

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

THE SHANE GROUP, INC. *ET AL.*,

Plaintiffs, on behalf of themselves
and all others similarly situated,

vs.

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Defendant.

Civil Action No. 2:10-cv-14360-DPH-
MKM

Judge Denise Page Hood
Magistrate Judge Mona K. Majzoub

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND
RELATED RELIEF**

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs Michigan Regional Council of Carpenters Employee Benefits Fund, The Shane Group, Inc., Bradley A. Veneberg, Abatement Workers National Health and Welfare Fund, Monroe Plumbers & Pipefitter Local 671 Welfare Fund, and Scott Steele and Proposed Plaintiffs Patrice Noah and Susan Baynard respectfully move this Court to (i) grant preliminary approval of the proposed Settlement Agreement (attached to Plaintiffs' memorandum in support hereof as Exhibit 1); (ii) name Patrice Noah and Susan Baynard as additional class representatives; (iii) certify the proposed Settlement Class as defined at p. 13 of the accompanying memorandum; (iv) approve the form and manner of giving notice of the proposed Settlement to the

Class; (v) set a hearing date for final approval thereof (the “Fairness Hearing”); and (vi) grant such other relief as is requested on pp. 2-3 of the accompanying memorandum. In support of this motion, Plaintiffs rely upon the authorities and arguments set forth in the accompanying memorandum.

Defendant do not oppose the requested relief.

June 23, 2014

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFICATION
OF SETTLEMENT CLASS, AND RELATED RELIEF**

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I. INTRODUCTION

Following three-and-a-half years of contentious litigation, including full fact discovery on merits and class certification issues and nearly complete briefing and expert discovery on class certification, Plaintiffs have reached a fair and reasonable settlement of their antitrust claims against Blue Cross Blue Shield of Michigan (“Blue Cross” or “BCBSM”). This settlement requires BCBSM to pay a proposed settlement class of direct purchasers of hospital healthcare services in Michigan (“Settlement Class”)¹ the sum of \$29,990,000 in exchange for a full release of all claims that the settlement class has against BCBSM in connection with the allegedly anticompetitive most favored nation clauses (“MFNs”) in Blue Cross’s contracts with Michigan General Acute Care Hospitals during the period 2006 to

¹ The Settlement Class is defined in the Settlement Agreement as follows:

“Settlement Class” means “all Direct Purchasers of healthcare services from a Michigan General Acute Care Hospital from January 1, 2006 until June 23, 2014. Excluded from the Settlement Class are all Released Parties.” For purposes of this class definition, “Direct Purchasers” includes without limitation individuals who paid Michigan General Acute Care Hospitals in the form of co-pays, co-insurance or otherwise; insurers that paid Michigan General Acute Care Hospitals for their insureds; and self-insured entities whose health plan participants received healthcare services at Michigan General Acute Care Hospitals.

¶ 30. Unless otherwise stated, all paragraph references are to the Settlement Agreement dated June 23, 2014, attached hereto as Exhibit 1. All capitalized terms herein have the same meaning they have in the Settlement Agreement.

June 23, 2014 (the date of the Settlement Agreement).

The settlement provides an excellent recovery for the Settlement Class, especially in light of the risks, burdens and uncertainties involved in this complex, expensive, and hard-fought litigation.

Plaintiffs request that this Court enter an order substantially in the form attached to the Settlement Agreement as Exhibit H:

1. granting preliminary approval to the Settlement Agreement, including the Plan of Allocation attached to the Settlement Agreement as Exhibit F;
2. joining Patrice Noah and Susan Baynard as additional named plaintiffs under Fed. R. Civ. P. 21;
3. certifying the Settlement Class under Fed. R. Civ. P. 23(a) and (b)(3);
4. appointing each of the six existing named Plaintiffs and Proposed Plaintiffs Noah and Baynard as representatives of the Settlement Class;
5. appointing those firms currently serving as interim Co-Lead Counsel, namely, The Miller Law Firm, P.C., Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”), Gustafson Gluek, PLLC, and Wolf, Haldenstein, Adler, Freeman & Herz LLC (“Wolf Haldenstein”), as Class Counsel under Fed. R. Civ. P. 23(g) to represent the Settlement Class;
6. appointing Epiq Systems as the Settlement Administrator to administer the Settlement under the supervision of Class Counsel;
7. appointing Eagle Bank to hold the Settlement Fund in an escrow account and to disburse funds from that account according to the orders of this Court;
8. approving the form of the Notices attached to the Settlement Agreement as Exhibits B, C and D, and approving the Notice Plan (attached to the Settlement Agreement as Exhibit A), for disseminating these notices to the Settlement Class Members;
9. approving the Claim Form attached to the Settlement Agreement as Exhibit E;
10. authorizing payment from the Settlement Fund of certain expenses of settlement administration;

