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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHARLES DES ROCHES, on his own behalf and on behalf of his beneficiary son, R.D., and all others similarly situated, SYLVIA MEYER, on her own behalf and all others similarly situated, and GAYLE TAMLER GRECO, on her own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

CALIFORNIA PHYSICIANS’ SERVICE d/b/a BLUE SHIELD OF CALIFORNIA; BLUE SHIELD OF CALIFORNIA LIFE & HEALTH INSURANCE COMPANY; and HUMAN AFFAIRS INTERNATIONAL OF CALIFORNIA,

Defendants.

Case No. 5:16-cv-2848 (LHK)

Hon. Lucy H. Koh

**ORDER PRELIMINARILY
APPROVING SETTLEMENT
AND APPROVING NOTICE
OF PROPOSED
SETTLEMENT AND
FAIRNESS HEARING**

WHEREAS, Plaintiffs Charles Des Roches, Sylvia Meyer, and Gayle Tamler Greco (“Plaintiffs”), individually and on behalf of the Class members, 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 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

1 Stipulation of Settlement dated January 15, 2018 and all exhibits thereto (the “Stipulation”), the
2 original of which is filed with the Clerk of the Court (this settlement process is hereafter referred
3 to as the “Settlement”);

4 WHEREAS, Plaintiffs have filed an unopposed motion for an order that, *inter alia*, (1)
5 preliminarily approves the Settlement on the terms set forth in the Stipulation; (2) appoints the
6 Settlement Administrator; (3) directs the Settlement Administrator to notify the members of the
7 Class per the approved form of notice; (4) establishes deadlines for members of the Class to opt
8 out of or object to the Settlement and/or to object to disclosure of information, including
9 information protected by 42 C.F.R. Part 2; and (5) schedules a hearing to determine whether the
10 Settlement should be finally approved as fair, reasonable and adequate, and whether an order
11 finally approving the Stipulation should be entered;

12 WHEREAS, the Court, having read and considered the motion, the memorandum
13 submitted in support of the motion, the Stipulation and the exhibits thereto, including the
14 proposed (i) Notice of Proposed Settlement of Class Action and Fairness Hearing; (ii) Plan of
15 Allocation; and (iii) Class Action Fairness Act of 2005 Notices, finds that substantial and
16 sufficient grounds exist for entering this Order Preliminarily Approving Settlement and
17 Approving Notice of Proposed Settlement and Fairness Hearing (“Preliminary Approval Order”);
18 and

19 WHEREAS, upon review and consideration of the foregoing materials, the Court has
20 found good cause for entering this Preliminary Approval Order;

21 NOW, THEREFORE, IT IS ORDERED THAT:

22 1. The definitions and terms set forth in the Stipulation are hereby adopted and
23 incorporated into this Preliminary Approval Order.

24 2. The Class includes all persons who meet the following definition, as provided in
25 the Court’s Order Granting Motion for Class Certification dated June 15, 2017 (ECF No 123 at
26 39):

27 All participants or beneficiaries of a health benefit plan administered by either Blue
28 Shield defendant and governed by ERISA whose request for coverage (whether pre-

1 authorization, concurrent, post-service, or retrospective) was denied, in whole or in
2 part, between January 1, 2012 and the present, based upon the Magellan Medical
3 Necessity Criteria Guidelines for any of the following levels of care: (i) Residential
4 Treatment, Psychiatric; (ii) Residential Treatment, Substance Use Disorders,
5 Rehabilitation; (iii) Intensive Outpatient Treatment, Psychiatric; or (iv) Intensive
6 Outpatient Treatment, Substance Use Disorders, Rehabilitation. Excluded from the
7 Class are Defendants, their parents, subsidiaries, and affiliates, their directors and
8 officers and members of their immediate families; also excluded are any federal,
9 state, or local governmental entities, any judicial officers presiding over this action
10 and the members of their immediate families, and judicial staff.

11 3. The proposed Settlement as reflected in the Stipulation is hereby preliminarily
12 approved. The Court finds that the proposed Settlement is the product of informed arm's-length
13 negotiation by counsel; contains no obvious deficiencies that would prevent preliminary Court
14 approval; bears a reasonable relationship to the claims alleged by Plaintiffs and the litigation risks
15 of Plaintiffs as well as Defendants; and does not improperly grant preferential treatment to the
16 named Plaintiffs or segments of the Class. Accordingly, notice thereof should be given to the
17 Class.

18 4. The Court approves the Notice of Proposed Class Action Settlement and Fairness
19 Hearing in the form as submitted by Plaintiffs on February 5, 2018 ("Notice"). The Court directs
20 that notice shall be given to the Class as follows: (i) the mailing of the Notice directly to members
21 of the Class; (ii) a Settlement website containing the Notice information and relevant pleadings
22 about the case, including the Motion for Preliminary Approval; and (iii) a telephone hotline by
23 which members of the Class can obtain information about the Settlement. The Court finds that
24 these notice procedures established by the Stipulation are appropriate and are reasonably
25 calculated to apprise the members of the Class of the pendency of the Action and the proposed
26 Settlement, afford any member of the Class an opportunity to present any objections to the
27 Settlement and/or to opt out of the Settlement, afford any member of the Class the opportunity to
28 object to disclosure of information relating to his or her request for coverage for substance use

1 and/or psychiatric treatment (the Class Claims Data, as defined in the Stipulation), and comply in
2 all respects with the Federal Rules of Civil Procedure and all of the requirements of due process.

