

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

[PROPOSED] ORDER:

- (1) FINALLY APPROVING SETTLEMENT AGREEMENT;
- (2) APPROVING DISBURSEMENTS PURSUANT TO SETTLEMENT AGREEMENT;
- (3) APPROVING PAYMENT OF ATTORNEYS FEES, LITIGATION COSTS AND CASE CONTRIBUTION AWARD; AND
- (4) ORDERING FINAL REPORT ON DISBURSEMENT OF QUALIFIED SETTLEMENT FUND;

NOTED FOR HEARING:

January 5, 2017 at 10:00 a.m.

I. BACKGROUND

On August 31, 2016 the Court preliminarily approved a proposed Settlement Agreement between Plaintiff on behalf of the Class and Defendants T-Mobile USA, Inc., T-Mobile USA Inc., Employee Benefit Plan; and United Healthcare Services, Inc. (“Defendants”). Dkt. No. 37. In conjunction with that Order, the Court directed that the

~~[PROPOSED]~~ ORDER FINALLY APPROVING SETTLEMENT AGREEMENT, ETC. - 1
[Case No. 2:15-cv-00180-RAJ]

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1 Claims Processor mail the Class Notice and Claim Form Materials (Dkt. No. 28-2) to the
2 Class Notice Recipients within 30 days of entry of the Order. *Id.* By September 27, 2016,
3 all Class Notices and Claim Form Materials were mailed in accordance with the class
4 notice procedures. Dkt. No. 40, ¶3. Class Counsel also established a settlement web page
5 within 30 days of the date of this Order, that contained the Class Notice, the Claim Form
6 Materials and key filings in the litigation, including the Motion for Attorneys' Fees,
7 Litigation Costs and Incentive Awards. Dkt. No. 37.

8 The Order also provided that class members who wished to comment on, opt-out
9 of, or object to the proposed Agreement were required to do so by December 22, 2016.
10 Class members were informed of their rights and of this deadline in the notices that were
11 mailed to them and on Class Counsel's website.

12 The Order further scheduled a final settlement hearing, which was held on
13 January 5, 2017, to consider objections and comments by class members and to determine
14 whether the proposed Agreement is fair, reasonable, adequate and should be approved by
15 the Court.

16 II. FINDINGS

17 1. The parties have reached a Settlement Agreement providing prospective
18 coverage of medically necessary Applied Behavior Analysis (ABA) therapies to treat
19 Autism Spectrum Disorders (ASD) and a claims process for reimbursement of uncovered
20 ABA therapies, the exact terms of which are set out in the Agreement.

21 2. This Agreement also establishes a settlement fund of \$676,935. Under the
22 terms of the Agreement, this fund will be used to pay retrospective claims for
23 unreimbursed ABA therapy services during the class period, attorneys' fees and costs,
24 incentive awards, costs of claims administration, and taxes. If funds remain after these
25 payments, then the residual funds will be returned to T-Mobile USA, Inc.

1 3. The Agreement provides that an independent claims administrator will
2 receive and process claims, and provides for an appeal process in the event of a dispute
3 over whether a claim should be paid.

4 4. The Court's Order required the Claim Processor to mail court-approved
5 notices, claim forms, instructions to claim forms and opt-out forms to class members by
6 direct mail. The notices informed class members that they had an opportunity to opt out,
7 object or submit comments to the Court regarding the proposed Agreement and that they
8 must do so in writing by December 22, 2016.

9 5. Consistent with the Order, Defendants provided notices and materials
10 required under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

11 6. Class notices were mailed to 522 enrollees in the T-Mobile Plan who had
12 submitted claims on their own behalf or on behalf of a dependent with a diagnostic code
13 associated with ASD. No class members opted out. No class members objected to the
14 Settlement Agreement. No class members submitted comments. A total of ten (10)
15 claims were received by the Claims Processor by December 22, 2016. The total value of
16 these claims, before they are adjudicated by the Claims Processor, is \$134,563.

17 **III. CONCLUSIONS**

18 7. Rule 23(e) provides that "a class action shall not be dismissed or
19 compromised without the approval of the court...." Compromise and arbitration of
20 complex litigation is encourage and favored by public policy. *See Simula, Inc. v. Autoliv,*
21 *Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).