11. setting deadlines for: (a) objecting to the settlement or requesting exclusion from the Settlement Class; (b) filing a motion for final approval of the settlement; and (c) petitioning the Court for attorneys' fees, expenses and plaintiff incentive awards;
12. setting a date for a fairness hearing to consider final approval of the settlement and Plaintiffs' forthcoming request for attorneys' fees, reimbursement of expenses, and plaintiff incentive awards; and
13. staying all proceedings in this Action except those provided for or required by the Settlement Agreement.

This motion and all of the foregoing sought relief is unopposed by BCBSM.

II. PROCEDURAL HISTORY

The first class action complaint in this litigation was filed on October 29, 2010. Three other class action complaints were filed shortly thereafter, although one of them, filed by City of Pontiac, was dismissed with prejudice by this Court on March 30, 2012. Dkt. No. 172 (No. 11-cv-10276). No appeal was taken. On May 29, 2012, the Court appointed The Miller Law Firm, Cohen Milstein, Gustafson Gluek and Wolf Haldenstein as interim class counsel pursuant to Rule 23(g). Dkt. No. 69.² On June 12, 2012, Plaintiffs filed a Consolidated Amended Complaint (CAC). Dkt. No. 72. The Court denied BCBSM's motion to dismiss the CAC on November 30, 2012. Dkt. No. 102.

In the CAC, Plaintiffs allege that beginning in the mid-2000s, Blue Cross entered into multiple contracts that harmed its rivals' ability to compete in the Michigan health insurance market by inserting MFN provisions in more than half

² Unless otherwise stated, all docket references are to the electronic docket in this case.

of its contracts with Michigan General Acute Care Hospitals. CAC ¶¶ 2-4. The CAC alleges that this was designed to entrench Blue Cross's dominant position in Michigan by raising its rivals' costs of providing health insurance. CAC ¶ 4. The CAC further alleges that the higher hospital charges resulting from the MFN provisions not only raised rivals' costs, but also inflated the charges paid by the other purchasers of hospital care, namely, individual insureds and self-insured entities who, along with Blue Cross's rivals, comprise the Settlement Class. Plaintiffs bring their claims under Section 1 of the Sherman Act and Section 2 of the Michigan Antitrust Reform Act.

The parties engaged in extensive fact discovery, in coordination with the discovery occurring in the parallel cases brought against Blue Cross by the United States and the State of Michigan³ and by Aetna.⁴ They exchanged millions of pages of documents, procured millions of pages of documents from third parties, responded to voluminous interrogatories, and took 169 depositions, including many of third-party insurers and hospitals. In addition to documents, the voluminous data produced and analyzed in this case – data reflecting payment terms and numerous other relevant factors for the large majority of healthcare procedures occurring in Michigan General Acute Care Hospitals over a period of

³ *United States v. Blue Cross Blue Shield of Mich.*, No. 10-cv-14155 (E.D. Mich.).

⁴ *Aetna Inc. v. Blue Cross Blue Shield of Mich.*, No. 11-cv-15346 (E.D. Mich.).

about seven years – is almost unprecedented in antitrust litigation.

On June 17, 2013, Plaintiffs filed a motion to drop the claims of certain Plaintiffs and to add Patrice Noah and Susan Baynard as additional plaintiffs to represent the proposed class. Dkt. No. 124. On October 21, 2013, Plaintiffs filed their motion for class certification, Dkt. No. 133, supported by the expert report of economist Dr. Jeffrey J. Leitzinger. Defendants opposed the motion on February 3, 2014, Dkt. No. 139, accompanied by, *inter alia*, the expert report of economist Dr. David S. Sibley. Drs. Leitzinger and Sibley were deposed. Before the deadline for Plaintiffs to file their reply, and before the Court had ruled on the motion to add and drop Plaintiffs, the parties informed the Court of their settlement and the Court entered an Order Adjourning All Deadlines on March 27, 2014, Dkt. No. 146.

