

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CHARLES DES ROCHES, et al.,  
Plaintiffs,  
v.  
CALIFORNIA PHYSICIANS' SERVICE, et  
al.,  
Defendants.

Case No. 16-CV-02848-LHK

**FINAL ORDER AND JUDGMENT  
APPROVING SETTLEMENT AND  
DISMISSING THIS ACTION WITH  
PREJUDICE**

Re: Dkt. No. 238

Plaintiffs Charles Des Roches, Sylvia Meyer, and Gayle Tamler Greco (“Plaintiffs”), individually and on behalf of the Class, as defined below, and Defendants California Physicians’ Service d/b/a Blue Shield of California, Blue Shield of California Life & Health Insurance Company (together with California Physicians’ Service, “Blue Shield”), and Human Affairs International of California (“HAI,” and together with Blue Shield, “Defendants”) (with Plaintiffs and the Defendants collectively referred to herein as the “Parties”), determined to settle the above-captioned matter (the “Action”) on the terms and conditions set forth in the Stipulation of Settlement dated January 15, 2018 and all exhibits thereto (the “Stipulation”), the original of

1 which is filed with the Clerk of the Court (this settlement process is hereafter referred to as the  
2 “Settlement”).

3 Currently pending is an application for final approval of the Settlement pursuant to Rule  
4 23(e) of the Federal Rules of Civil Procedure and of the Plan of Allocation; also pending is Class  
5 Counsel’s application for attorneys’ fees and reimbursement of expenses and for an incentive  
6 award to the class representatives (the “Fee Application”).

7 In connection with the Settlement and the applications currently before the Court, the  
8 Court makes the following findings:

9 A. On February 5, 2018, the Court entered an Order Preliminarily Approving  
10 Settlement and Approving Notice of Proposed Settlement and Fairness Hearing (the “Preliminary  
11 Approval Order”), appointing a Settlement Administrator, and directing that notice be given to the  
12 members of the Class of the proposed Settlement and Fairness Hearing.

13 B. In the Preliminary Approval Order, the Court approved the form of Notice of  
14 Proposed Class Action Settlement and Fairness Hearing (“Notice”) directed to members of the  
15 Class.

16 C. During the period April 6, 2018 through June 21, 2018, the Settlement  
17 Administrator caused the Notice to be mailed to all Class members, which informed Class  
18 members of the Settlement terms and that the Court would consider the following issues at the  
19 Fairness Hearing: (i) whether the Court should grant final approval to the Settlement and Plan of  
20 Allocation; (ii) whether the Court should enter final judgment dismissing the Action with  
21 prejudice; (iii) the amount of attorneys’ fees, costs, and expenses, if any, to be awarded to Class  
22 Counsel; (iv) whether to approve the payment of the Incentive Amount to the class representatives  
23 and the amount of the Incentive Amount; and (v) any objections by members of the Class to any  
24 of the above that were timely and properly served in accordance with the Preliminary Approval  
25 Order. The Notice also provided Class members with adequate notice and an opportunity to  
26 object, pursuant to 42 C.F.R. § 2.64, to disclosure of data relating to the member’s request for  
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1 coverage for substance use treatment to Class Counsel and the Settlement Administrator. If any  
2 Class member objected, the member’s Class Claims Data was not disclosed to Class Counsel and  
3 the Settlement Administrator, but the member remained in the Class (unless the objection was  
4 accompanied by a valid opt-out request) in accordance with the Preliminary Approval Order.

5 D. Pursuant to the Notice, three members of the Class chose to exclude themselves  
6 from the Settlement, and one objection to the Settlement was filed with the Court and made at the  
7 Fairness Hearing.

8 E. On June 21, 2018, the Settlement Administrator filed with the Court proof of  
9 mailing of the Notice to all members of the Class.

10 F. Defendants mailed the Class Action Fairness Act Notices (“CAFA Notices”)  
11 previously approved by the Court to the appropriate persons or entities.

12 G. In accordance with the Notice, a Fairness Hearing was held on June 28, 2018.

13 The Court, having entered the Preliminary Approval Order, having heard argument in  
14 support of the Settlement, the Plan of Allocation, and the Fee Application, having reviewed all of  
15 the evidence, objections, and other submissions presented with respect to the Settlement and  
16 related matters, and the record of all proceedings in this case, and having made the foregoing  
17 findings,

18 It is hereby ORDERED, ADJUDGED, AND DECREED that:

19 1. The Court has jurisdiction over the subject matter and personal  
20 jurisdiction over the Parties to the Action, including the Class members.

21 2. The Stipulation and all of its exhibits (as filed with the Court) are  
22 incorporated into this Final Order and Judgment, including the definitions and terms set  
23 forth in the Stipulation.

