a) Participating Class Members who submit timely
23 Claim Forms (as set forth below); and (b) Plaintiffs. Within seventy-five (75) calendar days of the
24 funding of the Class Settlement Amount, but no earlier than forty-five (45) calendar days of the
25 funding of the Class Settlement Amount, the Claims Administrator will also issue a payment to
26 itself for Court-approved services performed in connection with the settlement, and disburse the
27 Attorney’s Fees and Costs approved by the Court to Class Counsel.

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1 **C. Attorneys' Fees and Costs.** Settling Defendants agree not to oppose any motion to the
2 Court by Class Counsel for Attorneys' Fees and Costs of not more than Two Million Dollars
3 (\$2,000,000.00), gross. Any and all Attorneys' Fees and Costs ordered by the Court to be paid,
4 shall be paid as directed by the Court, from the Class Settlement Amount (once funded), and no
5 additional monies are to be paid by Settling Defendants for this, or any other, purpose.

6 **D. Class Representative Enhancement Payments.** In exchange for general releases, and in
7 recognition of their effort and work in prosecuting the Class Actions on behalf of Class Members,
8 Settling Defendants agree not to oppose any application or motion for Class Representative
9 Enhancement Payments of Twenty Five Thousand Dollars (\$25,000.00), each, to Tim Carroll,
10 Anna Good, and Paula Hamma. The Class Representative Enhancement Payments will be paid
11 from the Class Settlement Amount and will be in addition to their Individual Settlement Payments
12 paid pursuant to the Agreement. Plaintiffs will not be required to submit Claim Forms to receive
13 their Individual Settlement Payments. Plaintiffs will be solely and legally responsible to pay any
14 and all applicable taxes on the payments made pursuant to this paragraph, and will indemnify and
15 hold Settling Defendants harmless from any claim or liability for taxes, penalties, or interest
16 arising as a result of the payments.

17 **E. Claims Administration Costs.** The Claims Administrator will be paid for the reasonable
18 costs of administration of the Agreement and distribution of payments from the Class Settlement
19 Amount, which costs are currently estimated to be no greater than Thirty-Five Thousand Dollars
20 (\$35,000.00). These costs, which will be paid from the Class Settlement Amount, will include,
21 *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099
22 IRS Forms, distributing the Notice Packet, calculating and distributing the Class Settlement
23 Amount, and providing necessary reports and declarations.

24 **F. Potential Unused Claims Administration Costs.** Any portion of the estimated or
25 designated Class Administration Costs which are not in fact required to fulfill the total Class
26 Administration Costs will become part of the Net Settlement Amount.

27 **G. Individual Settlement Payment Calculations.** Individual Settlement Payments will be
28 calculated and apportioned from the Net Settlement Amount based on whether Class Members

1 treated with Defendant Gary Losse, M.D. at HealthSouth Arthroscopic & Laser Surgery Center of
2 San Diego, L.P. (“ALSC”); whether Class Members treated with some other physician than
3 Defendant Gary Losse, M.D. at ALSC; and/or whether Class Members received rehabilitation
4 treatment at HealthSouth Sports Medicine and Rehabilitation Center formerly located at or about
5 5471 Kearny Villa Road, Suite 202 (sometimes also erroneously referred to as 5471 Kearney Villa
6 Road), San Diego, California, as follows:

- 7 • 94% of the Net Settlement Amount to be apportioned equally among Participating
8 Class Members who received treatment by Defendant Gary Losse, M.D. at ALSC;
- 9 • 3% of the Net Settlement Amount to be apportioned equally among Participating
10 Class Members who received treatment by some other physician than Defendant
11 Gary Losse, M.D. at ALSC; and
- 12 • 3% of the Net Settlement Amount to be apportioned equally among Participating
13 Class Members who received rehabilitation treatment at HealthSouth Sports
14 Medicine and Rehabilitation Center formerly located at or about 5471 Kearny Villa
15 Road, Suite 202 (sometimes also erroneously referred to as 5471 Kearney Villa
16 Road), San Diego, California (the “Payment Categories”).