III. THE PROPOSED SETTLEMENT

Plaintiffs and Blue Cross conducted settlement negotiations on and off for over a year, with discussions intensifying in mid-March of this year, an agreement in principle reached in late-March, and a written agreement signed in June. This settlement was reached only after prolonged, difficult and arm's-length negotiations between the Parties.

The Settlement Agreement provides that Blue Cross will deposit \$29,990,000 in an interest-bearing escrow account for the benefit of the Settlement Class. ¶¶ 35-37. The payment will be made in two installments. The first

installment will be paid within 15 days of preliminary approval of the settlement, and the remainder will be paid within 5 days of Final Approval (including any appeals). *Id.* The escrow account will be maintained at Eagle Bank, a Maryland State Chartered Bank which has served as an escrow agent for settlement funds on several occasions. ¶¶ 6 & 38. Any interest accrued on the Settlement Amount will become part of the Settlement Fund. ¶¶ 32, 38, & 68. No disbursements from the escrow account will be made without prior Court approval. ¶¶ 66-70 .⁵

Upon Court approval, the Settlement Agreement binds Blue Cross, Plaintiffs, and the Settlement Class, which includes “all Direct Purchasers of healthcare services from a Michigan General Acute Care Hospital for healthcare services from January 1, 2006 until June 23, 2014” and that do not timely and validly exclude themselves from the Settlement Class. ¶¶ 24-25, 30, & 93.⁶

When it becomes final, the Settlement Agreement releases Blue Cross (and certain related entities and individuals) from all claims by Settlement Class Members who do not opt out (and by certain related entities and individuals) “arising out of or in any way relating to [BCBSM’s] Most Favored Nation Clauses, or any matter or event occurring up to the execution of this Agreement arising out

⁵ The Settlement Agreement provides that – with Court approval, which Plaintiffs seek in this motion – certain costs to administer the settlement may be paid from the Settlement Fund as they are incurred. *See* ¶ 70.

⁶ Blue Cross and related persons and entities are excluded from the Settlement Class. ¶ 24.

of the dispute which is the subject of this action.” ¶ 58.

The Parties may rescind the Agreement if the Court declines to approve it or any material part of it or if such approval is materially modified or set aside on appeal. ¶ 73. Blue Cross may also rescind the Agreement if it determines in good faith that the dollar amount of Relevant Purchases by Settlement Class Members who request exclusion (other than Aetna, Inc.) materially undermines the value of the Settlement to BCBSM. ¶ 74.

The Settlement Agreement includes a Plan of Allocation by which Plaintiffs propose to distribute the Net Settlement Fund⁷ to Settlement Class Members who submit timely and valid Claim Forms.⁸ The plan provides for pro rata distribution of the Net Settlement Fund, based on the dollar amount of Claimants’ relevant purchases of hospital services. The distribution is subject to minimum and maximum amounts per claimant and weighting of relevant purchases according to Plaintiffs’ assessment of the relative strength of the damages claim associated with the different categories of purchases.

Other than the Settlement Agreement, no agreements requiring disclosure were “made in connection with the proposal.” Fed. R. Civ. P. 23(e)(3).

⁷ The Net Settlement Fund is the Settlement Amount plus accrued interest minus any amounts awarded by the Court for attorneys’ fees, expenses and plaintiff incentive awards. *See* ¶ 13.

⁸ Plaintiffs’ motion for final approval of the Settlement will include a request for approval of the Plan of Allocation and the Claim Form.

IV. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT

Courts in the Sixth Circuit have often noted that the law favors the settlement of class action lawsuits. *See In re Packaged Ice Antitrust Litig.*, No. 08-MDL-01952, 2011 U.S. Dist. LEXIS 150427, at *42 (E.D. Mich. Dec. 13, 2011); *IUE-CWA v. General Motors Corp.*, 238 F.R.D. 583, 593 (E.D. Mich. 2006). At the preliminary approval stage, the role of the district court is limited to determining that the settlement (i) “appears to fall within the range of possible approval,” and (ii) “does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys.” *Dallas v. Alcatel-Lucent USA, Inc.*, No. 09-cv-14596, 2013 WL 2197624, at *8 (E.D. Mich. May 20, 2013) (quoting *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 359, 379 (N.D. Ohio 2001)).