3 5. The Court approves the form of the CAFA Notices filed on January 26, 2018, and
4 the Court further finds and orders that Defendants have complied with the notice requirements of
5 CAFA.

6 6. The Court finds that Class Counsel and the Settlement Administrator will need
7 personally identifiable information from all Class members, including their names and last-known
8 mailing addresses, to give notice to the Class members, as well as the Class Claims Data to
9 compute and verify the amount to which each Class member is entitled under the Plan of
10 Allocation. The Court further finds that, apart from Defendants' provision of such information to
11 Class Counsel and the Settlement Administrator, there are no other available or effective methods
12 for obtaining the information to verify a Class member's claims and amounts payable under the
13 Plan of Allocation, and the public interest in verifying these claims and amounts outweighs
14 potential injury to the Class member, physician-patient relationship, and treatment services.
15 Therefore, the Court authorizes the release to Class Counsel and the Settlement Administrator of
16 the names and last-known mailing addresses of any Class members for the limited purposes of
17 providing notice to Class members and an opportunity to object to disclosure of data to Class
18 Counsel and the Settlement Administrator. Class members will have adequate notice and an
19 opportunity to object to disclosure of data relating to the member's request for coverage for
20 substance use treatment, psychiatric treatment, or both, to Class Counsel and the Settlement
21 Administrator. If any such Class member objects, the member's data relating to his or her request
22 for coverage for treatment will not be disclosed to Class Counsel and the Settlement
23 Administrator, but he or she will remain in the Class. The Class List and Class Claims Data will
24 only be disclosed to Class Counsel and the Settlement Administrator.

25 7. Angeion Group is hereby appointed as Settlement Administrator, and shall be
26 responsible, under the direction and supervision of Class Counsel, for providing the Notice to the
27 Class in accordance with the provisions of the Stipulation and this Order.

28

1 8. Within thirty (30) days of entry of this Order, Defendants shall provide Class
2 Counsel and the Settlement Administrator with the Class List. Within sixty (60) days of the date
3 of this Order, Class Counsel, through the Settlement Administrator, shall provide the Notice to all
4 individuals listed on the Class List in accordance with the Stipulation.

5 9. Within forty (40) days after the date on which the Notice is mailed or otherwise
6 provided, the parties shall jointly move this Court for an Order authorizing Defendants to disclose
7 the Class Claims Data (except with respect to any Class member objecting to disclosure of such
8 information, as described below) to Class Counsel and the Settlement Administrator. Class
9 Claims Data will not be disclosed to Class Counsel and the Settlement Administrator for any
10 Class member who timely objects to the disclosure of such information, as described below.

11 10. To object to the disclosure of information in the Class Claims Data, which will
12 include information protected under 42 C.F.R. Part 2 for some Class members (*i.e.*, information
13 sufficient to identify a patient of a federal substance use treatment program as such), a Class
14 member must contact the Settlement Administrator, no later than thirty-five (35) days after the
15 date on which the Notice is mailed or otherwise provided. The objection to disclosure must
16 specify in writing that the Class member wishes to withhold his/her information in the Class
17 Claims Data from disclosure to Class Counsel and the Settlement Administrator. Any Class
18 member who does not object in the foregoing manner shall be deemed to have waived all
19 objections and shall be foreclosed from asserting that his or her privacy rights under 42 C.F.R.
20 Part 2 have been breached.

21 11. Within five (5) days of the Court Order granting the parties' joint motion seeking
22 authorization to disclose Class Claims Data, Defendants shall produce the Class Claims Data
23 (except with respect to any Class member objecting to disclosure of such information) to Class
24 Counsel and the Settlement Administrator.

25 12. In order for a member of the Class to be excluded from the Settlement, the
26 member of the Class must request exclusion by sending to the Settlement Administrator at the
27 address described in the Notice a statement identifying the Class member by name and residential
28 address and declaring that the Class member wishes to exclude him- or herself from the Class,

1 which must be received by the Settlement Administrator no later than sixty (60) days after the
2 date on which the Notice is mailed. In the event that a member of the Class submits a timely and
3 valid request for exclusion, that member of the Class shall be excluded from the Class, shall not
4 be a Class member, and shall not be entitled to participate in the Settlement.

