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JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANNETTE WEIL, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

CIGNA HEALTH AND LIFE
INSURANCE COMPANY, CIGNA
HEALTH MANAGEMENT, INC.,
CIGNA BEHAVIORAL HEALTH,
INC., AND MCMC, LLC

Defendants.

Case No. CV 15-07074 MWF (JPR)

**JUDGMENT APPROVING CLASS
ACTION SETTLEMENT AND
DISMISSING THIS ACTION WITH
PREJUDICE**

Plaintiff Annette Weil (“Plaintiff”), on behalf of herself and the Settlement Class Members, Defendants Cigna Health and Life Insurance Co., Cigna Health Management, Inc., and Cigna Behavioral Health, Inc. (“Cigna Defendants” or “Cigna”) (with Plaintiff and the Cigna Defendants collectively referred to herein as the “Parties”), and Defendant MCMC, LLC (with Cigna Defendants collectively referred to herein as “Defendants”) have agreed to settle the above-captioned class action suit (the “Action”) on the terms and conditions set forth in the Stipulation of Settlement (the “Stipulation”) (this settlement process hereinafter referred to as the “Settlement”).

Currently pending is an application for final approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and of the Plan of Allocation; also pending is Class Counsel’s application for attorneys’ fees and

1 expenses (the “Fee Application”) and for the incentive award for the class
2 representative.

3 In connection with the Settlement and the current applications before the
4 Court, the Court makes the following findings:

5 A. On April 17, 2017, the Court entered an Order Preliminarily
6 Approving Settlement and Approving Notice of Proposed Settlement and
7 Fairness Hearing (the “Preliminary Approval Order”) certifying the
8 proposed Settlement Class under Rule 23(a) and Rule 23(b)(3);
9 appointing Class Counsel, the class representative, and a Settlement
10 Administrator; and directing that notice be given to the members of the
11 Settlement Class of the proposed Settlement and of a Fairness Hearing.

12 B. In the Preliminary Approval Order, the Court approved the form
13 and content of the Notice of Proposed Class Action Settlement and
14 Fairness Hearing (“Notice”) directed to members of the Settlement Class.

15 C. During the Notice period, June 16, 2017 through July 26, 2017,
16 the Settlement Administrator caused the Notice to be mailed to all
17 members of the Settlement Class, which informed members of the
18 Settlement Class of the Settlement terms and that the Court would
19 consider the following issues at the Fairness Hearing: (i) whether the
20 Court should grant final approval to the Settlement and Plan of
21 Allocation; (ii) whether the Court should enter final judgment dismissing
22 the Action with prejudice; (iii) the amount of attorneys’ fees, costs, and
23 expenses, if any, to be awarded to Class Counsel; (iv) whether to approve
24 the payment of the Incentive Amount to the class representative and the
25 amount of the Incentive Amount; and (v) any objections by members of
26 the Settlement Class to any of the above that were timely and properly
27 served in accordance with the Preliminary Approval Order.

28 D. Pursuant to the Notice, six (6) members of the Settlement Class

1 chose to exclude themselves from the Settlement by submitting timely and
2 valid Opt-Out Forms, and zero (0) objections to the Settlement were filed
3 with the Court and/or made at the Fairness Hearing.

4 E. On August 7, 2017, the Settlement Administrator filed with the
5 Court a declaration attesting to the mailing of the Notice to all members
6 of the Settlement Class and the results of the Notice.

7 F. Cigna mailed the Class Action Fairness Act Notices (“CAFA
8 Notices”) previously approved by the Court to the appropriate persons or
9 entities more than 90 days before the scheduled August 28, 2017 Fairness
10 Hearing date.

11 G. In accordance with the Notice, a Fairness Hearing was held on
12 August 28, 2017.

13 The Court having entered the Preliminary Approval Order, having heard
14 argument in support of the Settlement and Plan of Allocation, and the Fee
15 Application and request for the Incentive Amount for the class representative,
16 having reviewed all of the evidence, objections, and other submissions presented
17 with respect to the Settlement and Plan of Allocation, and the record of all
18 proceedings in this case, and having made the foregoing findings,

19 it is hereby ORDERED, ADJUDGED, AND DECREED that:

20 1. The Court has jurisdiction over the subject matter and personal
21 jurisdiction over the parties to the Action, including the Settlement Class Members.

22 2. The Stipulation and all of its exhibits (as filed with the Court) are
23 incorporated in this Judgment, including the definitions and terms set forth in the
24 Stipulation.

