

AGREEMENT TO SETTLE CLAIMS
P.S. v. PEBB, No. 14C15068
Marion County Circuit Court, Oregon

This Agreement to Settle Claims (“Agreement”) is between P.S., a minor, by and through her parents, Kelly Alford-Smith and Duane Smith, Kelly Alford-Smith, the “Settlement Class” (as defined in ¶1.17) and N.B., a minor by and through his parents, L.B. and B.B. (collectively, “Claimants”) and Defendants State of Oregon and the Oregon Public Employees’ Benefit Board (collectively “Defendants,” defined in ¶1.10). Claimants and Defendants are referred to collectively as the “Parties.” This Agreement is a full expression of the agreements between the Parties.

RECITALS

P.S. is a covered dependent under the PEBB Providence Choice Plan, a self-funded health plan and Alford-Smith is a participant under that Plan, and was a participant prior to April 29, 2014.

A dispute arose between P.S. and PEBB as to coverage for Applied Behavior Analysis (“ABA”) prior to April 29, 2014. On April 29, 2014, P.S. and Alford-Smith filed an action entitled, *P.S., Alford-Smith v. Oregon Public Employee Benefit Board and the State of Oregon*, No 14C15068, pending in Marion County Oregon. P.S. brought claims on her own behalf and on behalf of similarly situated others for declaratory and injunctive relief related to PEBB’s exclusion of coverage for ABA therapy. Alford-Smith brought claims on her own behalf and on behalf of similarly situated others under O.R.S. 659A.112.

N.B., by and through his parents L.B. and B.B., was a covered dependent under the PEBB Providence Choice Plan and asserts that he incurred other compensable expenses during the period of January 1, 2014 to July 31, 2014, relating to non-coverage of ABA under the Plan during that period.

By this Agreement, the Parties wish to resolve all claims and all potential claims with respect to coverage of ABA therapies for all individuals under the Plans.

AGREEMENT

1. Definitions.

1.1 “ABA” or “Applied Behavioral Analysis” shall mean: the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences to produce significant improvement in human social behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior.

1.2 “Action” shall mean: *P.S., Alford-Smith v. Oregon Public Employee Benefit Board and the State of Oregon*, No. 14C15068, a class action pending in Marion County, Oregon.

1.3 “Agreement Execution Date” shall mean: the date on which this Agreement is fully executed.

1.4 “Autism” shall mean: a diagnosis of an Autism Spectrum Disorder of 299.0, 299.10, 299.80 under the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (DSM IV-TR or DSM-V or any subsequent revisions thereto).

1.5 “Claims Processor” shall mean Providence Health Plan.

1.6 “Class Counsel” shall mean: SIRIANNI YOUTZ SPOONEMORE HAMBURGER and MEGAN E. GLOR ATTORNEYS AT LAW.

1.7 “Class Members” shall mean: those individuals who comprise the Settlement Class.

1.8 “Class Period” shall mean: January 1, 2010 through January 30, 2015.

1.9 “Court” shall mean: the Marion County Circuit Court, Oregon.

1.10 “Defendants” shall mean: (a) Oregon Public Employee Benefit Board; and (b) State of Oregon.

1.11 “Effective Date of Settlement” shall mean: the date on which all of the conditions to settlement set forth in section 2 have been fully satisfied or waived.

1.12 “Final” shall mean: with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceeding for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and final disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.

1.13 “Final Decision” shall mean: a decision of the Oregon Supreme Court or of any intermediate appellate court that is not appealed within the time permitted for such appeals or that, if appealed, is not accepted for review.

1.14 “Named Plaintiffs” shall mean: P.S. by and through her parents Kelly Alford-Smith and Duane Smith, and Kelly Alford-Smith.

1.15 “Parties” shall mean: Named Plaintiffs, the Settlement Class, N.B. and Defendants.

1.16 “Plans” means the Providence Choice Plan and the Statewide Plan, the self-funded employee health plans offered through PEBB.

1.17 “Settlement Class” shall mean: a class to be certified for settlement purposes consisting of all individuals who have not opted out of such class and who fall into one of the following Subclasses:

ABA Claims Subclass:

All individuals who:

- (1) are or were enrolled in the Plans on or after January 1, 2010 through January 30, 2015;
- (2) have a diagnosis of Autism and;
- (3) incurred unreimbursed expenses for or incurred debt for (or whose parents/guardians incurred unreimbursed expenses for or debt for) Applied Behavioral Analysis services for the treatment of Autism during the Class Period.