17 **H. Class Action Certification for Settlement Purposes Only.** The Parties stipulate to
18 conditional certification of a settlement class exclusively for purposes of this Agreement. If, for
19 any reason, the Court does not preliminarily or subsequently finally approve all terms of this
20 Agreement, then:

- 21 1.) this Agreement is terminated and deemed void;
- 22 2.) this stipulation to conditional certification will be null, void, and of no further force or
23 effect;
- 24 3.) the operative complaint as to Settling Defendants shall revert to the Second Amended
25 Complaint that had previously been filed in the Class Action, without regard to the Third Amended
26 and Restated Complaint, and Settling Defendants shall retain any and all rights to oppose any
27 motions to amend, for class certification, to add any causes of action (including any claims under
28 the California Consumers Legal Remedies Act), or otherwise take any other action Settling

1 Defendants could have taken prior to entering into this settlement on July 8, 2015. In other words,
2 the Parties' claims and defenses go back to where they were as of July 7, 2015, the date of the
3 mediation among the Parties; and,

4 4.) the Parties agree that any statements or representations made to each other from July 7,
5 2015 to the date of this agreement shall be inadmissible in any subsequent motion, proceeding,
6 trial or hearing of this case.

7 The Parties further agree that conditional certification for purposes of this Agreement is not
8 an admission that class action certification is proper under the standards applied to contested
9 certification motions, and that this Agreement will not be admissible in this or any other
10 proceeding as evidence that either (a) a class action should be certified or (b) Settling Defendants
11 are liable to Plaintiffs or any Class Member, other than according to the Agreement's terms;
12 Settling Defendants do, and continue to, deny any liability including, but not limited to, any
13 liability for any claims asserted by Plaintiffs, any Class Members, or otherwise, in the Class
14 Action.

15 **I. Claims Administration Process.** The Parties agree to cooperate in the administration of
16 the settlement, to execute any reasonably necessary documentation to effectuate the claims and
17 administration process, and to make all reasonable efforts to control and minimize the costs and
18 expenses incurred in administration of the Agreement.

19 1. Delivery of Class List. Within sixty (60) calendar days after Preliminary Approval
20 of this Agreement by the Court, HealthSouth Corporation shall provide the Class List to the Claims
21 Administrator and to Class Counsel. The Class List shall be segregated into the three Payment
22 Categories identified and described in section G., above.

23 2. Notice by First-Class U.S. Mail. Within twenty (20) calendar days after receiving
24 the Class List from Defendants, the Claims Administrator will mail a Notice Packet to all Class
25 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses for
26 the Class Members identified in the Class List. In the alternative, should the Court deem
27 necessary, notice information and instructions similar to that contained in the Notice Packet
28 (described below) may be effectuated by the Claims Administrator pursuant to a reasonable

1 manner of notice by publication, if ordered by the Court. All deadlines and obligations set forth in
2 this Agreement, including, but not limited to, deadlines and obligations as to Claims Forms,
3 Request(s) for Exclusion, Notice(s) of Objection, and otherwise shall apply equally to any Class
4 Member regardless of whether notice was effectuated by publication or otherwise.

5 3. Confirmation of Contact Information in the Class List. Prior to mailing, the Claims
6 Administrator will perform a search based on the National Change of Address Database or any
7 other similar services available, such as provided by Experian, for information to update and
8 correct for any known or identifiable address changes. Any Notice Packets returned to the Claims
9 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
10 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Claims
11 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding
12 address is provided, the Claims Administrator will promptly attempt to determine the correct
13 address using a skip-trace, or other search using the name, address and/or Social Security number
14 of the Class Member involved, and will then perform a single re-mailing. Those Class Members
15 who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have between the
16 latter of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a
17 Claim Form, Request for Exclusion, or an objection to the settlement.

18 4. Notice Packets. Except as may be otherwise ordered by the Court, as referenced in
19 Section I.2, above, all Class Members will be mailed a Notice Packet. Each Notice Packet will
20 provide: (a) information regarding the nature of the Class Action; (b) a summary of the
21 Agreement's principal terms; (c) the definition of Class Members; (c) the formula for calculating
22 Individual Settlement Payments; (e) the dates which comprise the Class Period; (f) instructions on
23 how to submit valid Claim Forms, Requests for Exclusion, or objections; (g) the deadlines by
24 which the Class Member must postmark Claim Forms, Requests for Exclusions, or file and serve
25 objections to the Agreement; (h) the claims to be released, as set forth herein; and (i) the date for
26 the final approval hearing by the Court. Class Counsel, in conjunction with the Claims
27 Administrator, shall be responsible for drafting all documents necessary for the proposed Notice
28 Packet and exhibits thereto (including any Notice of Class Action Settlement), and any information

1 and documentation necessary to effectuate any notice by publication as may be ordered by the
2 Court. However, HealthSouth Corporation, and Counsel for HealthSouth Corporation, shall have
3 the right to provide input, and shall first approve such documents and information before
4 submission to the Court, Claims Administrator, Class Members, public, or otherwise.

