Pre-Recorded Telephone Messages made on behalf of Blue Cross and Blue Shield of North Carolina

This Settlement Agreement (hereinafter "Agreement") is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter "Attorney General"), and Blue Cross and Blue Shield of North Carolina (hereinafter "BCBSNC").

I. FACTUAL BACKGROUND

- BCBSNC is a not-for-profit corporation formed and existing under the laws of the State
 of North Carolina. It operates as a Hospital and Medical Service Corporation pursuant to
 Chapter 58, Article 65 of the North Carolina General Statutes. BCBSNC pays federal
 and state income taxes on its earnings.
- In October of 2009, BCBSNC contracted with Campaign Connections, Inc. ("Campaign Connections") and other consultants to help it conduct a public awareness and advocacy campaign pertaining to debates then pending in the United States Congress.
- 3. As part of the aforementioned campaign, Campaign Connections obtained contact information for North Carolina residents from a registered voter database and contacted approximately 100,000 North Carolina residents using pre-recorded telephone messages that were automatically dialed.
- 4. The use of an automatic dialing and recorded message player to make unsolicited telephone calls to the personal telephone numbers of North Carolina residents is, in most instances, prohibited by N.C. Gen. Stat. § 75-104.
- 5. The Attorney General is the state official with statutory responsibility for enforcing the provisions of N.C. Gen. Stat. § 75-104. He is authorized to bring actions in the North Carolina General Court of Justice to secure injunctions against further violations of the statute, together with civil penalties.

- 6. During the final week of October, 2009, the Attorney General began to receive complaints about the pre-recorded phone calls mentioned above. On November 9, 2009, following a preliminary investigation into the calls, the Attorney General requested that BCBSNC stop the calls. BCBSNC informed the Attorney General that the calls had stopped and provided assurances that the calls would not resume and that a proposed second call campaign would be cancelled. The parties then opened discussions concerning calls that had occurred and compliance with N.C. Gen. Stat. § 75-104 in the future
- 7. The discussions described in the preceding paragraph resulted in a series of undertakings by the parties which are set forth below.

II. CONTENTIONS OF THE ATTORNEY GENERAL

- 8. The Attorney General contends that with respect to the calls in question, BCBSNC violated the prohibition against automatically dialed, pre-recorded telephone messages found in N.C. Gen. Stat. § 75-104. The Attorney General further contends that Campaign Connections acted as BCBSNC's agent with respect to the automatically dialed, pre-recorded telephone message campaign that is the subject of this agreement.
- 9. The Attorney General contends further that BCBSNC was aware of the prohibitions against such calls when they were made because in 2008 BCBSNC actively sought, and the North Carolina General Assembly adopted, an exemption from N.C. Gen. Stat. § 75-104 enabling health insurers to transmit pre-recorded telephone messages to subscribers which contained information about their personal health care, preventive services, medications or other covered benefits. That provision is now codified at N.C. Gen. Stat. § 75-104(b)(6).

III. CONTENTIONS OF BCBSNC

- 10. BCBSNC maintains that it contracted with a reputable and experienced vendor,
 Campaign Connections, to implement portions of BCBSNC's communications strategy
 regarding health reform, including the aforementioned telephone calls to North Carolina
 citizens. The contract between BCBSNC and Campaign Connections required that
 Campaign Connections "comply at all times with all laws and regulations" in fulfilling its
 contractual obligations. BCBSNC believed that Campaign Connections was
 knowledgeable in state and federal statutes governing pre-recorded calls and that their
 expertise would ensure proper compliance with those laws. BCBSNC contends that
 Campaign Connections was not an agent of BCBSNC, but instead was an independent
 contractor.
- 11. BCBSNC maintains that when the pre-recorded calls were made, it believed the calls were made in compliance with applicable laws. BCBSNC further maintains that it did not violate N.C Gen. Stat. Sec 75-104. In the alternative, to the extent there were any violations of N.C. Gen. Stat. Sec 75-104, BCBSNC maintains that such violations resulted from a technical error in how the telephone calls were conducted by Campaign Connections.
- 12. BCBSNC maintains that no contacting information used in the calling campaign was obtained from any internal BCBSNC sources.