Employment Claims Subclass:

All individuals who:

- (1) are or were an employee of the State of Oregon and;
- (2) are the parent or legal guardian of a dependent who has a diagnosis of Autism who was enrolled under the Plans, on or after January 1, 2010 through January 30, 2015 and;
- (3) incurred unreimbursed expenses for or incurred debt for Applied Behavioral Analysis services for the treatment of Autism for such dependent during the Class Period.

1.18 “Settlement” shall mean: the settlement to be consummated under this Agreement.

1.19 “Settlement Class Released Claims for ABA Claims Subclass” shall mean: any and all claims demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating to coverage for ABA therapy that were brought, or that could have been brought, by the Named Plaintiffs against Defendants in the Action on behalf of a class, including but not limited to any claims under federal, state or local law or at equity, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorney’s fees and costs, expenses, prejudgment and post-judgment interest, statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This Release shall be binding on Plaintiffs, the ABA Claims Subclass and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

1.20 “Settlement Class Released Claims for Employment Claims Subclass” shall mean: any and all claims demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating to coverage for ABA therapy that were brought, or that could have been brought, by the Named Plaintiffs against Defendants in the Action on behalf of a class, including but not limited to claims under federal, state or local laws, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type,

attorney's fees and costs, expenses, prejudgment and post-judgment interest, statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This release specifically includes any employment discrimination claims that could have been brought by or on behalf of the Employment Claim Subclass. This Release shall be binding on Named Plaintiffs, the Employment Claims Subclass, and all their heirs, beneficiaries, representatives, assigns, attorneys and agents.

1.21 "N.B. Released Claims" shall mean: all claims, demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating in any way to claims for coverage of ABA services by PEBB during the Class Period, including but not limited to claims for breach of fiduciary duty, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorney's fees and costs, expenses, prejudgment and post-judgment interest, statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This release specifically includes any employment discrimination claims that could have been brought by or on behalf of the parents or guardians of N.B.

1.22 "Releasees" shall mean: Defendants, their affiliates, subsidiaries, their successors, predecessors, officers, directors, representatives, employees, agents, assigns, attorneys, independent contractors, and any and all other entities and persons in privity with them which could be ostensibly liable for the claims being released, including without limitation Providence Health & Services, and its affiliates, including without limitation, Providence Health Plan.

2. Conditions to Effectiveness of the Settlement.

2.1 General. The Settlement provided for in this Agreement shall not become binding unless and until each and every one of the conditions in sections 2.2 through 2.4 have been satisfied or waived.

2.2 Court Approval. The Settlement contemplated under this Agreement shall have been approved by the Court, as provided herein. The Parties agree jointly to recommend to the Court that it approve the terms of the Agreement and the Settlement contemplated hereunder. The Parties agree to promptly take all steps and efforts contemplated by the Agreement, including the following:

2.2.1 Certification of Settlement Class. The Court shall have certified the Settlement Class. Defendants' Counsel and Class Counsel shall make a joint stipulated motion for certification of the Settlement Class as part of the motions to approve this Agreement.

2.2.2 Motions for Preliminary Approval and Notice. The Court shall have preliminarily approved the Agreement ("Preliminary Approval Order") and authorized the issuance of notice and opt-out rights to the Settlement Class. Class Counsel shall make a motion for preliminary approval and authorization to send notice ("Preliminary Motion"). The Court must conclude that the notice to be sent fairly and adequately describes the terms of the Agreement, gives notice of the time and place of the hearing for final approval of the Settlement, describes

how a Class Member may comment on, object to, opt out of, or support the Settlement. The Court must also conclude that the manner of providing the notice to Class Members is the best notice practicable under the circumstances.

2.2.3 Issuance of Class Notice. On the date set by the Court in its Preliminary Approval Order, Defendants shall have caused the Court-approved notice to be delivered to the relevant Class Members.

2.2.3.1 Defendants shall cause class notice, with any related costs to be paid by Defendants, to be issued as follows:

- (1) U.S. Mail. All PEBB self-funded plan enrollees who have submitted claims with an Autism diagnosis at any time from January 1, 2010 to the present shall receive class notice via U.S. mail.
- (2) Webpage. Defendants shall prominently post, on the PEBB webpage, a link to the settlement agreement, notice, claim form and instructions to claim form.

