

HON. RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C.S., by and through his parents and guardians, S.S. and K.S.; and D.Z., by and through his parents and guardians, E.Z. and J.Z., each individually, on behalf of similarly situated individuals, and on behalf of THE BOEING COMPANY MASTER WELFARE PLAN,

Plaintiffs,

v.

THE BOEING COMPANY MASTER WELFARE PLAN, and THE BOEING COMPANY EMPLOYEE BENEFIT PLANS COMMITTEE,

Defendants.

NO. 2:14-cv-00574-RSM

ORDER:

- (1) GRANTING FINAL APPROVAL OF SETTLEMENT AGREEMENT; AND
- (2) APPROVING AND DIRECTING DISBURSEMENTS FROM QUALIFIED SETTLEMENT TRUST FUND

Upon consideration of Plaintiffs' unopposed motion pursuant to Federal Rule of Civil Procedure 23(e) for an order approving the settlement of this Action (the "Motion for Final Approval"), in accordance with the Parties' Settlement Agreement dated as of June 5, 2015 (the "Agreement"), which together with the Appendices annexed thereto sets forth the terms and conditions for a settlement of the Action, and the Court having read and considered the Agreement, enters the following findings:

1 1. The Court has jurisdiction over the subject matter of this Lawsuit, the
2 Named Plaintiffs, the Class Members, and Defendants pursuant to 29 U.S.C. § 1132(e).

3 2. The Agreement, together with all of its exhibits, is incorporated herein,
4 and to the extent not otherwise defined herein, all capitalized words, terms, and
5 phrases used herein shall have the same meaning as used in the Agreement.

6 3. The Settlement Class is that defined and preliminary certified by the
7 Court for settlement purposes only under Fed. R. Civ. P. 23(b)(1) on June 9, 2015 (Dkt.
8 No. 36).

9 4. The Court finds that the requirements of Federal Rule of Civil Procedure
10 23 and due process have been satisfied in connection with the distribution of the notice
11 to class members. The record reflects that the Claims Processor mailed 1,428 approved
12 notices and claims material to participants or beneficiaries enrolled in a self-funded
13 health coverage option during the class period who have an Autism diagnosis and
14 made a claim for any Autism treatment provided while they were Washington State
15 residents (“Notices”). Dkt. No. 37. The Court finds that direct mail notice to class
16 members was the best notice practical, and meets the requirements of due process.

17 5. The Court further finds that appropriate notice to state and federal
18 official was provided pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28
19 U.S.C. § 1715. The Court also finds that Defendants have fully satisfied their
20 obligations under CAFA.

21 6. The Class Processor did not receive any objections or comments to the
22 Agreement.

23 7. Based on the record before it, the Court finds, pursuant to Federal Rule of
24 Civil Procedure 23(e), that the Agreement attached as Appendix 1 to the Motion for
25 Preliminary Approval is fair, reasonable, and adequate. The Court finds that: (a) the
26 Agreement resulted from extensive arm’s length negotiations; (b) there is no evidence

1 of fraud, collusion, or overreaching or that the rights of absent Class Members were
2 disregarded; and (c) counsel has sufficient experience in similar litigation to propose
3 and recommend the Agreement. The Court further finds that the Agreement includes
4 Coverage Agreements pertaining to ABA therapy to treat ASD as set forth in
5 Paragraph 6 of the Agreement. The Court also finds that the Agreement provides
6 significant retrospective relief in that class members with approved claims will receive
7 full reimbursement for unpaid ABA claims during the class period.

8 8. From the outset of this case, the Settlement Class faced and continues to
9 face numerous affirmative defenses and litigation risks that could create a complete bar
10 to recovery or leave Class Members with a recovery less than that presented under the
11 Agreement. The Agreement is fair and reasonable under the circumstances. Therefore,
12 the Agreement is approved under Federal Rule of Civil Procedure 23(e).

13 9. The Court authorizes the payment of approved class member claims in
14 this action. The Claims Processor is directed to pay all valid claims from the Qualified
15 Settlement Trust Fund. There is a dispute over whether a late claim is valid. If
16 informal resolution is not possible, then the parties will seek resolution of the dispute.

17 10. Class Counsel have sought an attorneys' fees award, exclusive of costs
18 and expenses, in an amount equal to 25% of the Settlement Amount, i.e., \$225,000, and
19 reimbursement for out-of-pocket litigation costs incurred totaling \$9,737.45.

