HON. RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.D., by and through his parents and guardians, E.D. and H.D., individually, on behalf of similarly situated individuals, and on behalf of T-MOBILE USA, INC. EMPLOYEE BENEFIT PLAN,

Plaintiff,

v.

T-MOBILE USA, INC. EMPLOYEE BENEFIT PLAN; T-MOBILE USA, INC.; and UNITED HEALTHCARE SERVICES, INC.,

Defendants.

NO. 2:15-cv-00180-RAJ

PLAINTIFF'S UNOPPOSED MOTION:

(1) FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT;

(2) FOR APPROVAL OF CLASS NOTICE PACKAGE; AND

(3) TO ESTABLISH A FINAL SETTLEMENT APPROVAL HEARING AND PROCESS

NOTED FOR CONSIDERATION: March 25, 2016

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I. INTRODUCTION

Plaintiff A.D., by and through his parents, brought this class action lawsuit against T-Mobile USA, Inc. Employee Benefit Plan ("Plan"); T-Mobile USA, Inc.; and United Healthcare Services, Inc. (collectively "T-Mobile") seeking coverage for medically necessary treatment of his autism spectrum disorder ("ASD"). After filing suit, the parties engaged in discussions in an effort to resolve both the prospective and retrospective class claims. The parties were eventually successful. *See* Agreement to Settle Claims, attached hereto at ***Appendix 1*** ("Settlement Agreement").

Under the terms of the Settlement Agreement, T-Mobile will provide broad prospective and retrospective relief to plaintiff and the proposed settlement class.

With respect to prospective relief, T-Mobile has eliminated all of its exclusions and treatment limitations on Applied Behavior Analysis ("ABA") therapy coverage, the essential treatment for ASD, which was the subject of this case. *See* ***App. 1,*** ¶6. T-Mobile has agreed to clinical coverage criteria which are consistent with that agreed to by the major health insurers in Washington State (Regence, Premera and Group Health), as well as Washington's Medicaid and Public Employees health benefit plans. Spoonemore Decl., ¶3. Class members now have comprehensive coverage of ABA therapy to treat ASDs, and the ability to access that care.

With respect to retrospective relief, the Settlement Agreement establishes a $676,935 settlement fund to pay past claims (whether previously submitted or not) for ABA therapy, attorneys' fees, costs and incentive awards. Based upon the claims processes in other cases and an analysis by plaintiff's expert, class counsel anticipates that the settlement fund will be sufficient to pay all claims at or near 100%. Spoonemore Decl., ¶5.

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Accordingly, plaintiff moves for an Order preliminarily approving the Settlement Agreement. Specifically, pursuant to Federal Rule of Civil Procedure 23(e), plaintiff hereby moves the Court to:

(a) preliminarily approve the Settlement Agreement;

(b) authorize the mailing of notice to class members; and

(c) establish a final settlement approval hearing and process.

II. EVIDENCE RELIED UPON

Plaintiff relies upon the Declaration of Richard Spoonemore. While T-Mobile does not oppose this motion, it does not necessarily agree with the facts or legal conclusions alleged herein.

III. FACTS

This case was filed on February 10, 2015, on behalf of A.D., a child with ASD, and on behalf of similarly situated individuals. Dkt. No. 1. Plaintiff alleged that T-Mobile's *de facto* exclusion of ABA therapy to treat ASD violated the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("Mental Health Parity Act" or "Parity Act"), 29 U.S.C. § 1185a. Dkt. No. 1, ¶9.

The proposed Settlement Agreement was reached after months of negotiations with T-Mobile. The parties exchanged informal discovery, proposed offers and counteroffers and drafts of the proposed Settlement Agreement. Spoonemore Decl., ¶2. On January 29, 2016, the parties had agreed to the $676,935 settlement fund. *Id.*

IV. OVERVIEW OF THE SETTLEMENT AGREEMENT

This "Overview" section provides a summary of the key terms of the proposed Settlement Agreement. The "Law and Argument" section of this brief then addresses why the Court should preliminarily approve the agreement and authorize the class notice package to be sent.

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A. T-Mobile Will Provide Coverage for ABA Under Agreed Clinical Criteria.