IV. GENERAL TERMS OF AGREEMENT

- 13. This Agreement shall be binding upon the Attorney General and BCBSNC, its managers, officers, subsidiaries, employees, representatives, agents who are authorized by BCBSNC to make pre-recorded calls on its behalf, successors and assigns.
- 14. Except as otherwise specified herein, nothing in this Agreement shall be construed as relieving BCBSNC of its obligations to comply with applicable state or federal laws,

- rules or regulations, or as relieving BCBSNC from any existing or future liability under such laws, rules or regulations or from legal claims not set forth in this Agreement, or as limiting the ability of the Attorney General or any other North Carolina government official or government entity to enforce the provisions of this Agreement in the North Carolina General Court of Justice, Superior Court Division.
- 15. The Attorney General's execution of this Agreement shall not be deemed or represented to be an endorsement or approval of any of BCBSNC's practices by the Attorney General.
- 16. BCBSNC does not qualify under NC Gen Stat § 75-104(b)(1) as being exempt from the prohibition on the use of automatic dialing and recorded message player to make unsolicited telephone calls. Nothing herein shall prohibit BCBSNC from contacting North Carolinians by phone if done so in a legal manner.
- 17. This agreement may be modified only by a written instrument signed by or on behalf of the Attorney General and BCBSNC. The parties acknowledge that this Agreement constitutes a single or entire agreement that is not severable or divisible, except that if any provision herein is found by a court of competent jurisdiction to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
- 18. This Agreement constitutes a negotiated compromise to a dispute between its signatories. Neither party, by entering into this Agreement, acknowledges or implies that the allegations or legal positions of the other party possess merit or that their own allegations or legal positions lack merit. Both parties enter into this Agreement in order to avoid the expenditure of substantial resources that otherwise would result if the dispute were to be litigated in a court of law.

19. This Agreement does not affect the private rights or claims, if any, that a North Carolina telephone service subscriber might have with respect to BCBSNC and the pre-recorded calls that are the subject hereof.

V. UNDERTAKINGS OF THE PARTIES

- 20. In consideration for BCBSNC's undertakings set forth below, the Attorney General hereby agrees not to institute a suit, enforcement proceeding, or other action under NC Gen Stat § 75-1.1 or § 75-100 et seq. against BCBSNC or Campaign Connections with respect to the calling campaign described in paragraphs two through nine, above.
- 21. In consideration for the Attorney General's undertaking, above, BCBSNC hereby binds itself as follows:
 - a. BCBSNC and its employees, or authorized agents or vendors acting on behalf of BCBSNC, shall comply with North Carolina's law relating to automatically dialed, pre-recorded telephone messages to telephone service subscribers in North Carolina as reflected in N.C. Gen. Stat. § 75-100, et seq., as those statutes currently exist or may be amended in the future, should BCBSNC contact North Carolinians by phone;
 - b. BCBSNC shall establish in writing, and then implement and maintain, procedures and guidelines reasonably calculated to ensure its employees, and its authorized agents' and vendors' compliance with N.C. Gen. Stat. § 75-100, et seq., or any modifications thereof;
 - c. The written guidelines referenced in paragraph 21(b) above shall explicitly state that calls to North Carolinians cannot be made by BCBSNC or its agents pursuant to the exceptions found in N.C. Gen Stat § 75-104(b)(1);
 - d. Within thirty days of this agreement, BCBSNC shall provide written
 representation to the Attorney General that it is in compliance with Paragraphs 21

- (b) and (c) above, and provide for inspection if requested by the Attorney General copies of any documents created to comply with such paragraphs; and
- e. BCBSNC shall reasonably monitor all authorized employees, agents, vendors and third party call centers who are then placing telephonic calls to North Carolinians on behalf of BCBSNC in order to ensure that the terms and conditions of this Agreement are being met.
- 22. Contemporaneously with the execution hereof, BCBSNC shall pay civil penalties to the State of North Carolina in the amount of \$95,000.00. This payment shall be tendered via a check made payable to "North Carolina Attorney General." The check shall be tendered to the Attorney General, in care of David N. Kirkman, Assistant Attorney General, Consumer Protection Division, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001 or, for purposes of overnight courier delivery, 114 West Edenton Street, Raleigh, North Carolina 27603.

VI. FURTHER STIPULATIONS

- 23. BCBSNC authorizes the Attorney General to monitor BCBSNC's compliance with this Agreement by all lawful means and nothing in this Agreement shall limit a right of the Attorney General to obtain any document, information or testimony pursuant to any federal or state law, rule or regulation.
- 24. The North Carolina General Court of Justice, Superior Court Division, may assert personal jurisdiction over BCBSNC in any action to enforce the provisions of this Agreement and to issue any orders or directions as may be necessary and appropriate for the enforcement or interpretation of, or compliance with, this Agreement.

Signed this the day of January, 2010.

BLUE CROSS AND BLUE SHIELD OF NORTH CAROLINA

By: Mauren K. O'Corner

Maureen K. O'Connor

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ROY COOPER, ATTORNEY GENERAL, STATE OF NORTH CAROLINA

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