25 3. The Settlement Class is defined as the individuals identified on the
26 Class List filed by Cigna under seal with the Court on May 9, 2017, Dkt. No. 77.
27 The Class List reflects Cigna’s reasonable efforts to identify all individuals who
28 meet the criteria below:

1 Any individual: (1) who is or was enrolled in an ERISA-governed plan
2 administered by a Cigna Defendant, or insured under ERISA-governed health
3 insurance coverage offered by a Cigna Defendant in connection with a plan,
4 (2) whose TMS claims were administered by a Cigna Defendant, and (3) who
5 made a claim (including a request for pre-service authorization or a request
6 for payment or reimbursement) for TMS based on a diagnosis of depressive
7 disorder (a) that was denied and not paid, (b) that has a date of service or
8 letter denying pre-service authorization dated on or after September 8, 2011,
9 and (c) that was adjudicated as reflected in the class list data provided by
10 Cigna on February 16, 2017.

11 4. The Court finds that Plaintiff's counsel satisfies the requirements of
12 Rule 23(g). The Court further confirms for settlement purposes the appointment of
13 Plaintiff's counsel as Class Counsel under Rule 23(g).

14 5. The Court also confirms the appointment of Annette Weil as the class
15 representative of the Settlement Class.

16 6. Notice to the members of the Settlement Class has been given in an
17 adequate and sufficient manner and the Notice given constitutes the best notice
18 practicable under the circumstances, and was reasonably calculated to apprise
19 interested parties of the pendency of the Action, the nature of the claims, the
20 definition of the Settlement Class, and their opportunity to exclude themselves from
21 the Settlement Class or present objections to the Settlement. The Notice complied
22 in all respects with the requirements of the Federal Rules of Civil Procedure, the
23 United States Constitution (including the Due Process Clause), the rules of this
24 Court, and any other applicable law.

25 7. Members of the Settlement Class were given the opportunity to
26 exclude themselves from the Class through submission of Opt-Out Forms, and six
27 (6) individuals did so in a timely fashion. These individuals are identified on the
28 papers filed under seal with the Court on August 7, 2017.

1 8. No other individuals submitted Opt-Out Forms that were either
2 untimely or not adequately completed. All individuals, other than the six who
3 timely excluded themselves, are included in the Class. They are Settlement Class
4 Members and are bound by the terms of the Stipulation and this Judgment.

5 9. Based on the number of members of the Settlement Class on the Class
6 List and the number of timely and valid Opt-Out Forms submitted, the Settlement
7 Amount is \$2.75 million, in accordance with the formula set forth in the
8 Stipulation.

9 10. Cigna Defendants have satisfied the requirements of CAFA.

10 11. The Court finally approves the Settlement and Plan of Allocation in all
11 respects as fair, reasonable, adequate, and in the best interests of the Settlement
12 Class pursuant to Rule 23(e). The Settlement was not a product of fraud or
13 collusion, and the Court finds it satisfies Rule 23(e) after considering (i) the
14 complexity, expense, and likely duration of the Action; (ii) the stage of the
15 proceedings and amount of discovery completed; (iii) the factual and legal obstacles
16 to prevailing on the merits; (iv) the possible range of recovery; (v) the respective
17 opinions of the parties, including Plaintiff, Class Counsel, Defendants, and
18 Defendants' Counsel; and (vi) any objections submitted by members of the
19 Settlement Class.

20 12. The terms of the Stipulation, including all exhibits to the Stipulation
21 and to this Judgment, shall be forever binding on the Settlement Class.

22 13. Neither the Settlement, this Judgment, any papers related to the
23 Settlement, nor the fact of Settlement shall be used as a finding or conclusion of the
24 Court, or an admission by Defendants, of any fault, wrongdoing, or liability
25 whatsoever.

26 14. The parties and the Settlement Administrator shall carry out all the
27 terms of the Settlement, including the payment of the Settlement Amount, the
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1 Individual Share to each of the Settlement Class Members, and the release
2 provisions in the Stipulation in accordance with the terms of the Stipulation.

3 15. Defendants shall have no liability or responsibility for any payments,
4 fees, or costs under this Judgment or the Settlement aside from the Settlement
5 Amount. Under no circumstances shall Defendants be required to pay any amounts
6 in furtherance of this Settlement, this Judgment, and the administration of the
7 Settlement other than the payment of the Settlement Amount and payment of the
8 Incentive Amount.