Under the terms of the Settlement Agreement, T-Mobile is providing ABA coverage without age or treatment limitations or any other exclusion that categorically denies ABA coverage. The Settlement Agreement removes the barriers to access and specifically prevents T-Mobile from denying coverage for any of the reasons historically raised by other insurers or ERISA Plans. ***App. 1***, ¶6.2. T-Mobile must affirmatively provide coverage for ABA under the agreed criteria, creating a clear "path to coverage" for beneficiaries. ***App. 1***, ¶6.1; *App. A*. The ABA coverage criteria follow a "best practices" model for the delivery of ABA, informed by experts from the University of Washington's Autism Clinic and the Seattle Children's Autism Center. Spoonemore Decl., ¶3. These coverage criteria are now the standard for ABA coverage in Washington State and have been adopted by Premera, Regence, Group Health, Medicaid and the Public Employees health benefits plan, among others.[1] *Id.*

B. The Agreement Provides for Retrospective Relief on ABA Therapy Claims.

The Settlement Agreement provides for a $676,935 fund from which payments will be made for class members' claims for uncovered ABA therapy services during the class period, attorneys' fees, costs, and incentive awards. ***App. 1***, ¶8.4.

The calculation of damages in this case is based upon the same damages model that has ensured coverage of 100% of claims in other settlements. Spoonemore Decl., ¶5. Specifically, the parties used the settlement figure from *C.S. v. Boeing*, United States District Court for the Western District of Washington, Cause No. 2:14-00574-RSM, and

[1] These insurers only adopted ABA coverage after years of class action litigation brought by plaintiff's counsel, including a decision adverse to Regence by the Washington Supreme Court in *O.S.T. v. Regence BlueShield*, 181 Wn.2d 692 (2014).

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adjusted it to account for T-Mobile's smaller enrollment.[2] The *Boeing* case provided 100% reimbursement to all claimants, just as in every other ABA class action brought by plaintiff's counsel.[3]

A claims processor, Seattle-based Nickerson & Associates, will review the claims submitted to confirm that the four requisite items are on each claim form. ***App. 1***, ¶8.5.3. The claims processor must provide a class member who has a deficient claim form an opportunity to cure any problems, and class counsel is empowered to assist the class member in making any claim. ***App. 1***, ¶8.4.3.2. Any dispute concerning whether a claim should be granted or denied is subject to binding arbitration before (ret.) Judge George Finkle. ***App. 1***, ¶8.5.4.

Class members will be eligible for payment from the settlement fund upon submission of a claim form that verifies: (1) the class member's DSM diagnosis and date of diagnosis; (2) the date(s) of ABA treatment for that diagnosis (month/year); (3) the provider(s) of the treatment; (4) the unreimbursed charges or debt incurred with that treatment; and (5) the ABA treatment was medically necessary to treat the class member's autism. ***App. 1***, ¶8.4.2.1. *See also* ***App. 2***, Class Notice Package (proposed Notice, Claim Form, Claim Form Instructions, and Claim Form Certification) (proposed notice). The proposed notice and claims process is virtually identically to that approved by this Court in *R.H. v. Premera BlueCross*. *See R.H. v. Premera BlueCross*, 2014 U.S. Dist. LEXIS 108503 (W.D. Wash., Aug. 6, 2014).

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[2] Boeing settled for a $900,000 fund, plus $150,000 in notice and administrative expenses, for a total of $1,050,000. Spoonemore Decl., ¶5.

[3] In truth, all claimants received more than 100% given that no co-pays, deductibles or co-insurance were deducted from claims in any of these cases. Spoonemore Decl., ¶5.

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C. *Pro Rata* Reduction in the Event of Insufficient Funds

Class counsel anticipates that the settlement amount will be sufficient to pay all claims at 100%, even after payment of attorneys' fees, costs, incentive awards and costs of administration. Spoonemore Decl., ¶5. However, if insufficient funds remain to pay all claimants at 100% after fees, costs, incentive awards and expenses, then all class members will receive a *pro rata* distribution of their approved claimed amount. ***App. 1***, ¶8.4.7.

D. Reversion

If funds remain after the payment of claims, attorneys' fees, costs, incentive awards and costs of administration, then those funds shall revert to T-Mobile USA, Inc. ***App. 1***, ¶8.4.6.

E. Class Release

If approved (and in return for the benefits under the Settlement Agreement), the class will release T-Mobile from any and all claims related to coverage of ABA therapy services to treat ASD that could have been brought in this litigation. ***App. 1***, ¶3.