5 5. Disputed Information on Notice Packets. Class Members will have an opportunity
6 to dispute the information provided in their Notice Packets. To the extent Class Members dispute
7 the amount of their Individual Settlement Payments, Class Members may produce evidence to the
8 Claims Administrator showing that such information is inaccurate. Absent evidence rebutting
9 HealthSouth Corporation's records, the HealthSouth Corporation records will be presumed
10 determinative. However, if a Class Member produces evidence to the contrary, the Claims
11 Administrator will evaluate the evidence submitted by the Class Member and will make the final
12 decision as to the Individual Settlement Payment to which the Class Member may be entitled. All
13 such disputes are to be resolved not later than fourteen (14) calendar days after the Response
14 Deadline.

15 6. Claim Form Procedures. To receive Individual Settlement Payments, all Class
16 Members will be required to submit a timely Claim Form by the Response Deadline. All Claim
17 Forms must be signed and returned to the Claims Administrator via fax or first class mail
18 postmarked by the Response Deadline. The date of the fax, or postmark on the return mailing
19 envelope, will be the exclusive means to determine whether a Claim Form has been timely
20 submitted. However, it is not the intention of the Parties to exclude Class Members from
21 participating in the Agreement for technical reasons that do not interfere with the orderly
22 administration of the Agreement. Therefore, the Claims Administrator will compile a list of
23 claims rejected for (1) failure to cure an unsigned Claim Form or (2) late submission of the Claim
24 Form. As to the Class Members on that rejected claims list, any Class Member who requests, in a
25 signed letter, the ability to participate in the Settlement will be included as a Participating Class
26 Member so long as that written request is received by the Effective Date.

27 7. Defective Submissions. If a Class Member's Claim Form or Request for Exclusion
28 is defective as to the requirements listed herein, that Class Member will be given an opportunity to

1 cure the defect(s). The Claims Administrator will mail the Class Member a cure letter within three
2 (3) business days of receiving the defective submission to advise the Class Member that his or her
3 submission is defective, and that the defect must be cured to render the Claim Form or Request for
4 Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b)
5 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark or
6 fax a revised Claim Form or Request for Exclusion. If a Class Member responds to a cure letter by
7 filing a defective claim, then the Claims Administrator will have no further obligation to give
8 notice of a need to cure. If the revised Claim Form is not postmarked or received by fax within
9 that period, it will be deemed untimely.

10 8. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
11 Agreement must sign and postmark or fax a written Request for Exclusion to the Claims
12 Administrator within the Response Deadline. The date of the postmark on the return mailing
13 envelope or fax receipt confirmation will be the exclusive means to determine whether a Request
14 for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the
15 Claims Administrator, who will certify jointly to Class Counsel, and Counsel for HealthSouth
16 Corporation, the Requests for Exclusion that were timely submitted.

17 9. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
18 Member who does not affirmatively and effectively opt-out of the Agreement by submitting a
19 timely and valid Request for Exclusion will be bound by all of the terms of this Agreement,
20 including the release of claims (as addressed in section K, below), as well as any dismissal that
21 may be entered by the Court if it grants Final Approval to the Agreement.

22 10. Objection Procedures.

23 a. To object to the Agreement, a Class Member must file a valid Notice of
24 Objection with the Court and serve copies of the Notice of Objection on the Parties on or before
25 the Response Deadline. The Notice of Objection must be signed by the Class Member and contain
26 all information required by this Agreement. The postmark date of the filing and service will be
27 deemed the exclusive means for determining that the Notice of Objection is timely. Class
28 Members who fail to object in the specific and technical manner specified above will be deemed to

1 have waived all objections to the Agreement, and will be foreclosed from making any objections to
2 this Agreement and/or seeking any adjudication or review of this Agreement, whether by appeal or
3 otherwise.

4 b. Class Members who file and serve timely and proper Notices of Objection
5 will have a right to appear at the Final Approval Hearing in order to have their objections heard by
6 the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage
7 Class Members to submit written objections to the Agreement, to appeal from the Court's order
8 regarding the approval of this Agreement, or in any way oppose or contest the dismissal of the
9 Class Action and all claims and rights relating thereto. Class Counsel shall not represent any Class
10 Members with respect to any objections to this Agreement.