20 11. The Court approves class counsel request for attorneys' fees totaling
21 \$225,000. No Class Member has objected to this amount, which is evidence that the
22 Class Members find the request to be fair. This amount is fair and reasonable. This
23 award also results in a multiplier of 1.59, which is within an acceptable range. *See*
24 *Vizcaino v. Microsoft*, 290 F.3d 1043, 1051 (9th Cir. 2002) (multiplier of 3.65 "was within
25 the range of multipliers applied in common fund cases"). The Court awards these
26 attorneys' fees to Class Counsel for its efforts in this action, and authorizes and directs

1 the disbursement of \$225,000 from the Qualified Settlement Trust Fund to Class
2 Counsel.

3 12. The Court also approves Class Counsel's request for reimbursement of
4 \$9,737.45 in litigation costs. These costs were documented, are reasonable, and were
5 necessary to advance the interests of the class. No Class Member has objected to Class
6 Counsel's request for reimbursement of litigation costs. In addition to the fees, the
7 Court also authorizes and directs the disbursement of \$9,737.45 from the Qualified
8 Settlement Trust Fund to Class Counsel as litigation costs in this matter.

9 13. The Court approves the payment of incentive awards to the two class
10 representatives. S.S. and K.S., the parents and guardians of C.S., are awarded \$10,000
11 as an incentive award. E.Z. and J.Z., the parents and guardians of D.Z., are also
12 awarded \$10,000 as an incentive award. The Court authorizes and directs the
13 disbursement of \$10,000 to each of the two families from the Qualified Settlement Trust
14 Fund.

15 14. The Released Claims, as defined in the Agreement, are released and
16 discharged as of the Effective Date of the Agreement. The Named Plaintiffs on behalf
17 of themselves and, to the full extent permitted by law, on behalf of the Class Members,
18 are enjoined and barred from commencing or prosecuting, either directly or indirectly
19 any of the Released Claims against any Releasee directly, representatively,
20 derivatively, or in any other capacity, whether by a complaint, counterclaim, defense,
21 or otherwise, in any local, state, or federal court, or in any agency or other authority or
22 forum, where located.

23 15. Defendants, upon the Effective Date of the Agreement, have released and
24 discharged the Named Plaintiffs, the Settlement Class, and Class Counsel from any and
25 all claims based on the institution or prosecution of the Action.

1 16. The Court recognizes that Defendants have denied and continue to deny
2 Named Plaintiffs' and Class Members' claims. Neither the Agreement, this Final
3 Approval Order, the Preliminary Approval Order, drafts of such orders, any papers
4 related to the Agreement, nor the fact of the Agreement shall be used as a finding or
5 conclusion of the Court, or an admission of Defendants or The Boeing Company, or
6 any other person or entity, of any fault, omission, mistake, or liability, nor as evidence
7 of Named Plaintiffs' or any Class Member's lack of conviction in the validity or
8 strength of their claims, and shall not be offered as evidence of any claimed liability in
9 this or any other proceeding. Evidence of the Agreement and the orders of this Court
10 approving same shall be admissible only in proceedings to enforce the Agreement or
11 this Order, but not as admission of liability in the underlying Action. This Order is not
12 a finding of the validity or invalidity of any of the claims asserted or defenses raised in
13 this Action.

14 17. Class counsel is directed to submit a final report to the Court regarding
15 claims processing and disbursement of funds from the Qualified Settlement Fund,
16 which shall be no later than 30 days after the Claims Processor processes all valid
17 claims. Within 60 days after the submission of this report, the Claim Processor shall
18 cause the Qualified Settlement Fund to return to The Boeing Company any remaining
19 funds in the Qualified Settlement Fund, minus any court-approved or agreed holdback
20 for expenses incurred by not yet paid, taxes, and estimated administrative expenses
21 necessary to complete the activities of, and close the Qualified Settlement Fund. Any
22 part of the holdback remaining after all expenses and other liabilities of the Qualified
23 Settlement Fund are paid shall be returned to The Boeing Company upon closure of the
24 Qualified Settlement Fund.

1 It is so ORDERED this 9 day of November 2015.

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5 RICARDO S. MARTINEZ
6 UNITED STATES DISTRICT JUDGE

7 Agreed and Presented by:

8 SIRIANNI YOUTZ
9 SPOONEMORE HAMBURGER

10 /s/ Richard E. Spoonemore

11 Richard E. Spoonemore (WSBA #21833)

Eleanor Hamburger (WSBA #26478)

12 Attorneys for Plaintiffs

13
14 MORGAN LEWIS & BOCKIUS, LLP

15 /s/ Jeremy P. Blumenfeld

16 Jeremy P. Blumenfeld (*admitted pro hac vice*)

17 Nicole A. Diller (*admitted pro hac vice*)

18 Roberta H. Vespremi (*admitted pro hac vice*)

19 RIDDELL WILLIAMS, P.S.

20 /s/ Laurence A. Shapero

21 Laurence A. Shapero (WSBA #31301)

22 Attorneys for Defendants