F. Attorney Fees, Costs and Incentive Awards

Actual out-of-pocket litigation costs will be paid from the Settlement Fund. ***App. 1***, ¶12.2. An incentive award of up to $10,000 for the parents of A.D. will be also be requested from the Court, which—if approved—would also be paid from the Settlement Fund. ***App. 1***, ¶12.3.

With respect to attorneys' fees, the Agreement provides that class counsel may seek up to 35% of the Settlement Amount of $676,935, or $236,927.25. ***App. 1***, ¶12.1.

All of these requests are subject to Court review and approval. ***App. 1***, ¶¶12.1, 12.2, 12.3.

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V. LAW AND ARGUMENT

A. Legal Standards for the Approval of a Class Action Settlement Agreement

Compromise of complex litigation is encouraged and favored by public policy. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Federal Rule of Civil Procedure 23 governs the settlement of certified class actions and provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." FRCP 23(e). The Court must consider the settlement as a whole, "rather than the individual component parts," to determine whether it is fair and reasonable. *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) ("The settlement must stand or fall in its entirety"). Where, as here, the settlement agreement includes broad prospective relief, the Court must include consideration of that relief in its decision. *See, e.g., Laguna v. Coverall N. Am., Inc.*, 2014 U.S. App. LEXIS 10259, 12 (9th Cir., June 3, 2014); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

FRCP 23(e) sets forth the following procedures:

> (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
>
> (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
>
> (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
>
> (4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

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> (5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

Id.

Judicial review of a proposed class settlement typically requires two steps: a preliminary approval review and a final fairness hearing. Preliminary approval is not a commitment to approve the final settlement; rather, it is a determination that "there are no obvious deficiencies and the settlement falls within the range of reason." *Smith v. Professional Billing & Management Services, Inc.*, 2007 WL 4191749, *1 (D.N.J. 2007) (citing *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D. N.Y. 1997)). *See also Nat'l Rural Telecomms. Coop. v. DIRECTTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); MANUAL FOR COMPLEX LITIGATION (4th), § 21.632 at 320 (2004). If the settlement is preliminarily approved by the Court, then notice of the proposed settlement and the fairness hearing is provided to class members. At the fairness hearing, class members may object to the proposed settlement, and the Court decides whether the settlement should be approved.

As part of the Court's consideration, it should consider factors including:

> [T]he strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Staton, 327 F.3d at 959. Some of these factors, such as the reaction of class members, can only be gauged after preliminary approval and notice is provided. Especially at this preliminary phase, the question is not "whether the final product could be prettier,

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smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, 150 F.3d at 1027.

In this case, the parties negotiated at arm's length over the course of several months to arrive at a compressive global Settlement Agreement that delivers immediate coverage and back benefits to plaintiff and the class without years of litigation. The settlement is patently fair and adequate, and was not the result of collusion between the parties.

B. Plaintiff's Case Is Strong, But the Risk that Litigation Could Go on for Years Was Also High.

Plaintiff believes that the case for prospective coverage and reimbursement of out-of-pocket payments for wrongly denied ABA therapy claims was very strong and that they would have prevailed at trial. The proposed settlement reflects this strong position. It provides for prospective coverage of ABA therapy, reimbursement of class members' claims for out-of-pocket expenses related to back benefits, payment of attorneys' fees, costs and an incentive award, all accomplished within a year of filing the original action. This resolution is a victory for all involved without the delay and additional attorneys' fees and costs that further litigation would have entailed.

Similar litigation against the Washington State Public Employees Benefits Board, Group Health, Premera and Regence took many years, extensive discovery, multiple motions, appellate work, and even, in the case of Regence, a battle before the Washington Supreme Court before the cases reached resolution. Because T-Mobile worked closely with plaintiff to develop an agreeable resolution early in the litigation, attorneys' fees and expenses for both parties were dramatically lower than in any of the other recent Mental Health Parity settlements.

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C. The Amount Offered in Settlement Is Fair, Adequate and Reasonable.

The Settlement Fund of $676,935 is fair, adequate and reasonable, particularly in light of the broad injunctive relief also obtained. Class counsel believes that the amount is sufficient to pay all claims of class members. Based upon confidential enrollment data provided by T-Mobile, class counsel was able calculate the anticipated utilization rates under a model developed by Frank G. Fox, Ph.D., a Ph.D. health economist who has served as an expert for class counsel in ABA cases. *See* Spoonemore Decl., ¶¶4–5.

