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HON. RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

R.H., by and through his parents and guardians, P.H. and N.B.-H., individually, on behalf of WASHINGTON ALLIANCE FOR HEALTHCARE INSURANCE TRUST HEALTH BENEFIT PLAN, and on behalf of similarly situated individuals and plans,

Plaintiff,

v.

PREMERA BLUE CROSS, LIFEWISE HEALTH PLAN OF WASHINGTON

Defendants.

NO. 2:13-cv-00097-RAJ

~~[REVISED PROPOSED]~~ ORDER:

- (1) GRANTING FINAL APPROVAL OF SETTLEMENT AGREEMENT;
- (2) APPROVING DISBURSEMENTS PURSUANT TO SETTLEMENT AGREEMENT;
- (3) APPROVING OPT-OUTS;
- (4) AUTHORIZING THE PAYMENT OF LATE CLAIMS; AND
- (5) SCHEDULING A *CY PRES* HEARING

1 Upon consideration of the Plaintiff's Motions for Final Approval, Attorney Fees,
2 Costs and Inventive Awards, it is hereby ORDERED as follows:

3 (1) With respect to the two classes involved in this action, the R.H. NDT
4 Settlement Class and the R.H. ABA Settlement Class (collectively "R.H. Classes"), the
5 Court approves the Settlement Agreement attached as *Appendix 1* to the Motion for
6 Preliminary Approval as fair, reasonable and adequate to the class pursuant to FRCP
7 23.

8 (2) The Court finds that the settlement notice to the R.H. Classes met the
9 requirements of Federal Civil Rule of Civil Procedure 23, due process and the
10 applicable law in that it fairly and adequately described the terms of the Agreement,
11 gave notice of the time and place of the hearing for final approval of the Agreement,
12 and described how a class member may comment on, opt out of, object to, or support
13 the Agreement. The Court finds that the direct mail notice process provided to the
14 R.H. Classes was the best notice practicable under the circumstances, and met the
15 requirements of FRCP 23 and due process.

16 (3) Upon the occurrence of the conditions set forth in Section 2 of the
17 Settlement Agreement, the Court authorizes the payment of claims administration
18 costs/fees and notice costs (related to the two classes involved in this matter only) from
19 the Settlement Trust Fund to class counsel. Class counsel is also authorized to pay
20 additional administration and arbitration costs out of the Settlement Trust Fund as they
21 become due, as necessary. Class counsel shall document and submit those additional
22 invoices and payments in connection with *cy pres* hearing scheduled in paragraph 10,
23 *below*.

24 (4) Upon the occurrence of the conditions set forth in Section 2 of the
25 Settlement Agreement, the Court authorizes the payment of \$153,603.73 to the parents
26 of the named plaintiff in this action, R.H., to reimburse them for their out-of-pocket

1 ABA costs as provided in Section 9 of the Settlement Agreement. Class counsel is
2 authorized to disburse these funds from the Settlement Trust Fund.

3 (5) With respect to the work performed on behalf of the R.H Classes, the
4 Court awards class counsel a fee of 35% of the common cash fund allocated to this
5 action. No class member has objected to this amount, which is significant evidence that
6 the class members find the request to be fair. As the combined population of the R.H.
7 NDT Class and R.H. ABA Class is roughly equal to the combined size of the A.G. NDT
8 Class and the J.P. ABA Class, half of the common fund is fairly allocated to this action,
9 as the parties have done in the Settlement Agreement at Section 8.4.6.1. *See also* Dkt.
10 No. 69-1, *Exh. A*, p. 5 and *Exh. B*, p. 5 (population data for ERISA and non-ERISA class
11 members is roughly equal). As a result, for class counsel's work in just this case before
12 this Court, it is awarded \$612,500. This amount is fair and reasonable given that class
13 counsel obtained broad prospective relief and future benefits for both the R.H. Classes,
14 which far exceeds the value of just the cash fund. Dkt. No. 74, ¶¶9-10 (Decl. of Frank
15 Fox, Ph.D.); *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1305 (W.D. Wa. 2001)
16 (benchmark fee looks at the total recovery obtained, "including future benefits."). This
17 award also results in a multiplier of 3.3, which is well within an acceptable range. *See*
18 *Vizcaino v. Microsoft*, 290 F.3d 1043, 1051 (9th Cir. 2002) (multiplier of 3.65 "was within
19 the range of multipliers applied in common fund cases"). Upon the occurrence of the
20 conditions set forth in Section 2 of the Settlement Agreement, the Court awards these
21 attorney fees to class counsel for its efforts in this action, and authorizes the
22 disbursement of these funds from the Settlement Trust Fund to class counsel.

23 (6) Upon the occurrence of the conditions set forth in Section 2 of the
24 Settlement Agreement, the Court awards litigation costs to class counsel in the amount
25 of \$8,355.18, reflecting litigation costs to date in just this action. The Court authorizes
26 the disbursement of these funds from the Settlement Trust Fund.

1 (7) Upon the occurrence of the conditions set forth in Section 2 of the
2 Settlement Agreement, R.H., through his parents P.H. and N.B.-H., is awarded an
3 incentive award in the sum of \$25,000. The Court authorizes the disbursement of these
4 funds from the Settlement Trust Fund.

5 (8) Upon the occurrence of the conditions set forth in Section 2 of the
6 Settlement Agreement, the Court authorizes the payment of approved class member
7 claims in this action. The Court also authorizes the payment of the two late claims
8 identified by class counsel which were received prior to December 21, 2014, provided
9 they are otherwise approved by the claims administrator for payment. The Court
10 authorizes the disbursement of these funds from the Settlement Trust Fund

11 (9) Individuals otherwise in the R.H. Classes who submitted opt-out forms,
12 attached at *Exhibit B* to Declaration of Eleanor Hamburger in Support of Plaintiff's
13 Unopposed Motion for Final Approval of Settlement Agreement (Dkt. No. 82), are
14 excluded from the R.H. Classes, and are not subject to any provision of the Settlement
15 Agreement.

16 (10) A hearing to consider the distribution of *cy pres* funds is scheduled for
17 July 10, 2015 at 9:00 a.m.

18 It is so ORDERED this 21st day of January, 2015.

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22 The Honorable Richard A. Jones
23 United States District Judge