22 8. A presumption of fairness and adequacy attaches to a class action settlement
23 reached in arm's-length negotiations by experienced class counsel after meaningful
24 discovery. *See, e.g., Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th
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1 Cir. 1982); *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 209, 35 P.3d 351
2 (2001).

3 9. The following factors are generally considered when determining whether a
4 settlement is fair, adequate and reasonable: the likelihood of success by plaintiff; the
5 amount of discovery or evidence; the settlement terms and conditions; recommendation
6 and experience of counsel; future expense and likely duration of litigation;
7 recommendation of neutral parties, if any; number of objectors and nature of objections;
8 and the presence of good faith and absence of collusion. *Officers for Justice*, 688 F.2d at
9 625.

10 10. Based upon these factors, the Court finds that the Agreement is fair,
11 reasonable, and in the best interests of the class. The requirement of Rule 23 and due
12 process have been satisfied.

13 11. Specifically, the Court concludes that the Agreement was the result of
14 arm's-length bargaining. It was reached after sufficient discovery and motions practice.
15 Although the class had a strong likelihood of success, the key legal issue in the case has
16 not been adjudicated, such that there was risk in proceeding with the litigation. A
17 settlement in which class members will be able to obtain coverage of medically necessary
18 ABA therapies in the future, and full reimbursement for their ABA therapies, achieves the
19 goals of the litigation. There is no evidence of collusion between the parties, and the
20 agreement was reached in good faith.

21 12. The class was provided with adequate notice, and due process has been
22 satisfied in connection with the distribution of the notice. As noted above, there were no
23 objections to the proposed Agreement, and no opt-outs.

IV. LITIGATION, NOTICE AND ADMINISTRATIVE COSTS

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13. Upon the occurrence of the conditions set forth in Section 2 of the Settlement Agreement, the Court authorizes the payment of claims administration costs/fees and litigation costs (totaling to date \$6,964.70, which has been advanced by Class Counsel) from the Settlement Trust Fund to Class Counsel. Class Counsel is also authorized to pay additional administration and arbitration costs out of the Settlement Trust Fund as they become due, as necessary. Class Counsel shall document and submit those additional invoices and payments in connection with Class Counsel’s Final Report, described below.

V. ATTORNEYS’ FEES

14. Class Counsel is entitled to attorneys’ fees under the common fund doctrine. As permitted by the Agreement, Class Counsel has sought an award of 35% of the Settlement Amount. That request is granted, and the Court awards \$236,927 as attorneys’ fees to Class Counsel.

15. No objections were received to Class Counsel’s fee request.

16. Based upon the circumstances of this specific case, the Court finds that this amount is fair and reasonable. Class Counsel obtained broad prospective relief and future benefits for the class, which far exceeds the value of just the cash fund. *See Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1305 (W.D. Wash. 2001) (benchmark fee looks at the total recovery obtained, “including future benefits.”). Additionally, the evidence presented in support of the motion for final approval demonstrates that the fund is sufficient to pay 100% of class members’ claims in addition to attorneys’ fees and costs, claims administration, and the contribution award. Indeed, no class member objected to Class Counsel’s fee request. In light of these facts, as well as Class Counsel’s efforts, the risk of non-payment, and the complexity of the issues, the Court finds that a 35% fee

1 award is warranted. Although this award results in a multiplier of 2.23, it is still well
2 within an acceptable range. *See Vizcaino v. Microsoft*, 290 F.3d 1043, 1051 (9th Cir.
3 2002) (multiplier of 3.65 “was within the range of multipliers applied in common fund
4 cases”).

5 17. Upon the occurrence of the conditions set forth in Section 2 of the
6 Settlement Agreement, Class Counsel is authorized to distribute attorneys’ fees from the
7 Settlement Trust Fund to Class Counsel.

8 **VI. CASE CONTRIBUTION AWARD**

9 18. Upon the occurrence of the conditions set forth in Section 2 of the
10 Settlement Agreement, A.D., by and through his parents E.D. and H.D., is awarded a case
11 contribution award in the sum of \$10,000 as described in the Settlement Agreement. The
12 Court authorizes the disbursement of these funds from the Settlement Trust Fund.