This settlement easily meets this standard. This settlement recovers approximately \$30 million in cash on behalf of the Settlement Class, a substantial sum of money, especially in light of the real risks faced by Plaintiffs on class certification, summary judgment and in proving their case to the satisfaction of a jury, and given the inevitable delay and risk in obtaining a recovery through trial and appeal. The settlement presents no “obvious deficiencies” or any “grounds to doubt its fairness.” Rather, this is a straightforward cash deal for a straightforward

release. The settlement money will be distributed to the Settlement Class, its counsel and the class representatives only in the manner and in the amounts approved by this Court as fair and reasonable.

A. The Settlement Is Well Within the Range of Possible Approval as Being Fair, Reasonable and Adequate

The Settlement Agreement provides the Settlement Class with a substantial recovery – just shy of 30 million dollars. This amount represents over 25% of the overcharges that Dr. Leitzinger preliminarily estimated had been paid by members of the litigation class that Plaintiffs sought to certify.⁹ This is an excellent recovery for the Settlement Class especially in this complex case, and compares favorably to other class action antitrust settlements. *See In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 U.S. Dist. LEXIS 10532, at *15 (E.D. Pa. June 2, 2004) (collecting cases in which courts have approved settlements of 5.35% to 28% of

⁹ To be sure, the Settlement Class is significantly broader than the proposed litigation class: the Settlement Class covers a broader time period and broader set of Michigan hospitals. But it is not unusual to settle a class action for a broader class given the defendant's desire for total peace. *See Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 772 n.5 (N.D. Ohio 2010). Moreover, as discussed *infra* Part VIII, Plaintiffs' proposed plan of allocation allocates the large majority of the settlement money to the members of the proposed litigation class, in recognition of the greater strength of their damages claims, as revealed by Plaintiffs' Counsel's analysis of the extensive factual record and Dr. Leitzinger's impact and damages analysis. Thus, even though the Settlement Class adds additional persons, entities and purchases to this case – which was a condition of settlement – the broader class will not unreasonably or unfairly dilute the claims of the members of the proposed litigation class. Further, BCBSM's desire to settle with the broader class acknowledges that it faces some risk, however small, from at least the expense and distraction of litigating additional claims.

estimated damages in complex antitrust actions).

The fairness of the settlement is underscored by the substantial risks and certain delays associated with continuing the litigation. Were the litigation against Blue Cross to continue, Blue Cross has made it clear that it would continue to vigorously defend itself against the Plaintiffs' claims. Blue Cross has argued strenuously that the challenged MFN agreements are procompetitive, that they did not cause reimbursement rates to increase, that any increases in reimbursement rates were too small to affect competition among sellers of commercial health insurance, and that Plaintiffs cannot prove impact and damages *at all*, let alone with class-wide evidence. While Plaintiffs believe they can counter these arguments, they face real risk that the Court or a jury would disagree. *See IUE-CWA*, 238 F.R.D. at 594 (recognizing "the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.") (quoting *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005)). Even if Plaintiffs were to prevail on all liability issues, there is no guarantee that a jury would award them substantial damages. *See In re McDonnell Douglas Equip. Leasing Sec. Litig.*, 838 F. Supp. 729, 741 (S.D.N.Y. 1993). In order to avoid these substantial risks and this uncertainty, as well as the "long, arduous [trial] requiring great expenditures of time and money on behalf of both the parties and the court," the Parties have determined that

settlement is in their own best interests. *In re Cincinnati Policing*, 209 F.R.D. 395, 400 (S.D. Ohio 2002).

B. The Settlement Is the Result of Arm's-Length Negotiations

There is a presumption that parties act in good faith during settlement negotiations. *UAW v. GMC*, No. 05-cv-73991, 2006 U.S. Dist. LEXIS 14890, at *63 (E.D. Mich. Mar. 31, 2006) (“Courts presume the absence of fraud or collusion [in settlement negotiations] unless there is evidence to the contrary.”). There is no reason to challenge that presumption here, as the settlement negotiations have been conducted at arm's-length, with each side zealously advocating for the interests of its client(s) and wholeheartedly pursuing litigation throughout the process. Further, both parties are represented by highly competent counsel, who are experienced in antitrust class action cases like this one.