2.2.3.2 Class Counsel Sirianni Youtz Spoonemore Hamburger shall create a webpage which contains the following material:

- (1) A description of P.S. v. PEBB, including a summary of the litigation to date.
- (2) A description of the Settlement Class definition.
- (3) A summary of the proposed settlement derived from the class notice.
- (4) A timeline and schedule of events, including deadlines for submitting claims, objecting, and opting out.
- (5) How to contact Class Counsel for additional information.
- (6) Litigation and Settlement documents, or links to documents, including:
 - i. complaint and answer;
 - ii. class notice;
 - iii. instructions to claim form;
 - iv. claim form;
 - v. opt-out form;
 - vi. motion for preliminary approval; and
 - vii. the Court's order on preliminary approval.

2.2.4 Fairness Hearing. On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in the hearing ("Fairness Hearing") during or after which the Court will determine by order (the "Final Order"): (i) the proposed Settlement between the Parties is fair, reasonable and adequate and should be approved by the Court; and (ii) the requirements of ORCP 32 and due process have been satisfied in connection with the distribution of the notice.

2.2.5 Motion for Final Approval. On the date set by the Court in its Preliminary Approval Order, Plaintiffs shall have filed a motion (“Final Approval Motion”) for an order giving final approval to this settlement (“Approval Order”).

2.3 Claims Processing Completed. Claims Processing, pursuant to section 7, has been completed.

2.4 No Termination. The Settlement shall not have terminated pursuant to section 10.

3. Releases.

3.1 Releases of the Releasees by Named Plaintiffs and the Settlement Class. Upon the Effective Date of Settlement, Named Plaintiffs on behalf of themselves and, to the full extent permitted by law, on behalf of the Settlement Class that they represent, unconditionally release and forever discharge Releasees from any and all Settlement Class Released Claims for both the ABA Claims subclass and the Employment Claims subclass that Plaintiffs or the Settlement Class has directly, indirectly, derivatively, or in any other capacity ever had or now have. This Release shall be binding on Plaintiffs, the Settlement Class members, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

3.2 Release of the Releasees by N.B. Upon the Effective Date of Settlement, N.B., by and through his parents L.B. and B.B. unconditionally release and forever discharge Releasees from any and all N.B. Released Claims that N.B. has directly, indirectly, derivatively, or in any other capacity ever had or now has. This Release shall be binding on N.B. and all his lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents. This Release is contingent upon execution of a separate release agreement by Providence Health Plan in favor of N.B.

3.3 Defendant’s Release of Named Plaintiffs, Settlement Class, N.B., and Class Counsel. Upon the Effective Date of Settlement, Defendants, to the full extent permitted by law, absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class, and Class Counsel from any and all claims that Defendants may have or had with respect to the Action.

3.4 Upon the Court’s approval of this Settlement Agreement, all claims under the Action shall be dismissed with prejudice.

4. Representations and Warranties.

4.1 Knowing and Voluntary. The Parties, and each of them, represent and warrant that they are voluntarily entering into this Agreement as a result of arm’s-length negotiations; in executing this Agreement they are relying upon their own judgment, belief and knowledge, and the advice and recommendations of their own counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof. The Parties, and each of them, represent and warrant that they have carefully read the contents of this Agreement; they have made such investigation of the facts pertaining to the Settlement, this Agreement and all of the matters pertaining thereto as they deem necessary; and

this Agreement is signed freely by each person executing this Agreement on behalf of each party. Each individual executing this Agreement on behalf of any other Person does hereby represent and warrant to the other parties that he or she has the authority to do so.

4.2. No Assignment and Tax Consequences. Each class member who submits a claim shall warrant and represent that he/she/they are the sole owner of the claims submitted, and he/she/they have not assigned any such claims to anyone, including to any health care providers. No representation is made by the Released Parties regarding any potential tax consequences of the payments made as a result of this Agreement, and the Parties agree and understand that the Released Parties do not have any responsibility for any tax consequences.

5. No Admission of Liability. The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing herein shall be deemed to constitute an admission of any wrongdoing by Defendants or any of the Releasees. Neither the fact nor the terms of this Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement or arising out of or relating to the Final Orders and motions for approval.

6. Prospective ABA Coverage and Agreements.

6.1 Coverage of ABA Therapy. Defendant PEBB will continue to cover ABA under its self-funded plans at least through January 1, 2022, but may continue to provide ABA coverage beyond that date.