Although Dr. Fox's model predicted costs that are greater than the final Settlement Fund, class counsel anticipates that the claims can be paid at 100%. *Id*. Dr. Fox's analysis modeled the entire universe of unpaid claims, not the class members who are likely to submit claims. *See Chesbro v. Best Buy Stores, L.P.*, 2014 U.S. Dist. LEXIS 25404 (W.D. Wash. 2014) (participation of only 8.5% of class members is "within the normal range for participants in class actions."). Dr. Fox's analysis did not exclude claims that were paid by secondary insurance, Medicaid or other third-party payors such as the state's birth-to-three program. He did not include cost-sharing deductions. Moreover, class counsel's estimates regarding the claims processes have proven to be accurate in its other Mental Health Parity Act cases. Spoonemore Decl., ¶5. In every case to date, claims were paid at 100%. *Id*. In fact, the settlement amount in this case is essentially the amount agreed to in *C.S. v. Boeing*, as adjusted for T-Mobile's lower enrollment. *Id*. The claims process in *Boeing* has concluded, and every claimant will be paid 100% (with no co-pays, deductibles or co-insurance applied). There is no reason to believe that the amount here will be insufficient, and every reason to believe that the same outstanding result will follow.

Even if the Settlement Agreement results in only partial compensation to class members, it should still be approved because of the broad injunctive relief provided to class members. *See, e.g., Laguna,* 2014 U.S. App. LEXIS 10259, *12; *Linney*, 151 F.3d at 1242

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(in both cases, the Ninth Circuit affirmed approval of a settlement which provided broad prospective relief in addition to a cash settlement fund).

D. The Settlement Agreement Provisions Governing Attorneys' Fees, Costs and Incentive Award Are Fair and Reasonable.

The Settlement Agreement permits class counsel to seek fees of up to 35% of the Settlement Fund. ***App. 1***, ¶12.1. The benchmark percentage in the Ninth Circuit is 25% of the common fund, with the opportunity to adjust the percentage upwards or downwards depending upon special circumstances (including exceptional results, the level of risk involved in the litigation, any additional common benefits obtained in the Settlement Agreement beyond the cash fund, and a showing that the fee award is similar to standard fees in other similar litigation). *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002). *Accord,* MANUAL FOR COMPLEX LITIGATION (4th), § 14.121 (2004) ("[T]he factor given the greatest emphasis is the size of the fund created, because 'a common fund is itself the measure of success … [and] represents the benchmark from which a reasonable fee will be awarded.'"); NEWBERG ON CLASS ACTIONS, § 14.6 (same).

Courts typically award fees in the range of 20% to 50% of the common benefit created by counsel's efforts. *Id. See also* MANUAL FOR COMPLEX LITIGATION (4th), § 14.121 (2004). Indeed, 20%-30% is the "usual" range under Ninth Circuit authority. *Vizcaino,* 290 F.3d at 1047-48. However, the "usual" range is not a cap or ceiling on fees. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1310 (9th Cir. 1990) ("The benchmark percentage should be adjusted … when special circumstances indicate that the percentage recovery would be either too small or too large…."). When supported by "the complexity of the issues and the risks," as well as exceptional results, a court can—and should—depart from that range. *See, e.g., In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (approving 33⅓% award); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming 33⅓% award).

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The first step in computing a fee under the common fund doctrine is to calculate the total value of the benefit conferred upon the class. *Vizcaino,* 142 F. Supp. 2d 1299, 1302 ("[U]nder federal case law, the 'benchmark' percentage of recovery fee is 25% of the recovery obtained, ***including future benefits***, with 20 to 30% as the usual range of common fund fees."); *Vizcaino*, 290 F.3d at 1049 ("[N]onmonetary benefits conferred by the litigation are a relevant circumstance" to consider when evaluating the total benefit of the litigation). This value includes the amount a defendant was forced to pay into a fund, as well as sums paid (or to be paid) directly by a defendant to class members due to a forced change in policy:

> Though in many common fund cases the size of the recovery is easily determined, if prospective or other nonmonetary relief is granted, the recovery may be difficult to evaluate. Nevertheless, the fee should be based on a percentage of the value of ***all*** the relief obtained for the class of beneficiaries through counsel's effort, whether monetary or nonmonetary.