Additionally, the Settlement Agreement does not reflect any preferential treatment for the class representatives or provide for excessive compensation for the attorneys. Indeed, the settlement provides for no particular award of attorneys' fees, but requires Plaintiffs to petition the Court to approve their requested fees, and the Court will only approve such a request to the extent it is reasonable. The class representatives do not receive any special treatment under the settlement. While Plaintiffs intend to petition the Court for incentive awards for the Plaintiffs, these are well-recognized in the law as an appropriate means of compensating the

Plaintiffs for the services they provided and the risks they took on behalf of the class. *See In re F&M Distributions, Inc. Sec. Litig.*, No. 95-cv-71778, 1999 U.S. Dist. LEXIS 11090, at *20-21 (E.D. Mich. June 29, 1999) (noting that “[incentive] awards are common in class actions where common funds have been created” and finding that awards were “reasonable and justified due to the discovery and other burdens to which [class representatives] were subjected, including having to give depositions and produce their records of securities transactions.”).

Because the Settlement Agreement provides for reasonable compensation, contains no unfair provisions, and was reached through good faith negotiations, Plaintiffs request that this Court grant preliminary approval.

V. NOAH AND BAYNARD SHOULD BE ADDED AS ADDITIONAL NAMED PLAINTIFFS

Plaintiffs request that the Court join Patrice Noah and Susan Baynard as additional named plaintiffs in this Action pursuant to Rule 21 of the Federal Rules of Civil Procedure. Both individuals desire to serve as class representatives in this case, and in fact produced documents and then appeared for deposition in January 2014 in anticipation of being added to the case. Their addition would bolster the adequacy of representation of the Settlement Class. Plaintiffs moved to add them as additional plaintiffs last year, and the motion was pending when the case settled. For the reasons stated in that motion, Plaintiffs now request that Noah and Baynard be joined as additional named plaintiffs to represent the Settlement Class. *See* Dkt.

No. 124, at 9-12.

VI. THE SETTLEMENT CLASS SHOULD BE CERTIFIED AND CLASS COUNSEL APPOINTED

Plaintiffs request that the Court certify, for settlement purposes only, a Settlement Class comprised of:

All Direct Purchasers of healthcare services from a Michigan General Acute Care Hospital from January 1, 2006 until June 23, 2014. Excluded from the Settlement Class are all Released Parties. For purposes of this class definition, “Direct Purchasers” includes without limitation individuals who paid Michigan General Acute Care Hospitals in the form of co-pays, co-insurance or otherwise; insurers that paid Michigan General Acute Care Hospitals for their insureds; and self-insured entities whose health plan participants received healthcare services at Michigan General Acute Care Hospitals.

Plaintiffs further request that the Court appoint, for settlement purposes only, each current Plaintiff and Proposed Plaintiffs Patrice Noah and Susan Baynard as Settlement Class representatives, and interim Co-Lead Class Counsel as Class Counsel to the Settlement Class.

To determine whether a proposed settlement class should be approved, a Court must determine whether the class satisfies the requirements of Rule 23(a) and 23(b). *See IUE-CWA*, 238 F.R.D. at 591. It is appropriate for the Court to do so, however, with the knowledge that a settlement class does not present issues identical to those of a litigation class destined for trial. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would

present intractable management problems . . . ”). As explained below, the Settlement Class meets the applicable Rule 23 requirements.

A. The Settlement Class Satisfies the Numerosity Requirement

The numerosity requirement is met when “joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “While no strict numerical test exists to define numerosity under Rule 23(a)(1), ‘substantial’ numbers of affected consumers are sufficient to satisfy this requirement.” *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 852 (6th Cir. 2013) (quoting *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006)). The litigation class Plaintiffs sought to certify consisted of many thousands of members. *See* Expert Rep. of Jeffrey Leitzinger, Ph.D. in Support of Pls.’ Mot. for Class Cert. (“Leitzinger Rpt.”) (Oct. 21, 2013), Dkt. No. 133 Ex. A, at ¶ 25. The Settlement Class is broader – consisting of all insurers, self-insured entities and individual insureds who purchased healthcare services from a Michigan General Acute Care Hospital during a more than eight-year period – and thus easily satisfies the numerosity requirement.

B. The Settlement Class Satisfies the Commonality Requirement

The Settlement Class satisfies the commonality requirement, *see* Fed. R. Civ. P. 23(a)(2), as there are several factual and legal issues that are common to the class members. Such common issues include whether the MFN agreements were

anticompetitive, whether BCBSM's actions injured the class members, and the appropriate measure of damages. Common questions such as these are often found to be sufficient to satisfy the commonality requirement, and do so here. *See Young*, 693 F.3d at 543.