6.2 Developmental Disability Exclusion. Defendant PEBB will not deny coverage of ABA therapy based upon an exclusion of mental health services designed to treat developmental disabilities.

6.3 Experimental/Investigational Exclusion. Defendant PEBB shall not deny or limit ABA coverage as defined in this Agreement on the basis that it is “experimental” or “investigational.”

6.4 Medical Necessity. Nothing herein shall be construed to require coverage for ABA that is not medically necessary, as determined by PEBB or its designee.

6.5 Prior Authorization. The Parties agree that the plans’ requirement for Prior authorization for coverage of ABA shall permit coverage, if medically necessary, approved back to the date of the most recently approved individualized ABA treatment plan for that course of treatment.

6.6 IRO Rights Preserved. Nothing herein, or in any clinical review criteria, shall be construed to limit a Class Member’s right to seek an independent review of any denial of ABA under law. Defendant PEBB agrees to comply with existing law regarding notification of Class Members, in any denial of coverage for ABA, of their appeal rights, including the right to seek independent review.

7. Claims Processing.

7.1 Claims Processing. Unreimbursed ABA costs incurred by a Class Member (or the parents or legal guardians on behalf of the Class Member) during the Class Period shall be eligible for reimbursement as follows:

7.1.1 Payment to Holder. Payment to Class Members shall be made to the certificate holder, i.e., the parent(s) or legal guardian(s) of the Class Member or their properly documented assignee.

7.1.2 Submission of Claims. Class Members (or their parents and/or legal guardians) will be provided with a Claim Form in connection with the Notice of Settlement provided herein.

7.1.2.1 Elements of Claim. The Claim Form shall require the Class Member (or his or her designee) to indicate and verify (1) the DSM diagnosis of the Class Member; (2) the date of the diagnosis and the name of the provider who made the diagnosis; (3) the date(s) of ABA treatment (month/year); and (4) the unreimbursed charges or debt incurred associated with that ABA treatment (excluding unreimbursed charges associated with annual deductibles, co-payments and co-premiums).

7.1.2.2 Documentation Required. The following documentation will be required:

7.1.2.2.1 The actual or approximate date(s) of ABA treatment, which can be evidenced by clinical notes, an appointment schedule/log created at the time of treatment, invoices seeking payment that include dates of service, a signed letter from the provider, a sworn statement attesting to the dates, or other evidence of similar reliability; and

7.1.2.2.2 The unreimbursed charges or debt incurred associated with ABA treatment, which can be evidenced by cancelled checks, credit card account statements, provider ledgers, invoices stamped "paid" or showing amounts due, checking account statements, signed letters from the provider or the provider's employer documenting the amount paid or debt incurred (so long as the letter clearly connects payments/debt with ABA Services dates), or other evidence of similar reliability and containing similar specificity connecting payments/debt to the ABA services date.

7.1.3 The Claims Processor shall review the claim forms to confirm that the items indicated in Sections 7.1.2.1, 7.1.2.2.1, and 7.1.2.2.2, above, are present in the claim form and that the submitted documentation supports the claimed amount. The Claims Processor shall also confirm with the Defendants that the Class Member was enrolled under a PEBB self-funded health benefit plan covered by this Agreement at the time the unreimbursed charges were incurred. The Claims Processor shall further confirm that the claimed sums are not duplicative of each other or

of previously submitted claims paid by Defendants and that the claims were incurred during the Class Period.

7.1.3.1 Opportunity to Cure. In the event of a deficiency of proof, the Claims Processor shall provide the Class Member (or the parent/legal guardian of the Class Member) with an explanation of the deficiency and a reasonable opportunity, no less than 30 days and not to exceed 90 days, to cure the deficiency.

7.1.3.2 Assistance in Perfecting Claim. A copy of all deficiency notices shall also be provided to Class Counsel, who may assist the Class Member in curing any problems with the Class Member's claim.

7.1.4 Disposition of Claims. The Claims Processor shall provide Class Counsel and Defendants' Counsel with copies of all Claim Forms submitted by Class Members (or their designees), along with the disposition of each claim (denied, approved at \$X, etc.). The disposition of claims shall be provided to Class counsel at least thirty (30) days before the Fairness Hearing (See ¶2.2.4).