24 3. The Class includes all individuals who meet the definition of the Class  
25 certified by the Court on June 15, 2017 (ECF No. 123 at 39):

26 All participants or beneficiaries of a health benefit plan administered by  
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1 either Blue Shield defendant and governed by ERISA whose request for  
2 coverage (whether pre-authorization, concurrent, post-service, or  
3 retrospective) was denied, in whole or in part, between January 1, 2012 and  
4 the present, based upon the Magellan Medical Necessity Criteria Guidelines  
5 for any of the following levels of care: (i) Residential Treatment,  
6 Psychiatric; (ii) Residential Treatment, Substance Use Disorders,  
7 Rehabilitation; (iii) Intensive Outpatient Treatment, Psychiatric; or (iv)  
8 Intensive Outpatient Treatment, Substance Use Disorders, Rehabilitation.  
9 Excluded from the Class are Defendants, their parents, subsidiaries, and  
10 affiliates, their directors and officers and members of their immediate  
11 families; also excluded are any federal, state, or local governmental entities,  
12 any judicial officers presiding over this action and the members of their  
13 immediate families, and judicial staff.

14 4. As set forth in the Stipulation of Settlement, para. 2.22, ECF No. 225-1,  
15 the settlement includes injunctive relief benefiting the class. Specifically, the  
16 Defendants, who had stopped using the Challenged Guidelines on March 5, 2017,  
17 agreed that they will: (i) not resume use of the Challenged Guidelines to determine  
18 claims for benefits for members of Blue Shield health benefit plans; and (ii) issue a  
19 bulletin to the appropriate personnel conducting medical necessity reviews instructing  
20 them not to rely upon previous denials of a Class member's coverage requests to  
21 support a future denial of coverage requests on the basis of lack of medical necessity.

22 5. Further, pursuant to the Settlement, Defendants will pay \$7,000,000 for  
23 the benefit of the Class to be allocated, after deduction of attorneys' fees, costs,  
24 expenses and incentive awards, in accordance with the Plan of Allocation.

25 6. Notice to the members of the Class has been given in an appropriate,  
26 adequate, and sufficient manner and the Notice was reasonably calculated to apprise  
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interested parties of the pendency of the Action, the nature of the claims, the definition of the Class, and their opportunity to exclude themselves from the Class or present objections to the Settlement. The Notice complied in all respects with the requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the rules of this Court, and any other applicable law.

7. Members of the Class were given the opportunity to exclude themselves from the Class, and three individuals did so in a timely fashion. These individuals are included in Exhibit A to the Declaration of Brian Devery Regarding Dissemination of Class Action Notice filed with the Court on June 18, 2018. ECF No. 253-5; *see also* ECF No. 256 at ¶ 12.

8. Members of the Class were also given the opportunity to object to the Settlement and Plan of Allocation. Only one Class member, Mr. Tom Gill, filed a document stating an objection to the total amount of the settlement fund. ECF No 250. Mr. Gill appeared and addressed the Court at the June 28, 2018 Fairness Hearing. Mr. Gill, in his written submission to the Court, requested that the Court reject the Settlement. However, at the Hearing, Mr. Gill clarified that he supports the Settlement, and withdrew his objection and request that the Settlement not be approved. Mr. Gill stated that he would have preferred that the full settlement amount be used to reimburse Class members who paid for treatment following an allegedly wrongful denial of benefits by the Defendants, rather than have a portion of the Settlement (25%) allocated to all Class members equally, including those who did not obtain treatment after the denial of coverage. Further, at the Hearing, Mr. Gill stated that he would submit additional documentation in support of his entitlement to receive proceeds of the Settlement Fund on or before June 30, 2018. Class Counsel and the Settlement Administrator shall review this additional documentation to come to a final determination of the payment Mr. Gill is owed under the Plan of Allocation.

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9. Defendants have satisfied the requirements of CAFA.

10. The Court finally approves the Settlement and Plan of Allocation in all respects as fair, reasonable, adequate, and in the best interests of the Class pursuant to Rule 23(e). The Settlement was not a product of fraud or collusion, and the Court finds it satisfies Rule 23(e) after considering: (i) the complexity, expense, and likely duration of the Action; (ii) the stage of the proceedings and amount of discovery completed; (iii) the factual and legal obstacles to prevailing on the merits; (iv) the possible range of recovery; (v) the respective opinions of the Parties, including Plaintiffs, Class Counsel, Defendants, and Defendants’ counsel; and (vi) any objections submitted by members of the Class.

11. The terms of the Stipulation, including all exhibits to the Stipulation and to this Final Order and Judgment, shall be forever binding on the Class.

12. Neither the Settlement, this Final Order and Judgment, any papers related to the Settlement, nor the fact of Settlement shall be used as a finding or conclusion of the Court, or an admission by Defendants, of any fault, wrongdoing, or liability whatsoever.

13. The Parties and the Settlement Administrator shall carry out all the terms of the Settlement, including the payment of the Settlement Amount, the distribution of payments to each of the Class members as provided in the Plan of Allocation, and the release provisions in the Stipulation, in accordance with the terms of the Stipulation.

14. Defendants shall have no liability or responsibility for any payments, fees, or costs under this Final Order and Judgment or the Settlement aside from the Settlement Amount. Under no circumstances shall Defendants be required to pay any amounts in furtherance of this Settlement, this Final Order and Judgment, and the administration of the Settlement other than the payment of the Settlement Amount and payment of the Incentive Amount.