M.F. Derfner and A. Wolf, COURT AWARDED ATTORNEY FEES, ¶2.06, pp. 2-86-87 (2000) (emphasis in original). *See also* A. Conte, ATTORNEY FEE AWARDS, § 2.05, p. 37 (1993) ("[N]umerous courts have concluded that the ***amount of the benefit conferred*** logically is the appropriate benchmark against which a reasonable common fund fee charge should be assessed") (emphasis added); *id*., § 2.22 (all benefits should be presented to court in common fund fee application).

In this case, class counsel not only secured a cash fund but also obtained a significant expansion of coverage of ABA services for class members. In fact, ***the majority of value in this settlement is not the cash but the promise of ABA therapy coverage into the future without visit limits or other caps***. Even if the prospective relief of ABA coverage for all eligible T-Mobile beneficiaries were valued at just $676,935, then

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35% of the cash settlement amount would constitute a very small percentage of the actual common benefit to the class.

The Court may "cross-check" the percentage approach by considering the potential loadstar fee award. *Vizcaino,* 290 F.3d at 1050. Performing the "cross-check" reveals that the fee request is justified. Through April of 2015, class counsel has dedicated over 149 hours to litigating this case. Spoonemore Decl., ¶6. More time will be spent through the notice and approval process, and class counsel will update its fee and expense chart when filing its motion for attorneys' fees. At class counsel's normal hourly rates, the time value of the effort to date exceeds $81,000. At a 35% fee award, the amount sought would represent a multiplier of 2.89. *Vizcaino*, 290 F.3d at 1051 (approving a percentage-of-the-settlement award where the loadstar cross-check multiplier was 3.65, and noting that most lode-star cross-check multipliers are often in the 1-4 range). A multiplier of more than 2 is reasonable considering the *Kerr* factors, including the risks involved in the litigation, the length of the litigation, the novelty of the issues involved, the contingent nature of the cases, and awards in similar cases. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). Here, class counsel obtained systemic, far-reaching change for all Washington T-Mobile participants early in the case. The risk involved in the litigation was high, which has been reflected in awards in similar cases.[4] *See, e.g.*, Spoonemore Decl., *Exh. A,* p. 2 (in *R.H. v. Premera BlueCross,* the Court approved a settlement award of 35% of the cash fund with a multiplier of 3.3).

In any event, the Court need not approve class counsel's attorneys' fees at this stage. The relevant provision in the Settlement Agreement only secures an agreement

[4] Unlike *R.H.* and the prior ABA cases, this case was only brought under the Federal Parity Act—the state act did not apply.

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not to oppose a later motion for attorneys' fees up to 35%. Preliminary approval of the Settlement Agreement does not bind the Court to any provision of attorneys' fees. *See, e.g., Jones v. GN Netcom, Inc.*, 654 F.3d 935, 945 (9th Cir. 2011) (the Ninth Circuit's rejection of a fee award does not necessitate invalidation of the trial court's approval of a settlement agreement).

E. The Proposed Incentive Award Provision Is "Fair, Adequate and Reasonable."

The Ninth Circuit has established the factors to consider when reviewing incentive awards for named plaintiffs. The Court must consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, the amount of time and effort the plaintiff expended in pursuing the litigation and reasonable fears of workplace retaliation" when determining whether an incentive award is appropriate. *Staton,* 327 F.3d at 977, citing to *Cook v. Niedert,* 142 F.3d 1004, 1016 (7th Cir. 1998). "Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit." *Cook*, 142 F.3d at 1016 (approving a $25,000 incentive award); *see, e.g., Louie v. Kaiser Found. Health Plan, Inc.,* 2008 U.S. Dist. LEXIS 78314, 18 (S.D. Cal., Oct. 6, 2008) (preliminary approval of a $25,000 incentive award where named plaintiffs "have protected the interests of the class and exerted considerable time and effort by maintaining three separate lawsuits, conducting extensive informal discovery, hiring experts to analyze discovered data and engaging in day-long settlement negotiations with a respected mediator").

Here, A.D., through his parents, dedicated substantial time, effort, and risk to protect the interests of the class. Class counsel will submit declarations from the parents of the class representatives detailing their specific efforts in the application for fees, costs

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and incentive awards, assuming the Settlement Agreement is preliminarily approved.[5] At this point the Court need not decide whether such an incentive award should be ordered. The Court should conclude that the provision in the Settlement Agreement permitting class counsel to seek an incentive award for of up to $10,000 for the parents of each class representative does not render the proposed Settlement Agreement unfair or a product of collusion.

