

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. C16-227-JCC

ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER PRELIMINARILY APPROVING THE SETTLEMENT

Upon consideration of Plaintiffs' unopposed motion pursuant to Federal Rule of Civil Procedure 23(e) for an order preliminarily approving the settlement of this action (Motion for Preliminary Approval, Dkt. No. 59) and in accordance with the parties' settlement agreement (Agreement, Dkt. No. 59-1 at 2) the Court ORDERS as follows:

1. Based on the record before it, the Court tentatively finds, pursuant to Federal Rule of Civil Procedure 23(e), that the Agreement attached as Appendix A to the Motion for Preliminary Approval (Dkt. No. 59-1 at 2) is fair, reasonable, and adequate. The Court finds that:

- (a) the Agreement resulted from extensive arm's-length negotiations;
- (b) there is no evidence at this stage of the proceedings of fraud, collusion, or

1 overreaching, or that the rights of absent Class Members were disregarded; and

2 (c) counsel has sufficient experience in similar litigation to propose the Agreement.

3 The Agreement codifies this Court's May 27, 2016, preliminary injunction order (Dkt. No. 40)
4 for a period of three years and restricts Washington State Health Care Authority's (WHCA)
5 ability to enforce its February 25, 2015, treatment policy that restricted access to treatment based
6 on fibrosis score. The Agreement appears to provide substantial prospective relief to the class
7 members; *i.e.*, class members will be entitled to seek coverage for direct-acting antivirals to treat
8 Hepatitis C without regard to their fibrosis score, subject only to narrow and reasonable
9 exceptions. The Court's preliminary approval is subject to change pending the outcome of the
10 final settlement approval hearing (Fairness Hearing) established herein.

11 2. The Court finds that the proposed class notices, attached as Appendices B, C, and
12 D to the Motion for Preliminary Approval (Dkt. No. 59 at 16, 21, 26) meet the requirements of
13 Federal Rule of Civil Procedure 23, due process, and the applicable law. The proposed notices
14 fairly and adequately describe the terms of the Agreement, including the attorney fees and costs
15 and incentive awards; give notice of the time and place of the Fairness Hearing; and describe
16 how a class member may comment on, object to, or support the Agreement. The Court ORDERS
17 that the blanks in the proposed notices shall be filled in prior to mailing to reflect the dates and
18 deadlines set forth in this Order.

19 3. The Court DIRECTS the WHCA to mail, by direct first-class United States mail,
20 forwarding requested, the following notices:

21 (1) to all class members who are currently on Medicaid and previously requested
22 treatment with a DAA, the form of notice attached as Appendix C to the Motion for
23 Preliminary Approval (Dkt. No. 59-1 at 21);

24 (2) to all class members who are not currently on Medicaid and previously requested
25 treatment with a DAA, the form of notice attached as Appendix D to the Motion for
26 Preliminary Approval (Dkt. No. 59-1 at 26);

1 (3) to all other class members, the form of notice attached as Appendix B to the Motion
2 for Preliminary Approval (Dkt. No. 59-1 at 16).

3 WHCA shall complete its mailing within 21 days after the date of this Order. WHCA shall
4 submit a declaration to the Court confirming its compliance with the class notice procedures
5 contained in this Order and in the Agreement within 30 days of the date of this Order.

6 4. Within 14 days of the date of this Order, WHCA shall prominently post on its
7 web page a link to the Agreement and the class notice in the form attached as Appendix B to the
8 Motion for Preliminary Approval (Dkt. No. 59-1 at 16).

9 5. Within 14 days of the date of this Order, class counsel shall establish the
10 settlement web page identified in the class notices. The web page shall contain the information
11 referenced in the Agreement section 2.2.3.2.

12 6. The Court concludes that direct mail notice to the class, in addition to web-based
13 notice, is the best notice practicable under the circumstances and complies with the requirements
14 of Federal Rule of Civil Procedure 23, due process, and any other applicable law.

15 7. A Fairness Hearing to consider whether the proposed Agreement is fair,
16 reasonable, and adequate and should be finally approved is scheduled for April 4, 2017, at 9 a.m.
17 at the United States Courthouse, 700 Stewart Street, Seattle, WA 98101.

18 8. A class member who wishes to comment on or object to the Agreement must
19 submit written comments and/or objections to the Court no later than March 21, 2017.

20 9. A class member who wishes to appear at the Fairness Hearing may do so if he or
21 she submits written notice to the Court, with copies to counsel, that he or she intends to appear in
22 person or through counsel. In that written notice to appear, the Class Member must describe the
23 nature of his or her comment or objection. Written notice of intent to appear must be filed with
24 the Court and mailed to counsel by March 21, 2017.

25 10. A Motion for Final Approval of the Agreement, together with any supporting
26 declarations or other documentation, must be filed no later than March 28, 2017. Class counsel

1 shall also mail the Motion for Final Approval to all class members who object to the Agreement
2 or file written notice with the Court that they intend to appear at the Fairness Hearing.

3 11. Class counsel shall file any motion for an award of attorney fees or
4 reimbursement of expenses or costs and any motion for an incentive awards no later than
5 February 17, 2017. Class counsel shall post this motion on the settlement web page within three
6 days of its filing with the Court.

7 12. The Court reserves the right to adjourn the date of the Fairness Hearing without
8 further notice to class members, and it retains jurisdiction to consider all further applications
9 arising out of or connected with the Agreement. The Court may approve the Agreement, with
10 such modifications as may be agreed to by the Parties, if appropriate, without further notice to
11 class members.

12 DATED this 5th day of January 2017.



John C. Coughenour
UNITED STATES DISTRICT JUDGE

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