11 c. Plaintiffs and Class Counsel shall bear the full responsibility and cost of
12 resolving all claims, issues, and objections raised by any objectors. The Claims Administrator
13 shall provide notice to Class Counsel and Counsel for HealthSouth Corporation of any Notices of
14 Objection, and all claims, issues and objections raised by any objectors. Settling Defendants shall
15 have the option, but not the obligation, to formally respond to, or to informally participate in
16 resolution of, any claims, issues and objections raised by any objectors.

17 11. Reminders. Not earlier than twenty (20) calendar days or later than thirty (30)
18 calendar days after the initial mailing of Notice Packets, the Claims Administrator will send a
19 Reminder Postcard to all Class Members who were sent a Notice Packet and who have not
20 returned a Claim Form or a Request for Exclusion. All Reminder Postcards will include the
21 Response Deadline, and the contact information for the Claims Administrator.

22 12. Certification Reports Regarding Individual Settlement Payment Calculations. The
23 Claims Administrator will provide Counsel for HealthSouth Corporation, and Class Counsel, a bi-
24 monthly report which certifies: (a) the number of Participating Class Members from the settlement
25 class who have submitted valid Claim Forms; (b) the number of Class Members who have
26 submitted valid Requests for Exclusion; (c) the number of Settlement Class Members who do not
27 submit valid Claim Forms and who do not submit valid Requests for Exclusion; and (d) whether
28 any Class Member has submitted a challenge to any information contained in their Claim Form or

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2 Notice Packet. Additionally, the Claims Administrator will provide to counsel for both Parties any
3 updated reports regarding the administration of the Agreement as needed or requested.

4 13. Un-cashed Settlement Checks. Any checks issued by the Claims Administrator to
5 Participating Class Members will be negotiable for at least 180 calendar days. Those funds
6 represented by settlement checks returned as undeliverable and those settlement checks remaining
7 un-cashed for more than 180 calendar days after issuance will be returned to the Claims
8 Administrator. All residual monies not claimed will be distributed in accordance with and
9 pursuant to the terms set forth in paragraph 14, “Residue”, and paragraph 19, “Nullification of
10 Settlement Agreement”, below.

11 14. Residue. It is the intention of the Parties that the entire Class Settlement Amount
12 will be paid out as set forth and described in the Agreement, leaving no residue. However, it is
13 possible that after all payments described herein are made, some amount may remain as the result
14 of one or more checks that fail to be delivered because a Participating Class Member’s current
15 address is not known and cannot be ascertained after reasonable efforts by the Claims
16 Administrator, the result of one or more checks that remain un-cashed after 180 calendar days after
17 issuance, or the result of circumstances that cannot be anticipated. If, after payment of the entire
18 Class Settlement Amount has been made as set forth in the Agreement, and any such residue
19 remains, any residue shall be distributed as follows, and in this order: (1) to the Claims
20 Administrator for Claims Administration Costs in excess of \$35,000.00, upon submission of a
21 declaration under penalty of perjury by the Claims Administrator, establishing such additional
22 costs, and approval by the Court; and (2) any remaining balance of residue funds shall be applied
23 to a *Cy Pres* fund agreed on by the Parties and approved by the Court.

24 15. Certification of Completion. Upon completion of administration of the Settlement,
25 the Claims Administrator will provide a written declaration under oath to certify such completion
26 to the Court and counsel for all Parties.

1 16. Tax Treatment of Individual Settlement Payments. All Individual Settlement
2 Payments will be allocated as set forth in section G, “Individual Settlement Payment Calculations”
3 above, and will be reported on an IRS Form-1099 by the Claims Administrator.

4 17. Administration of Taxes by Claims Administrator. The Claims Administrator will
5 be responsible for issuing to Plaintiffs, Participating Class Members, and Class Counsel any W-2,
6 1099, or other tax forms as may be required by law for all amounts paid pursuant to this
7 Agreement.

8 18. Option to Terminate. HealthSouth Corporation will have, in its sole discretion, the
9 right to void, and the right of Settling Defendants to withdraw from, this Agreement, including any
10 obligation to fund the Class Settlement Amount, if, at any time prior to Final Approval: (a) Two
11 Percent (2%) or more of the total Class Members, as identified on the Class List, opts out of the
12 Agreement by returning a Request for Exclusion; (b) if the combined claims by Plaintiffs and any
13 Class Members that opt out of this Agreement (including alleged monetary damages, estimated
14 attorneys’ fees, and all other damages, expenses, interest, or costs) exceeds Five Million Dollars
15 (\$5,000,000.00), and/or (c) the Court does not find, and order, that this settlement and Agreement
16 are in good faith pursuant to California Code of Civil Procedure sections 877 and 877.6, and that
17 this Agreement is enforceable as a final settlement of all claims by and between Plaintiffs,
18 Settlement Class Members, and Settling Defendants. HealthSouth Corporation must exercise these
19 rights of rescission, in writing, to Class Counsel within thirty (30) calendar days after the latest
20 Response Deadline, or thirty (30) calendar days after the funding date of the Class Settlement
21 Amount as referenced in section B.1, above, whichever is later.