C. The Settlement Class Satisfies the Typicality Requirement

The claims of Plaintiffs and Proposed Plaintiffs Patrice Noah and Susan Baynard are typical of the claims of the Settlement Class because the class representatives' claims and the class's claims all arise from the same course of conduct – BCBSM's MFN agreements. Moreover, all seek recovery on the theory that the MFN agreements were anticompetitive and caused prices for healthcare at Michigan General Acute Care Hospitals to be inflated. *See Fed. R. Civ. P. 23(a)(3); Powers v. Hamilton Cnty. Pub. Defender Comm'n*, 501 F.3d 592, 618 (6th Cir. 2007) (“[A] plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.”) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1082 (6th Cir. 1996)).

D. The Settlement Class Satisfies the Adequacy Requirement

Rule 23(a)(4)'s adequacy requirement raises two questions: “(1) whether the class counsel are qualified, experienced and generally able to conduct the litigation and (2) whether the class members have interests that are antagonistic to the other

class members.” *Beattie v. CenturyTel, Inc.*, 234 F.R.D. 160, 169 (E.D. Mich. 2006) (quoting *Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000)). Here, both factors are satisfied.

The Court previously concluded that The Miller Law Firm, Cohen Milstein, Gustafson Gluek, and Wolf Haldenstein have the experience, knowledge and resources to adequately represent a class in this case, in appointing them interim class counsel under Federal Rule of Civil Procedure 23(g). *See* Dkt. No. 69. Since that appointment, these four firms (together with their co-counsel) have vigorously and effectively litigated this case for nearly two years, defeating BCBSM’s motion to dismiss, participating in extensive fact and expert discovery, working with Dr. Leitzinger to prepare class certification expert reports, filing a motion for class certification, and virtually completing a class certification reply brief (before the case settled). Interim class counsel’s work in this case demonstrates that, in addition to having the experience, knowledge and resources to adequately represent the Settlement Class, they have in fact capably represented, and devoted a substantial amount of resources to, a proposed class in this case for an extended period of time.

Plaintiffs and Proposed Plaintiffs have likewise shown their dedication to advancing the interests of a class throughout the course of the litigation – working with their counsel, producing documents in discovery and sitting for depositions.

No conflicts between Plaintiffs, Proposed Plaintiffs and the litigation class have arisen during this case. Further, the proposed class representatives' interests are aligned with the Settlement Class's interests in this case because they, like all other class members, have been injured by the same alleged conduct and they, like the other class members, "have the same interest in establishing liability, and . . . they all seek damages for overpayment." *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. 393, 407 (S.D. Ohio 2007). They are thus adequate representatives of the Settlement Class.

E. Questions of Law and Fact Predominate Over Any Questions Affecting Individual Members of the Settlement Class

Finally, Plaintiffs must show that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Antitrust cases are ideally suited for class action treatment because common issues routinely predominate. *See Amchem*, 521 U.S. at 625 ("Predominance is a test readily met in certain cases alleging . . . violations of the antitrust laws."). Importantly, in *Amchem*, the Supreme Court recognized that the fact of a "settlement is relevant to a class certification," and specifically instructed that the portion of the predominance analysis that typically focuses on the management of the trial becomes unnecessary and irrelevant when a class is being certified in light

of settlement. *Id.* at 619-20. *See also Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 305-06 (3d Cir. 2011) (en banc) (court need not “consider the available evidence and the method or methods by which plaintiffs propose to use the evidence to prove the disputed element at trial”) (quotation omitted). Here, the focus is on Defendant’s conduct and its overall effect on the market as a whole, *not* on matters pertaining to individual Settlement Class Members. *See In re Pressure Sensitive Labelstock Antitrust Litig.*, No. 03-md-1556, 2007 U.S. Dist. LEXIS 85466, at *41 (M.D. Pa. Nov. 19, 2007) (“Common issues predominate when the focus is on the defendants’ conduct and not on the conduct of the individual class members”) (citation and quotation marks omitted).

Common issues predominate here because, to recover, each and every member of the Settlement Class would need to prove: (1) the existence of the MFN agreements between Blue Cross and certain hospitals in Michigan, (2) how these agreements affected competition in the sale of commercial health insurance, including whether the MFN hospitals were located in geographic areas that would cause competition to be suppressed, and (3) Blue Cross’s market power. Each of these issues is a component of the liability case and thus is common to all class members.