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15. Releases:

A. Upon the Effective Date, Plaintiffs and all Class members, and their respective current and former employees, attorneys, heirs, executors, administrators, agents, legal representatives, conservators, professional corporations, partnerships, assigns, successors, and with respect to minors, parents and guardians, will fully, finally, and forever release, relinquish, and discharge all of the Defendants and their Affiliated Entities from, and shall forever be enjoined from prosecution of Defendants and their Affiliated Entities for, any and all Released Claims.

B. Class members fully, finally, and forever release, relinquish, and discharge Defendants from, and shall forever be enjoined from prosecution of Defendants for, any and all “Released Claims,” which the Stipulation defines as:

“Released Claims” means any claims, rights, and liabilities of any nature, including but not limited to, actions, claims, demands, causes of action, obligations, damages, debts, charges, attorneys’ fees, costs, arbitrations, forfeitures, judgments, indebtedness, liens and losses of any kind, source or character, whether arising out of federal or state law, whether known or unknown, whether asserted or unasserted, arising on or before the Effective Date, whether in contract, express or implied, tort, at law or in equity or arising under or by virtue of any statute or regulation, by reason of, or arising out of Defendants’ development, adoption, and application of the Challenged Guidelines during the Class Period (including “Unknown Claims” as defined herein). For avoidance of doubt, “Released Claims” include all claims by the Class members relating to the coverage decisions and denials reflected in Class Claims Data and all claims arising out of the facts alleged in the operative complaint.

C. Class members fully, finally, and forever release, relinquish, and

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discharge Defendants from, and shall forever be enjoined from prosecution of Defendants for, any and all “Unknown Claims,” which the Stipulation defines as:

“Unknown Claims” means any and all Released Claims that any Plaintiff or Class member does not know or suspect to exist in his or her favor as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and Class members shall have waived any and all provisions, rights, and benefits conferred under California Civil Code section 1542 or by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties and Class members by operation of law shall be deemed to have acknowledged that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Stipulation.

D. As set forth in the Stipulation, “Affiliated Entities” means (i) any direct or indirect parents, subsidiaries, or affiliates of Defendants; (ii) any employees, agents, officers or directors of Defendants or their direct or indirect parents, subsidiaries, or affiliates (all natural persons in the definition of Affiliated Entities are collectively referred to as “Affiliated Individuals”); (iii) any corporations in which any such Affiliated Individual is a shareholder in excess of 5%, employee, officer or director; (iv) any



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1 partnerships or any other unincorporated forms of business, or limited liability companies,  
 2 in which any Defendant, or direct or indirect parents, subsidiaries, or affiliates of  
 3 Defendants, or Affiliated Individual owns an interest in excess of 5%; (v) any employee  
 4 health benefits plans in which any Plaintiff or Class member participates or participated;  
 5 (vi) any fiduciary, recordkeeper, claims administrator or plan administrator of such  
 6 employee health benefits plans; (vii) any trusts of which any Affiliated Entity is a grantor,  
 7 trustee or beneficiary; and (viii) any independent review organization that reviewed any  
 8 claims for benefits or requests for coverage for Defendants for any Class member.  
 9 “Affiliated Entities” also means any corporations, business entities, partnerships or other  
 10 unincorporated forms of business, or limited liability companies, that are controlled  
 11 directly or indirectly by Defendants or Affiliated Individuals, or that are directly or  
 12 indirectly under “common control” with Defendants or Affiliated Individuals as that term  
 13 is defined under ERISA Section 4001(a)(14)(B), 29 U.S.C. § 1301(a)(14)(B).

14 E. Class members are barred and permanently enjoined from  
 15 prosecuting any and all Released Claims.

16 F. Nothing in this Final Order and Judgment or the Stipulation shall  
 17 preclude any action to enforce the terms of the Settlement.

18 16. By September 12, 2018, Class Counsel shall file a proposed  
 19 administrative order for approval for distribution of the Settlement Fund to the Class  
 20 members. In this proposed order, Class Counsel shall specifically include the final  
 21 amount to be distributed to Mr. Gill.

22 17. Without affecting the finality of this Final Order and Judgment in any  
 23 way, this Court will retain exclusive continuing jurisdiction over all Parties and Class  
 24 members with regard to implementation of the Stipulation, disposition of the Settlement  
 25 Amount, and enforcement and administration of the Stipulation, including the release  
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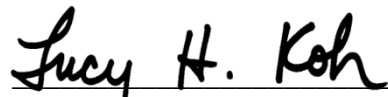
provisions thereof. The Court may order any appropriate legal or equitable remedy necessary to enforce the terms of this Judgment and/or the Settlement.

18. The Action is dismissed with prejudice and without costs (except as otherwise provided herein).

This is a final and appealable judgment. The Clerk shall close the file.

**IT IS SO ORDERED.**

Dated: July 5, 2018



\_\_\_\_\_  
LUCY H. KOH  
United States District Judge