F. The Settlement Was the Result of Arm's-Length Negotiations.

This case was negotiated at arm's length over a period of many months. Spoonemore Decl., ¶2. The resulting Settlement Agreement closely follows similar agreements negotiated by class counsel with Regence, Premera, Group Health, and Moda. *Id*. T-Mobile did not get any special deal related to the coverage mandates that plaintiff and his counsel have worked to enforce. The only unique benefit provided to T-Mobile by settling this case early in the litigation was class counsel's agreement to permit a reversion of unclaimed funds—a concession that made sense in light of T-Mobile's decision to not engage in protracted litigation but, instead, to quickly and in good faith negotiate and then promptly institute an ABA benefit even prior to an agreement on a comprehensive deal.

G. There Was Sufficient Discovery.

Given the *de facto* exclusion of ABA coverage and class counsel's vast background in similar cases, there was little need for significant factual discovery in this case. This litigation turned on a key legal question: whether a plan may limit or exclude coverage of medically necessary ABA therapies to treat ASD through Plan design and

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[5] The proposed $10,000 incentive awards are ***below*** those approved by courts in other similar litigation, reflecting the early resolution of this case without written discovery, depositions or the need for multiple mediation sessions. In *R.H. v. Premera BlueCross,* the named plaintiffs were awarded incentive awards of $25,000 per plaintiff family after extensive discovery, years of litigation, and multiple mediation sessions. Spoonemore Decl., *Exh. A*, p. 3.

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administration under the Federal Parity Act. Class counsel required little discovery to address this dispositive legal issue. With respect to damages, class counsel obtained sufficient information discovery from T-Mobile to effectively model the expected utilization of ABA for the class. Spoonemore Decl., ¶4. Discovery was sufficient to reach a settlement of this matter.

H. Class Counsel Is Experienced in Similar Litigation and Recommend Settlement.

Class counsel is very experienced in similar class action litigation and strongly recommends that the Settlement Agreement be approved. Spoonemore Decl., ¶8.

I. The Proposed Notice, Opportunity to Submit Objections and Fairness Hearing Are Sufficient to Safeguard the Interests of Class Members.

The Court should also approve the proposed notice and direct that it be mailed to each class member. *See* ***App. 2***. This proposed notice adequately summarizes the Settlement Agreement, informs class members where they can get further information, explains how class members can file objections and/or opt out, and informs class members of the date and time of the settlement approval hearing. It also explains the process for submitting claims. Interested class members will have an opportunity to consult with class counsel or an attorney of their own choosing. Those who wish can get more information about the Settlement Agreement from class counsel. Lastly, should any objections of substance be made, the Court can provide the objector with an opportunity to be heard at the final approval hearing.

J. A Final Approval Hearing Should Be Set.

Finally, class members with comments, concerns or objections to any aspect of the Settlement Agreement should be provided with an opportunity to submit written material for the Court's consideration. Class members who wish to appear in person to address the Court with any comments, concerns or objections should also be provided

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with an opportunity to appear at a hearing before the Court decides whether to finally approve the Settlement Agreement.

Class members who wish to appear in person should notify the Court and the parties of their desire to be heard, along with a statement of the issue or issues that they would like to address. The proposed notice and proposed order submitted with this motion require that such notice be given so that the Court and the parties can consider and address the specific issues that class members wish to raise at the hearing. Finally, the class requests that the Court set a hearing date to consider class members' comments and to decide whether the Settlement Agreement should be finally approved and implemented.

K. Proposed Scheduling Order

The class proposes that the Court issue a scheduling order along with preliminary approval of the Settlement Agreement. The proposed Order includes a proposed schedule which includes deadlines for: (1) sending class notice; (2) class counsel filing for attorneys' fees, costs and incentive awards; (3) class members filing opt-outs, comments and objections with the Court; and (4) the filing of a motion for final approval of the Settlement Agreement.

VI. CONCLUSION

Plaintiff respectfully requests that the Court:

(a) preliminarily approve the Settlement Agreement;

(b) authorize the mailing of notice to the settlement class members; and

(c) establish a final settlement approval hearing and process.

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DATED: February 26, 2016.

By: */s/ Eleanor Hamburger*
By: */s/ Richard E. Spoonemore*
By: */s/ Charles D. Sirianni*

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- **Barbara J Duffy**
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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

- (no manual recipients)

DATED: February 26, 2016, at Seattle, Washington.

/s/ Charles D. Sirianni
Charles D. Sirianni (WSBA #40421)

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