7.1.5 Payment of Claims. Defendants shall pay all final claims approved by the Claims Processor up to an aggregate cap of Four Hundred Thousand Dollars (\$400,000.00), which includes the payments to be made under Sections 7.1.7, 7.1.8, and 7.1.9 of this Agreement. If the total amount of all approved claims exceeds \$400,000, then each claim shall be paid on a *pro rata* basis with all other approved claims provided that the threshold payment level is met as set forth in section 9.5. Payment of final claims shall be made 35 days after entry of final approval of the Settlement Agreement, if no appeal of the final approval order is taken. If entry of the final approval of the Settlement Agreement is appealed, then payment of all final claims approved by the Claims Processor shall occur within 35 days of the issuance of the Final Decision upholding approval of this Settlement Agreement.

7.1.6 Dispute Resolution Process. Defendants, Class Counsel or a Class Member may challenge the decision of the Claims Processor. Any dispute over whether a claim is valid or not shall be submitted for final and binding dispute resolution based on paper submissions before a sole neutral arbitrator, to be selected by the parties. Defendants shall bear the cost of the arbitrator's fee and each party shall bear his/her/its own costs and attorney fees incurred in the dispute resolution proceedings if any. Claims submitted under this provision will become final upon the rendering of the arbitrator's decision. Any claims determined to be valid as a result of the Dispute Resolution Process must be accounted for and paid according to the deadlines set forth in ¶7.1.5.

7.1.7 Payment of Unreimbursed ABA Claims for P.S. The Parties agree that the documented amount of unreimbursed ABA claims incurred by P.S. during the Class Period is \$30,395.25 and this amount shall be paid pursuant to ¶7.1.5.

7.1.8. Payment of Compensable Expenses for N.B. The Parties agree that N.B. has incurred documented expenses during the period of January 1, 2014 to July 31, 2014, relating to

PEBB's non-coverage of ABA during that period in the amount of \$7,748.00. This amount shall be paid pursuant to ¶7.1.5.

7.1.9. Payment of Alford-Smith Employment Discrimination Claim. In consideration of the promises and obligations hereunder and in order to avoid the ongoing expense of litigation, Defendants agree to pay Alford-Smith Seventeen Thousand Five Hundred Dollars (\$17,500) relating to her claim under ORS 659A.112 brought in the Action. This amount shall be paid pursuant to ¶7.1.5.

8. Effective Date of Settlement.

8.1 Effective Date. This Agreement shall be fully effective and binding on the date on which all of the conditions to settlement set forth in section 2 have been fully satisfied or waived.

8.2 Disputes Concerning the Effective Date of Settlement. If Parties disagree as to whether each and every condition set forth in section 2 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within ten (10) business days thereafter, shall present their dispute for mediation and/or arbitration under Section 12.1.

9. Termination of Agreement to Settle Claims.

9.1 Court Rejection. If the Court declines to preliminarily or finally approve the Settlement, then this Agreement shall automatically terminate, and thereupon become null and void.

9.2 Court of Appeals Reversal. If the Oregon Court of Appeals reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this section.

9.3 Supreme Court Reversal. If the Oregon Supreme Court reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this section.

9.4 Pending Appeal. If an appeal is pending of an order declining to approve the Settlement, this Agreement shall not be terminated until final resolution of dismissal of any such appeal, except by written agreement of the Parties.

9.5. Threshold Payment Level. This Agreement shall terminate if under Section 7.1.5 due to the \$400,000 cap on approved claims, approved claims could not be paid at least at 60% of their approved value.

9.6 Threshold Participation. If more than 10 individuals opt out through a timely submission by qualified Class Members, Defendants at their sole option, may terminate the

Agreement by delivering notice of their termination within 15 days of the final calculation of opt outs received by the Claims Processor. For purposes of this paragraph, a timely opt out by a parent/guardian on his/her own behalf and on behalf of their dependent who incurred unreimbursed ABA expenses during the Class Period, shall be treated as a single opt out.

10. Consequences of Termination. If the Agreement is terminated and rendered null and void for any reason, then the following shall occur:

10.1 Reversion of Action. Each Action shall revert to its status as of October 23, 2015.

10.2 Releases and Terms Void. All Releases given or executed pursuant to this Agreement shall be null and void and none of the terms of the Agreement shall be effective or enforceable.