5 13. Separate from the right of a member of the Class to object to disclosure of Class
6 Claims Data, he or she may also object to the Settlement. To object to the Settlement, a Class
7 member must send to the Settlement Administrator at the address described in the Notice a
8 statement identifying the Class member by name and residential address and setting forth all
9 bases for objection and providing all documentation in support of the objection, which must be
10 received by the Settlement Administrator no later than sixty (60) days after the date on which the
11 Notice is mailed or otherwise provided. If the objecting Class member intends to appear at the
12 Fairness Hearing, the Class member must also include, as part of the objection, a notice of intent
13 to appear and a list of witnesses (if any) the person may call by live testimony. Copies of such
14 objection and notice, and all documentation in support thereof, together with copies of any other
15 papers or briefs filed with the Court, must be simultaneously delivered to Class Counsel and
16 Defendants' counsel. Any Class member who does not object in the foregoing manner shall be
17 deemed to have waived all objections and shall be foreclosed from making any objections to the
18 Settlement. The procedures and requirements for filing objections satisfy the due process rights of
19 all Class members and are sufficient to ensure the efficient administration of justice and the
20 orderly presentation of any Class members' objections to the Settlement.

21 14. No later than twenty-one (21) days before the opt-out and Settlement objection
22 deadline, Class Counsel shall file any further papers in support of the final approval of the
23 Settlement, including any motion for attorneys' fees, reimbursement of costs and expenses , and
24 award of an Incentive Amount to the class representatives (the "Fee Application").

25 15. The Court will determine whether to grant final approval of the Settlement
26 following a Fairness Hearing to be held on June 28, 2018, at 1:30 p.m., at the Robert F. Peckham
27 Federal Building & United States Courthouse, 280 South 1st Street, Courtroom 8 – 4th Floor, San
28 Jose, CA 95113 (the "Fairness Hearing"). The Court will determine pursuant to the Fairness

1 Hearing that it has jurisdiction over the subject matter, the Parties, and the members of the Class.
2 It will further determine whether the proposed Settlement, including the Plan of Allocation, is
3 fair, reasonable, and adequate, and whether it should be finally approved by the Court. Finally, it
4 will decide the Fee Application, the amounts of attorneys' fees, costs, and expenses that should be
5 awarded to Class Counsel pursuant to Rule 23(h), and the Incentive Amount to be awarded to the
6 class representatives, if any. The Court may adjourn and/or reschedule the Fairness Hearing
7 without further notice to the Class.

8 16. No later than ten (10) days before the Fairness Hearing, the Parties may file with
9 the Court any papers in further support of final approval of the Settlement, including responses to
10 objections to the Settlement. Copies of all papers shall be served upon all Class members who file
11 a valid and timely objection to the Settlement or their counsel.

12 17. The Settlement Administrator shall, at least seven (7) days prior to the Fairness
13 Hearing, file with the Court proof of mailing of the Notice to the Class.

14 18. Any Class member may appear at the Fairness Hearing, in person or by counsel,
15 and be heard to the extent allowed by the Court in opposition to the fairness, reasonableness, and
16 adequacy of the Settlement as embodied by the Stipulation and the Fee Application. Unless such
17 requirement is excused by the Court, no person shall be heard in opposition to the Settlement, the
18 Stipulation, or the Fee Application unless such person has filed an objection to the Settlement and
19 a notice of an intention to appear no later than sixty (60) days after the date on which the Notice
20 is mailed or otherwise provided.

21 19. The Court reserves the right to adjourn and/or reschedule the Fairness Hearing
22 without further notice of any kind to Class members. Therefore, any Class member intending to
23 attend the Fairness Hearing should (in addition to complying with all instructions and
24 requirements above) confirm the date, time, and location of the Fairness Hearing with Class
25 Counsel.

26 20. Pending the final determination of whether the Settlement should be approved, all
27 proceedings and discovery in the Action are stayed, except as specifically provided for in this
28 Order. If the Effective Date does not occur, or if the Stipulation is otherwise terminated and

1 canceled pursuant to its terms, the Parties shall be deemed to have reverted to their respective
 2 statuses as of the date and time immediately prior to the execution of the Stipulation.

3 21. The Court approves the following schedule for Settlement-related activities:

| <u>DATE</u> | <u>EVENT</u> |
|---|---|
| February 5, 2018 [Day 1] | Entry of Preliminary Approval Order |
| March 7, 2018 [Day 30] | Defendants provide Class Counsel with Class List |
| April 6, 2018 [Day 60] | Last day to provide Notice to Class members |
| May 11, 2018 [Day 95] | Last day for Class members to object to disclosure of information in Class Claims Data, including under 42 C.F.R. Part 2 |
| May 15, 2018 [Day 99] | Last day for Plaintiffs to file papers in support of final approval of Settlement, including Fee Application |
| May 16, 2018 [Day 100] | The parties jointly move for an Order authorizing Defendants to disclose the Class Claims Data (except with respect to any Class member objecting to disclosure of such information, as described below) to Class Counsel and the Settlement Administrator pursuant to 42 C.F.R. § 2.64 |
| June 5, 2018 [Day 120] | Last day for Class members to opt out or object to Settlement |
| June 18, 2018 [10 days before Fairness Hearing] | Last day for any party to file papers in further support of final approval of Settlement, including responses to objections to the Settlement |
| June 21, 2018 [7 days before Fairness Hearing] | Settlement Administrator to file proof of mailing of Notice to Class |
| June 28, 2018 | Fairness Hearing concerning final approval of Settlement |

21
 22 **IT IS SO ORDERED.**

23 Dated: February 5, 2018

Lucy H. Koh

 Honorable Lucy H. Koh
 United States District Judge
 Northern District of California