22 19. Nullification of Settlement Agreement.

23 a. In the event that: (a) the Court does not grant Preliminary Approval, or Final
24 Approval, of the Agreement as provided herein; (b) the Agreement does not become final for any
25 other reason; (c) the Agreement is terminated; (d) HealthSouth Corporation has exercised any
26 Option to Terminate (as discussed above); or (e) the Agreement is deemed void for any reason,
27 then this Agreement, and the stipulation to conditional class certification for settlement purposes,
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1 as well as any documents generated to bring the Agreement into effect, will be null, void, and of no
2 further force or effect.

3 b. In such event, any and all amounts deposited into the QSA will be returned
4 to HealthSouth Corporation. Any order or judgment entered by the Court in furtherance of this
5 Agreement will likewise be treated as void from the onset. The operative pleading as to Settling
6 Defendants shall also revert back to the Second Amended Complaint in the Class Action (without
7 regard to the Third Amended and Restated Complaint), with Settling Defendants retaining all
8 rights, without limitation, to oppose any motions to amend, class certification, or otherwise.

9 **J. Court Approval.**

10 1. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to
11 request the Preliminary Approval of the Agreement, and the entry of a Preliminary Approval Order
12 for: (a) Preliminary Approval of the proposed Agreement and all of its terms, including conditional
13 certification of the settlement class for settlement purposes only, and (b) setting a date for a Final
14 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the
15 Notice Packet to be sent, or similar information published pursuant to Court order, to all Class
16 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will
17 submit this Agreement, which sets forth its terms, and will include the proposed Notice Packet;
18 i.e., the proposed Notice of Class Action Settlement document, the proposed Claim Form, and the
19 Mailing Envelope, attached as Exhibits A, B, and C, respectively. Class Counsel will be
20 responsible for drafting all documents necessary to obtain preliminary approval, including, but not
21 limited to, all motions and required supporting pleadings and documents, the proposed Notice
22 Packet documents and exhibits thereto (including any Notice of Class Action Settlement), and any
23 information and documentation necessary to effectuate any notice by publication. However,
24 HealthSouth Corporation, and Counsel for HealthSouth Corporation, shall have the right to provide
25 input, and shall first approve such documents and information before submission to the Court,
26 Claims Administrator, Class Members, public, or otherwise.

27 2. Final Settlement Approval Hearing and Entry of Dismissal. Upon expiration of all
28 deadlines to postmark Claim Forms, Requests for Exclusion, or objections to the Agreement, and

1 with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to
2 determine the Final Approval of the Agreement and its terms, disposition of any residue funds, and
3 determination of the amounts properly payable for (a) Individual Settlement Payments; (b) the
4 Attorneys' Fees and Costs; (c) any Class Representative Enhancement Payments; and (d) all
5 Claims Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held
6 earlier than thirty (30) days after the latest Response Deadline. Class Counsel will be responsible
7 for drafting all documents necessary to obtain final approval, but will allow HealthSouth
8 Corporation and Counsel for HealthSouth Corporation reasonable input on same. Class Counsel
9 will also be responsible for drafting the Attorneys' Fees and Costs application to be heard at the
10 Final Approval hearing, which such application may be contained within the Motion for Final
11 Approval of Class Settlement.

12 3. Dismissal and Continued Jurisdiction. Upon Final Approval of the Agreement by
13 the Court, or after the Final Approval/Settlement Fairness Hearing, Plaintiffs will present the Court
14 for its approval a Request for Dismissal, with prejudice, as to all claims asserted against Settling
15 Defendants in the Class Action (Case No. GIC806908). After entry of the dismissal, the Court will
16 have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and
17 enforcement of the terms of the Agreement, (b) settlement administration matters, and (c) such
18 post-dismissal matters as may be appropriate under Court rules or as set forth in this Agreement.

19 4. All Terms Subject to Final Court Approval. All amounts and procedures described
20 in this Agreement will be subject to final Court approval.

