

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

B. E. and A.R., on their own behalf and on  
behalf of all similarly situated individuals,

Plaintiffs,

v.

DOROTHY F. TEETER, in her official  
capacity as Director of the Washington  
State Health Care Authority,

Defendant.

CASE NO. C16-0227-JCC

ORDER FINALLY APPROVING  
CLASS SETTLEMENT

**I. BACKGROUND**

On January 5, 2017, the Court preliminarily approved a proposed Settlement Agreement, attached at Dkt. No. 59-1 (Agreement), between the class and Defendant Dorothy F. Teeter, in her official capacity as the Director of the Washington State Health Care Authority (WHCA). (Dkt. No. 63.) In conjunction with that order, the Court directed notice to be provided by direct mail to all class members by January 26, 2017. The Court approved a form of notice.

The order further provided that class members who wished to comment on or object to the proposed Agreement were required to do so by March 21, 2017. Class members were informed of their rights, and of this deadline, in the notices that were mailed to them.

1 The order further scheduled a final settlement hearing, which was held on April 4, 2017,  
2 to consider objections and comments by class members and to determine whether the proposed  
3 Agreement is fair, reasonable, adequate, and should be approved by the Court.

## 4 II. FINDINGS

5 1. The parties have reached a Settlement Agreement providing coverage for direct  
6 acting antiviral medications for the treatment of class members diagnosed with Hepatitis C, the  
7 exact terms of which are set out in the Agreement.

8 2. The Agreement codifies this Court's May 27, 2016, preliminary injunction order,  
9 (Dkt. No. 40), for a period of three years and restricts WHCA's ability to enforce its February  
10 25, 2015 treatment policy that restricted access to treatment based on fibrosis score. The  
11 Agreement provides substantial prospective relief to the class members; *i.e.*, class members will  
12 be entitled to seek coverage for direct-acting antivirals to treat Hepatitis C without regard to their  
13 fibrosis score, subject only to narrow and reasonable exceptions.

14 3. The Court's order required WHCA to mail court-approved notices to class  
15 members by direct mail. The notices informed class members that they had an opportunity to  
16 object or submit comments to the Court regarding the proposed Agreement and that they must do  
17 so in writing by March 21, 2017. Counsel for WHCA confirmed, by declaration, that the notices  
18 were timely mailed. (Dkt. No. 66.)

19 4. The Court and the Parties received 21 letters concerning the Settlement  
20 Agreement. The majority of the letters were supportive of the Agreement, while others were  
21 written by class members seeking information on how to obtain treatment. Significantly, no class  
22 members objected to the Settlement Agreement or any of its terms or conditions.

## 23 III. CONCLUSIONS

24 5. Federal Rule of Civil Procedure 23(e) provides that "[t]he claims, issues, or  
25 defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the  
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1 court's approval." Compromise and arbitration of complex litigation is encouraged and favored  
2 by public policy. *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).

3 6. A presumption of fairness and adequacy attaches to a class action settlement  
4 reached in arm's-length negotiations by experienced class counsel after meaningful discovery.  
5 *See, e.g., Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9<sup>th</sup> Cir. 1982); *Pickett v.*  
6 *Holland Am. Line-Westours, Inc.*, 145 Wn. 2d 178, 209, 35 P.3d 351 (2001).

7 7. The following factors are generally considered when determining whether a  
8 settlement is fair, adequate, and reasonable: the likelihood of success by plaintiffs; the amount  
9 of discovery or evidence; the settlement terms and conditions; recommendation and experience  
10 of counsel; future expense and likely duration of litigation; recommendation of neutral parties, if  
11 any; number of objectors and nature of objections; and the presence of good faith and absence of  
12 collusion. *Officers for Justice*, 688 F.2d at 625.

13 8. Based upon these factors, the Court finds that the Agreement is fair, reasonable,  
14 and in the best interests of the class. The requirement of Federal Rule of Civil Procedure 23 and  
15 due process have been satisfied.

16 9. Specifically, the Court concludes that the Agreement was the result of arm's-  
17 length bargaining. It was reached after discovery and motions practice, including a preliminary  
18 injunction order from this Court. Although the class had a strong likelihood of success, a  
19 settlement in which class members will be able to obtain coverage of direct acting antivirals for  
20 the treatment of their Hepatitis C without regard to fibrosis score achieves the goals of the  
21 litigation. There is no evidence of collusion between the parties, and the agreement was reached  
22 in good faith.

23 10. The class was provided with adequate notice, and due process has been satisfied  
24 in connection with the distribution of the notice. There were no objections to the proposed  
25 Agreement.  
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1           **IV.     EXTENSION OF INJUNCTION ORDER**

2           11.     Pursuant to Sections 2.3 and 5.1.1 of the Settlement Agreement, the class  
3 requests, and WHCA does not oppose, that the Court order that the requirements contained in the  
4 May 27, 2016 Preliminary Injection Order, (Dkt. No. 40), remain in effect for a period of three  
5 years from the effective date of the settlement. The Court so orders. WHCA shall not apply its  
6 February 25, 2015 Hepatitis C virus (HCV) treatment policy, including its exclusion of all  
7 treatment based on fibrosis score, and is required to provide coverage for prescription  
8 medications to treat HCV without regard to fibrosis score, consistent with existing state and  
9 federal Medicaid requirements for a period of three years from the effective date of settlement.  
10 The Court retains jurisdiction for purposes of enforcement of this Order.

11           **V.     ATTORNEY FEES AND LITIGATION COSTS**

12           12.     Pursuant to the Settlement Agreement, WHCA is obligated to pay the reasonable  
13 fees of class counsel. Class counsel seeks \$335,377 in fees, which WHCA has elected not to  
14 oppose. The Court finds this sum reasonable, and it is approved.

15           13.     No objections were received to class counsel’s fee request.

16           14.     Class counsel is also entitled to reimbursement of its actual litigation costs and  
17 expenses. Class counsel seeks reimbursement in the sum of \$8,016.86, reflecting its  
18 unreimbursed actual out-of-pocket litigation costs and expenses. This request is supported, is  
19 reasonable, and is approved.

20           15.     No objections were received to class counsel’s request for an award of costs and  
21 expenses.

22           **VI.    CASE CONTRIBUTION AWARDS**

23           16.     Pursuant to the Settlement Agreement, WHCA has agreed to pay each class  
24 representative the sum of \$7,500 as a case contribution award. This amount is reasonable, and is  
25 approved.

26           17.     No objections were received to the request for case contribution awards.