In addition, Dr. Leitzinger has devised a single formula and compiled a single database that allow him to opine on which hospitals negotiated inflated

reimbursement rates with Priority, HAP, Aetna and Blue Cross (the insurers from which plaintiffs obtained the necessary data) as a result of the MFN agreements, and to estimate how much the rate was inflated. These class-wide elements are central to Dr. Leitzinger's analysis and are more than sufficient to make his analysis common evidence.¹⁰ Indeed, the Seventh Circuit held that the same or similar methodology used in another case also involving overcharges on hospital services was common evidence, even if the methodology needed to be applied to determine impact and damages on a *medical-procedure-by-medical-procedure* basis. *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 819 (7th Cir. 2012).

Not only do common issues exist as to the claims of the Settlement Class, they outweigh any individual issues. *See* Dkt. No. 133, at 32-48. Accordingly, the class action device would be far superior to any alternative procedure for resolving the factual and legal issues presented here. *See In re Carbon Black Antitrust Litig.*, Civ. No. 03-10191-DPW, 2005 U.S. Dist. LEXIS 660, *82-83 (D. Mass. Jan. 18, 2005) (courts generally find superiority requirement satisfied when common issues

¹⁰ While the data Dr. Leitzinger used was to show impact and damages for the narrower litigation class, his methodology is equally applicable to the Settlement Class, although it may be the case that, as discussed in Section VIII below, Plaintiffs would have substantially greater difficulty proving impact and damages for some members of the Settlement Class. But what matters for class certification is that a common methodology and database can be used to determine who was harmed and the extent of their damages. *See Kohen v. Pac. Inv. Mgmt. Co. LLC & PIMCO Funds*, 571 F.3d 672, 679 (7th Cir. 2009).

predominate). A single class-wide adjudication is more efficient than thousands of individual actions litigating the same issues with the same proof, and more fair than the more likely alternative – few or no individual suits at all. *See In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 326, 350-51 (E.D. Mich. 2001).

Because the requirements of Rule 23 are satisfied, especially in light of settlement, Plaintiffs ask that the Court certify the Settlement Class.

VII. THE CLASS NOTICES AND THE NOTICE PLAN SHOULD BE APPROVED

Plaintiffs request approval of the forms of class notice attached to the Settlement Agreement as Exhibits B (Postcard Notice), C (Publication Notice) and D (Long Form Notice), and the proposed Notice Plan, attached to the Settlement Agreement as Exhibit A, for disseminating these notices to Settlement Class Members. Rule 23 requires that notice of a settlement be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see also* A. Conte & H. Newberg, *Newberg on Class Actions*, § 8.20-.21 at 228-32 (4th ed. 2002).

As detailed in the Notice Plan, Plaintiffs propose to provide the following notice to the Settlement Class:

- Mail the Postcard Notice to all Settlement Class Members whose names and addresses are available from the data produced in this litigation by Blue Cross, Priority, and Aetna, as well as to all other

commercial insurers in the class. Plaintiffs are seeking contact information for customers of HAP and additional customers of Aetna. Plaintiffs estimate that postcards will be mailed to more than 2 million class members.

- Publish the Publication Notice in 12 local newspapers, two newspaper supplements, and *People* magazine in Michigan.
- Place a banner advertisement on websites that are part of the Xaxis Network.
- Post the Long Form Notice, the Settlement Agreement, the Claim Form, and other information about the settlement on a website that the Settlement Administrator¹¹ will create and maintain. The Publication Notice and Postcard Notice will prominently display the website address.
- The Long Form Notice will identify the website address and provide both an email address that will be staffed by the Settlement Administrator and a toll-free telephone number to allow Settlement Class Members to request a Notice or Claim Form be mailed to them or listen to answers to frequently asked questions.

The contents of the class notices and the proposed method of their dissemination comport with Federal Rules of Civil Procedure 23(c)(2) and 23(e), as well as due process. *See generally* Declaration of Shannon R. Wheatman, Ph.D. on Adequacy of Notice Plan (“Wheatman Decl.”), dated June ____, 2014 (Attached hereto as Exhibit 2); *see Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-77 (1974) (due process is satisfied by mailed notice to all class members who reasonably can be identified); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 429

¹¹ Epiq Systems has over 40 years of experience in notice and administration in class action cases. *See* “Epiq Overview,” attached hereto as Exhibit 3. Epiq Systems was selected by Class Counsel through a competitive bidding process.