21 **K. Releases.**

22 1. Plaintiffs' Release. Upon the Effective Date, and as a condition of receiving any
23 Individual Settlement Payment and/or Class Representative Enhancement Payments, or failing to
24 submit a valid Request for Exclusion, Plaintiffs and all Settlement Class Members, including their
25 heirs, successors, and anyone else purporting to claim through them, agree to the additional
26 following General Release: In consideration of Settling Defendants' promises and agreements as
27 set forth herein, Plaintiffs, Settlement Class Members, and their heirs, successors, and anyone else
28 purporting to claim through them, hereby fully and finally release HealthSouth Corporation;

1 Arthroscopic & Laser Surgery Center of San Diego, L.P. (d/b/a HealthSouth Arthroscopic & Laser
2 Surgery Center of San Diego, d/b/a HealthSouth/Oasis Surgery Center, and also d/b/a Oasis
3 Surgery Center); SHC San Diego, Inc.; and HealthSouth Corporation (d/b/a HealthSouth Sports
4 Medicine and Rehabilitation Center [erroneously named as HealthSouth Rehabilitation]), as well
5 as their former or present parent entities, subsidiaries, predecessors, successors, assigns, and
6 affiliates, and their respective officers, directors, managers, shareholders, members, partners (save
7 for Plaintiffs' separate claims against the non-settling defendants in the related action GIC806902,
8 Gary Losse, M.D., David Chao, M.D., Paul Murphy, M.D., and Byron King, M.D.), attorneys,
9 representatives, employees, administrators, fiduciaries, insurance carriers, trustees, and agents
10 (collectively, the "Released Parties"), of and from any and all claims of Plaintiffs, Settlement Class
11 Members, and their heirs, successors, and anyone else purporting to claim through them, including,
12 but not limited to, those which were or could have been asserted in the Class Action, and also
13 generally release and discharge the Released Parties from any and all claims, demands, obligations,
14 causes of action, rights, or liabilities of whatsoever kind or character which have been or could
15 have been asserted against the Released Parties arising out of or relating to interaction(s) of
16 Plaintiffs and/or any Class Members with Released Parties, Gary Losse, M.D., Byron King, M.D.,
17 David Chao, M.D., Paul Murphy, M.D., Oasis Sports Medical Group, Inc., and/or Oasis MSO, Inc.,
18 including, but not limited to those for negligence, breach of fiduciary duty, fraud, deceit, breach of
19 contract, concealment, unfair business practices, unlawful business practices, fraudulent business
20 practices, battery, assault, failure to provide informed consent, lack of informed consent, failure to
21 provide adequate peer review or quality assurance, violations of the California Business and
22 Professions Code, violations of the Consumers Legal Remedies Act, any other claims and/or causes
23 of action, claims for damages or any other type of relief (including attorneys' fees and costs), as
24 well as any and all claims which could have been brought based upon the factual allegations in the
25 Class Action under any federal, state, or local law or ordinance, public policy, tort, common law,
26 law sounding in equity, or otherwise. This release specifically includes any and all claims,
27 demands, obligations and/or causes of action whether or not known or suspected to exist, and
28 whether or not specifically or particularly described herein.

1 2. Plaintiffs' Civil Code Section 1542 Waiver. It is Plaintiffs' and the Settlement
2 Class Members' intent that this Agreement shall be effective as a bar to all demands, liens,
3 assignments, contracts, covenants, actions, suits, causes of action, obligations, costs, expenses,
4 attorneys' fees, damages, losses, claims, controversies, judgments, orders, and liabilities of
5 whatever character, nature and kind, known or unknown, suspected or unsuspected, whether or not
6 concealed or hidden, against the Released Parties and all parent entities, successor entities,
7 officers, managers, attorneys, directors, shareholders, partners, employees, agents, members,
8 affiliates, representatives, subsidiary entities or agents. In furtherance of this intent, Plaintiffs and
9 Settlement Class Members expressly, knowingly and voluntarily waive any and all rights and
10 benefits conferred upon them by the provisions of Section 1542 of the California Civil Code,
11 which provides:

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

17 3. No Release as to Case No. 806902. The releases contained herein do not apply to
18 Plaintiffs' pending separate claims against Gary Losse, M.D.; David Chao, M.D.; Paul Murphy,
19 M.D.; Byron King, M.D.; Oasis Sports Medical Group, Inc.; and Oasis MSO, Inc., or to any claims
20 Plaintiffs or the Settlement Class Members may have against same, in consolidated Case No.
21 806902. Plaintiffs and the Settlement Class Members hereby expressly reserve any and all rights to
22 pursue any action or claims against those persons and entities, but intend this Agreement to be a
23 full release of any and all claims as to Settling Defendants.