9 16. Releases:

10 A. Settlement Class Members fully, finally, and forever release,
11 relinquish, and discharge Defendants and their Affiliated Entities from, and
12 shall forever be enjoined from prosecution of Defendants and their Affiliated
13 Entities for, any and all “Settled Claims,” which the Stipulation defines as:

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15 any and all past, present and future claims, actions, causes
16 of action, rights or liabilities, known or unknown, based
17 in whole or in part on facts existing as of the date on
18 which the motion for preliminary approval is filed with
19 the Court, arising out of or related to Defendants’
20 decisions concerning coverage of TMS for the treatment
21 of a depressive disorder. The Settled Claims include, but
22 are not limited to, claims, actions, rights or causes of
23 action arising under federal, state, or local statutory or
24 common law or mandate that were raised or could have
25 been raised in the Action, including, without limitation,
26 those seeking benefits or coverage under the terms of an
27 employee benefits plan insured or administered by Cigna;
28 claims under ERISA or the Paul Wellstone and Pete
Domenici Mental Health Parity and Addiction Equity Act
of 2008 (and amendments to any such laws); intentional
wrongdoing; fraud, misrepresentation, or negligent
misrepresentation; breach of fiduciary duty or prohibited
transaction; breach of contract; and breach of the duty of
good faith and/or fair dealing. The Settled Claims also
include, but are not limited to, claims for benefits,
damages, profits, accounting for profits, unjust

1 enrichment, attorneys' fees, punitive damages, injunctive
2 relief, or other equitable relief that were brought or could
3 have been brought by, or on behalf of, Plaintiff or any
4 Settlement Class Member, and claims related to this
5 Action and based on facts existing in whole or in part as
6 of the date on which the motion for preliminary approval
7 is filed with the Court that were raised or could have been
8 raised in this Action. For avoidance of doubt, "Settled
9 Claims" are limited to claims arising out of or related to
10 Defendants' decisions concerning coverage of TMS for
11 the treatment of a depressive disorder; and "Settled
12 Claims" do not include claims challenging individual
13 medical necessity determinations for coverage of TMS
14 made under the Revised TMS Coverage Policy or
15 revisions thereto, or claims challenging Cigna's failure to
16 pay for TMS treatment approved under the Revised TMS
17 Coverage Policy or revisions thereto.

18 B. Settlement Class Members expressly acknowledge certain
19 principles of law applicable in some states, such as Section 1542 of the Civil
20 Code of the State of California, which provide that a general release does not
21 extend to claims that a creditor does not know or suspect exists in his or her
22 favor at the time of executing the release, which if known by him or her must
23 have materially affected his or her settlement with the debtor. Settlement
24 Class Members expressly waive all rights related to the Settled Claims under
25 Section 1542 of the Civil Code of the State of California, which reads as
26 follows:

27 **A GENERAL RELEASE DOES NOT EXTEND**
28 **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.

Settlement Class Members acknowledge that they may have claims that are covered by the terms of this Settlement that they have not yet discovered.

1 Settlement Class Members acknowledge that they intend to release any and
2 all such known, unknown or unsuspected Settled Claims. Notwithstanding
3 the choice of law provision in the Settlement, to the extent that California or
4 other law may be applicable and enforceable, Settlement Class Members
5 hereby agree that the provisions of Section 1542 of the Civil Code of the
6 State of California and all similar federal or state laws, rights, rules, or legal
7 principles of any other jurisdiction that may be applicable here are hereby
8 knowingly and voluntarily waived and relinquished by Settlement Class
9 Members, and Settlement Class Members agree and acknowledge that this
10 provision is an essential term of the Settlement and this release.

11 C. Settlement Class Members are barred and permanently enjoined
12 from prosecuting any and all Settled Claims against Defendants or their
13 Affiliated Entities.

14 D. Until April 17, 2022, a Settlement Class Member shall not
15 initiate a facial legal challenge to the Revised TMS Coverage Policy or
16 revisions thereto, either individually or as a named plaintiff in a putative
17 class action; however, a Settlement Class Member may participate as an
18 absent class member in a putative class action that is a facial challenge to the
19 Revised TMS Coverage Policy or revisions thereto.

20 E. Nothing in this Judgment or the Stipulation shall preclude any
21 action to enforce the terms of the Settlement.

22 17. Plaintiff's Motion for Attorneys' Fees and Expenses and an Incentive
23 Award (Dkt. No. 78) is granted; the Court awards Class Counsel attorneys' fees in
24 the amount of \$907,500 and payment of expenses in the amount of \$9,370.47.
25 Consistent with the Settlement Agreement, the Court approves payment of the
26 awarded attorneys' fees and expenses immediately upon payment of the Settlement
27 Amount.

1 18. An incentive award in the amount of \$10,000 is approved for the class
2 representative.

3 19. Without affecting the finality of this Judgment in any way, this Court
4 will retain exclusive continuing jurisdiction over all parties and Settlement Class
5 Members with regard to implementation of the Stipulation, disposition of the
6 Settlement Fund, and enforcement and administration of this Stipulation, including
7 the release provisions thereof. The Court may order any appropriate legal or
8 equitable remedy necessary to enforce the terms of this Judgment and/or the
9 Settlement.

10 20. The Action is dismissed with prejudice and without costs (except as
11 otherwise provided herein).

12 21. This is a final and appealable judgment.

13 SO ORDERED

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17 DATED: August 28, 2017



MICHAEL W. FITZGERALD
United States District Judge