11. Attorneys' Fees/Costs, Case Contribution Award, and Cost of Administration.

11.1 Incentive Award. An incentive award for P.S., by and through her parents Duane Smith and Kelly Alford-Smith, of Seventeen Thousand Five Hundred Dollars (\$17,500) as class representative of the ABA Claims Subclass will be requested by Class Counsel to be paid by Defendants. This Agreement is not contingent upon this payment to P.S. as Class representative, and shall not terminate by reason of the Court awarding less than requested. Defendants shall take no position with respect to this application of an incentive award, which is subject to the Court's review and approval, provided that the requested amount does not exceed the above.

11.2 Costs of Notice and Administration. All costs and expenses of class notice set forth in ¶¶2.2.3.1, and claims processing and administration, as set forth in ¶¶7.1.3-7.1.4 shall be paid by Defendants.

11.3 Attorneys Fees and Costs. An attorney fee award in the amount of \$255,000 and costs in the amount of \$10,392.81 will be requested by Class Counsel to be paid by Defendants. This Agreement is not contingent upon an award of attorney fees at the level requested by Class Counsel provided the Court does not order more than the above amounts and shall not terminate by reason of the Court awarding less than the amounts requested by Class Counsel. Defendants will take no position with respect to Class Counsel's application for attorney's fees, provided that the request does not exceed the amount set forth herein.

12. Miscellaneous.

12.1 Dispute Resolution. The Parties agree that any dispute regarding the terms, conditions, releases, enforcement or termination of this Agreement shall be resolved by Sid Brockley through mediation and, if mediation is unsuccessful, through binding arbitration without the ability or right to appeal with a sole neutral arbitrator selected by the parties.

12.2 Governing Law. This Agreement shall be governed by the laws of State of Oregon without regard to conflict of law principles.

12.3 Severability. The provisions of this Agreement are not severable.

12.4 Amendment. Before entry of any Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of any Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court.

12.5 Waiver. The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

12.6 Construction. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision thereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.

12.7 Principles of Interpretation. The following principles of interpretation apply to this Agreement:

12.7.1 Headings. The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

12.7.2 Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

12.7.3 References to a Person. References to a person include references to an entity, and include successors and assigns.

12.8 Survival. All representations, warranties and covenants set forth in herein shall be deemed continuing and shall survive the Effective Date of Settlement.

12.9 Entire Agreement. This Agreement contains the entire agreement among the Parties and their counsel relating to the claims brought in this litigation.

12.10 Counterparts. This Agreement may be executed by exchange of executed faxed or PDF signature pages, and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

12.11 Binding Effect. This Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit

plans, predecessors, and transferees, and their past and present shareholders, officers, directors, agents, and employees.

12.12 Further Assurances. Each of the Parties agree, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith promptly execute and deliver such other documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.

SIGNATURES:

STATE OF OREGON

By _____ DATED: _____
Its _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2015, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of the STATE OF OREGON, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the STATE OF OREGON, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of the STATE OF OREGON.

Witness my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

PUBLIC EMPLOYEES BENEFIT BOARD

By _____ DATED: _____
Its _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2015, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of the PUBLIC EMPLOYEES BENEFIT BOARD, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the PUBLIC EMPLOYEES BENEFIT BOARD, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of the PUBLIC EMPLOYEES BENEFIT BOARD.

Witness my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

PIPER SMITH, by and through her parent, KELLY ALFORD-SMITH

By _____ DATED: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, KELLY ALFORD-SMITH, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 2015.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

PIPER SMITH, by and through her parent, DUANE SMITH

By _____ DATED: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, DUANE SMITH, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 2015.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

NIKO BOSKOVIC, by and through his parent, LORETA BOSKOVIC

By _____ DATED: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, LORETA BOSKOVIC, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 2015.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

NIKO BOSKOVIC, by and through his parent, BOJAN BOSKOVIC

By _____ DATED: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, BOJAN BOSKOVIC, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 2015.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

APPROVED:

SIRIANNI YOUTZ
SPOONEMORE HAMBURGER

Eleanor Hamburger
Attorneys for the Plaintiff and the Settlement Class

DATED: _____

MEGAN E. GLOR ATTORNEYS AT LAW

Megan E. Glor
Attorneys for the Plaintiff and the Settlement Class

DATED: _____

KARR TUTTLE CAMPBELL

Medora A. Marisseau
Attorneys for Defendants

DATED: _____

ELLEN F. ROSENBLUM, ATTORNEY GENERAL

Sheila H. Potter
Attorneys for Defendants

DATED: _____