24 **L. Miscellaneous.**

25 1. Defense and Indemnity From Insurer or Benefit Provider. Plaintiffs agree to defend,
26 indemnify and hold harmless Settling Defendants and Released Parties (including, but not limited
27 to, reimbursing them for their reasonable defense fees, costs and litigation expenses) from any and
28 all claims proffered by any insurer or benefit provider of any Plaintiff or Settlement Class Member
against Settling Defendants for any reimbursement of medical benefits, costs, fees, or expenses
paid to Settling Defendants or any affiliated entity of Settling Defendants for services rendered to

1 Plaintiffs or the Settlement Class Members during the Class Period, and related to the claims at
2 issue in this Class Action.

3 2. Stay to Remain in Effect (Except Approval Process). Settling Defendants
4 previously agreed to a stay of this Class Action and the related 5-year statute to bring this Class
5 Action to trial in order to pursue settlement negotiations. Settling Defendants agree that said stay
6 shall continue to remain in effect until such time as a final order has been entered approving this
7 Agreement. All litigation in this Class Action shall be otherwise stayed except to the extent
8 necessary to effectuate this Agreement.

9 3. No Additional Funds. Settling Defendants shall have no obligation to provide any
10 additional monies or consideration except as expressly delineated herein.

11 4. Burden on Class Counsel. Class Counsel shall have the primary burden in preparing
12 all pleadings, motions, and any other efforts to effectuate this Agreement and securing Preliminary
13 Approval and Final Approval by the Court.

14 5. Tax Liability. Settling Defendants make no representation as to the tax treatment or
15 legal effect of the payments called for hereunder, and Plaintiffs and Participating Class Members
16 are not relying on any statement, representation, or calculation by Settling Defendants, Released
17 Parties, Counsel for HealthSouth Corporation, counsel for Released Parties, or by the Claims
18 Administrator in this regard. Plaintiffs and Participating Class Members understand and agree that
19 they will be solely responsible for the payment of any taxes and penalties assessed on the payments
20 described herein.

21 6. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
22 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO
23 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
24 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
25 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
26 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
27 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
28 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE

1 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
2 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
3 UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
4 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
5 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
6 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
7 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
8 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT
9 MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
10 ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS
11 THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES
12 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
13 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
14 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
15 CONTEMPLATED BY THIS AGREEMENT.

16 7. No Prior Assignments. Plaintiffs, Settlement Class Members, and Class Counsel
17 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
18 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of
19 any liability, claim, demand, action, cause of action or right herein released and discharged.

20 8. Compromise Not Admission. This Agreement is intended to, and does, compromise
21 disputed claims and shall not be construed as an admission of liability by any Party of any claim
22 made by any other Party. Settling Defendants have denied, and continue to deny, all allegations
23 and liability in this Class Action, and will continue to deny all allegations and any liability.
24 Settling Defendants have agreed to settle the Class Action to buy their peace and avoid the risks of
25 litigation, and to circumvent the risks of future litigation costs, fees, and expenses.

26 9. Good Faith Cooperation. Plaintiffs and HealthSouth Corporation shall cooperate in
27 good faith and undertake all reasonable actions and steps in order to accomplish the events
28 described in this Agreement.

1 10. Admissibility. Plaintiffs, Settlement Class Members, Class Counsel, and Settling
2 Defendants agree that this Agreement shall not be admissible in any action or proceeding for any
3 purpose, except as otherwise provided herein, including, but not limited to, pursuant to Cal.
4 Evidence Code section 1123 for purposes of the Court approving, interpreting, or enforcing this
5 Agreement.

6 11. Exhibits Incorporated by Reference. The terms of this Agreement include the terms
7 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
8 herein. Any Exhibits to this Agreement are an integral part of the settlement.

9 12. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety
10 of the Parties' settlement terms.

11 13. Amendment or Modification. This Agreement may be amended or modified only
12 by a written instrument signed by counsel for all Parties or their successors-in-interest.

13 14. Authorization to Enter Into Settlement Agreement. Plaintiffs and Class Counsel
14 warrant and represent that they are expressly authorized by the individuals and/or entities whom
15 they represent to negotiate this Agreement and to take all appropriate action required or permitted
16 to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any
17 other documents required to effectuate the terms of this Agreement. The Parties and their counsel
18 will cooperate with each other in good faith, and use their best efforts to implement this
19 Agreement. If the Parties are unable to reach agreement on the form or content of any document
20 needed to implement this Agreement, or on any supplemental provisions that may become
21 necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the
22 Court to resolve such disagreement.