13 19. No objections were received to the request for the case contribution award.

14 **VII. PAYMENTS TO CLASS MEMBERS**

15 20. Upon the occurrence of the conditions set forth in Section 2 of the
16 Settlement Agreement, the Court authorizes the payment of approved class member
17 claims. The Court authorizes the disbursement of these funds from the Settlement Trust
18 Fund. Class members must negotiate their checks within 90 days of issuance. Class
19 Counsel may extend this deadline on request from a class member and is authorized to
20 issue replacement checks for lost checks without further approval of the Court.

21 21. Upon the occurrence of the conditions set forth in Section 2 of the
22 Settlement Agreement, the Court authorizes the payment of \$6,732.88 to the parents of
23 A.D., pursuant to Section 8.5 of the Agreement, reflecting the documented amount of
24 unreimbursed ABA claims incurred by A.D. The Court authorizes the disbursement of
25 these funds from the Settlement Trust Fund.

VIII. OPT-OUTS

22. No class members opted out of this Settlement Agreement.

IX. CLASS COUNSEL’S FINAL REPORT AND REVERSION TO T-MOBILE

23. Class Counsel shall submit a final report to the Court regarding claims processing and disbursement of funds from the Qualified Settlement Fund no later than 30 days after the Claims Processor processes all valid claims. The Report shall detail the payment of court-awarded attorneys’ fees, costs, expenses, case contribution award, costs of notice/administration, payment of class member claims, taxes and an agreed-upon or court approved “holdback amount” necessary to complete the activities of and close the Qualified Settlement Fund.

24. All remaining funds, if any, in the Qualified Settlement Fund shall be returned to T-Mobile USA, Inc. within 60 days of the submission of the Final Order, and consistent with the requirements of the Settlement Agreement. Any part of the “holdback amount” remaining after payment of all expenses and other liabilities of the Qualified Settlement Fund, shall be returned to T-Mobile USA, Inc., upon closure of the Qualified Settlement Fund.

X. ORDER

It is hereby ORDERED that:

1. The Settlement Agreement is approved as fair, reasonable and adequate under Rule 23, and its terms shall bind class members, since no class member opted-out.

2. Class Counsel is awarded attorneys’ fees, litigation costs, and reimbursement of costs of notice and administration, as set forth above. These amounts are authorized to be paid to Class Counsel from the Settlement Trust Fund.

1 3. Class Counsel and/or its designee is also authorized to distribute checks to
2 class members and the Named Plaintiff in accordance with the Agreement and this Order,
3 as approved by the Claims Processor or on appeal. These amounts are authorized to be
4 paid from the Settlement Trust Fund.

5 4. Case contribution award of \$10,000 to Plaintiff A.D. by and through his
6 parents E.D. and H.D. as set forth in the Agreement is approved, and Class Counsel is
7 authorized to distribute that sum from the Settlement Trust Fund to the parents of A.D.

8 5. Class Counsel is authorized to pay the continuing costs of claims
9 administration and class notice from the Settlement Trust Fund. Class Counsel shall
10 document such payments to the Court in a Final Report submitted at the conclusion of this
11 matter.

12 6. Class Counsel is ordered to submit a Final Report in accordance with the
13 Agreement and this Order.

14 7. Class Counsel is authorized to distribute to T-Mobile USA, Inc. any funds
15 remaining after the payment of court-awarded attorneys' fees, costs, expenses, case
16 contribution award, costs of notice/administration, payment of class member claims, taxes
17 and an agreed-upon or court approved "holdback amount" necessary to complete the
18 activities of and close the Qualified Settlement Fund. When the Qualified Settlement
19 Fund is closed, Class Counsel is authorized to distribute any remaining funds to T-Mobile
20 USA, Inc.

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1 8. The Court shall retain jurisdiction over this matter until the Qualified
2 Settlement Fund is closed.

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4 It is so ORDERED this 5th day of January, 2017.

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8 The Honorable Richard A. Jones
9 United States District Judge