23 15. Binding on Successors and Assigns. This Agreement will be binding upon, and
24 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

25 16. Governing Law. All terms of this Agreement, and its Exhibits, shall be governed by
26 and interpreted according to the laws of the State of California.

27 17. Execution and Counterparts. This Agreement may be executed in one or more
28 counterparts. All executed counterparts and each of them, including facsimile and scanned copies

1 of the signature page, will be deemed to be one and the same instrument provided that counsel for
2 the Parties will exchange among themselves original signed counterparts as needed.

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4 18. Acknowledgement that Settlement is Fair and Reasonable.

5 a. The Parties believe this Agreement is a fair, adequate, and reasonable
6 settlement of the Class Action, and have arrived at this Agreement after good-faith, arm's-length
7 negotiations, and in the context of adversarial litigation, taking into account all relevant factors,
8 present and potential. The Parties agree and acknowledge that this Agreement was made in good
9 faith within the meaning of C.C.P. sections 877 and 877.6, and that this Agreement is enforceable
10 as a final settlement of all claims by and between Plaintiffs, Settlement Class Members, and
11 Settling Defendants. None of these individuals or entities shall deny these representations, or later
12 claim otherwise.

13 b. The Parties further acknowledge that they are each represented by competent
14 counsel and that they have had an opportunity to consult with their counsel regarding the fairness
15 and reasonableness of this Agreement. In addition, the Mediators may execute a declaration
16 supporting the Agreement and the reasonableness of the settlement and the Court may, in its
17 discretion, contact the Mediators to discuss the Agreement and whether or not the settlement is
18 objectively fair and reasonable.

19 19. Invalidity of Any Provision. Before declaring any provision of this Agreement
20 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible
21 consistent with applicable precedents so as to define all provisions of this Agreement as valid and
22 enforceable.

23 20. Captions. The captions and section numbers in this Agreement are inserted for the
24 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
25 provisions of this Agreement.

26 21. Waiver. No waiver of any condition or covenant contained in this Agreement or
27 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
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1 constitute a further waiver by such Party of the same or any other condition, covenant, right or
2 remedy.

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5 22. Enforcement Fees and Costs. Except as expressly provided elsewhere herein, the
6 Parties agree to each bear their own fees and costs incurred in litigating the Class Action, and any
7 efforts to effectuate and enforce this Agreement.

8 23. HIPAA. The Parties and their respective counsel further agree that HIPAA and all
9 other applicable privacy regulations, be they local, state, or federal, shall be observed at all times.

10 24. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
11 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly
12 against one Party than another merely by virtue of the fact that it may have been prepared by
13 counsel for one of the Parties, it being recognized that, because of the good-faith, arms-length
14 negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

15 25. Representation by Counsel. The Parties acknowledge that they have been
16 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
17 and that this Agreement has been executed with the consent and advice of counsel, and reviewed in
18 full. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the
19 Agreement, or relating in any way to the claims and/or remedies sought in the Class Action.

20 26. Binding Agreement. The Parties warrant that they understand and have full
21 authority to enter into this Agreement, and further intend that this Agreement will be fully
22 enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure
23 in any proceeding to enforce its terms (as more specifically provided herein), notwithstanding any
24 mediation confidentiality provisions that otherwise might apply under federal or state law.

25 27. Voluntary Agreement. The undersigned represent and acknowledge they have
26 signed the Agreement freely and voluntarily, without duress or coercion. Each Party, by executing
27 this Agreement, represents that they shall not deny the validity of this Agreement on the ground
28 they executed the same under duress, fraud or without capacity.

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SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Plaintiff Tim Carroll

PLAINTIFF

Dated: _____

Plaintiff Anna Good

PLAINTIFF

Dated: _____

Plaintiff Paula Hamma

DEFENDANT: HealthSouth Corporation

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

LAW OFFICE OF MARC O. STERN, APC

Dated: _____

Marc O. Stern
Attorneys for Plaintiffs

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MORRIS, SULLIVAN, & LEMKUL LLP

Dated: _____

Will Lemkul
Chase M. Stern
Attorneys for Plaintiffs

HIGGS, FLETCHER & MACK, LLP

Dated: _____

William A. Miller
Jason C. Ross
Attorneys for HealthSouth Corporation;
Arthroscopic & Laser Surgery Center of San Diego,
L.P.; and SHC San Diego, Inc.