(S.D. Tex. 1999) (mailed notice to all class members whose address was known, and publication notice, satisfied Due Process and Rule 23). Plaintiffs therefore request that the Court approve the form of the class notices and the Notice Plan.

VIII. THIS COURT SHOULD PRELIMINARILY APPROVE THE PLAN OF ALLOCATION AND APPROVE THE CLAIM FORM

Plaintiffs propose to distribute the Net Settlement Fund¹² to Settlement Class Members who submit timely and valid Claim Forms. Plaintiffs will disseminate a Claim Form, substantially in the form attached to the Settlement Agreement as Exhibit E, to Settlement Class Members. The Claim Form will be available on the settlement website and upon request. The class notices will advise class members of how they can obtain the Claim Form and the deadline for submitting a completed form. Completed forms may be mailed to the Settlement Administrator or submitted online, via the settlement website.

Plaintiffs propose to allocate the Net Settlement Fund as provided in the Plan of Allocation attached to the Settlement Agreement as Exhibit F. The plan identifies three categories of relevant purchases. Class members may claim their purchases in any or all categories.

Category 1 purchases are those that define the litigation class that Plaintiffs had moved to certify. These purchases occurred at thirteen Michigan General

¹² The Net Settlement Fund is the Settlement Amount plus accrued interest minus any amounts awarded by the Court for attorneys' fees, expenses and plaintiff incentive awards. *See* ¶ 13.

Acute Care Hospitals and involved insurance coverage provided by four insurers: BCBSM, HAP, Priority, and Aetna (at a single Michigan hospital). These are the purchases for which Plaintiffs had the best evidence of impact and for which Dr. Leitzinger had (preliminarily) measured damages. Accordingly, the plan allocates the large majority (78 percent) of the Net Settlement Fund to compensate class members for Category 1 purchases. Category 2 purchases are those made at Michigan General Acute Care Hospitals when an MFN agreement between BCBSM and the hospital was in effect, excluding Category 1 purchases. Plaintiffs had weaker or no evidence of impact for Category 2 purchases (the majority of Michigan hospitals with MFN contracts), and, for class certification purposes, did not seek to prove damages for these purchases. Thus, the plan allocates 20 percent of the Net Settlement Fund to these purchases. Category 3 purchases are all purchases of healthcare services at Michigan General Acute Care Hospitals from January 1, 2006 through June 23, 2014 other than Category 1 and 2 purchases. In Plaintiffs' view, claims based on these purchases – when the hospital had no MFN agreement – would be very difficult if not impossible to prove, and thus the plan allocates only two percent of the Net Settlement Fund to these purchases.

Settlement funds would be allocated pro rata based on the claimant's purchases within a category as a percentage of the total purchases of all claimants within the same category. However, a distribution will be made to claimants for

Category 3 purchases only under certain conditions designed to avoid mailing checks where the cost to review the supporting documentation, to calculate the amount of the distribution, and to process and mail the check exceeds the amount of the check. Any Category 3 funds not distributed to claimants because of these conditions would be distributed cy pres to Free Clinics of Michigan, as determined by the Court.

There is a minimum distribution per claimant of \$25 for Category 1 purchases and \$15 for Category 2 purchases (subject to reduction in unlikely circumstances). These minimums will encourage claimants with small purchases to share in the recovery, will minimize their burden of filing a claim, and will facilitate efficient administration of the settlement. There is also a per-claimant cap for Category 1 and 2 purchases. The cap for Category 1 is 3.5% of the claimants' total purchases of healthcare services at Michigan General Acute Care Hospitals between January 1, 2006 and June 23, 2014. The cap for Category 2 is 1% of such purchases. These caps were the subject of intense negotiations between the Parties and were part of the give and take that led to this settlement.

This carefully crafted plan of allocation reflects (1) Plaintiffs' reasonable judgment about the relative value of the different claims being settled, (2) a desire for an efficient and fair claims process, and (3) the arm's-length negotiations between the Parties. As such, the plan is within the range of possible approval as

being fair, reasonable and adequate, and should be granted preliminary approval. *See In re Top Tankers, Inc. Sec. Litig.*, No. 06-cv-13761, 2008 U.S. Dist. LEXIS 58106, at *34 (S.D.N.Y. July 31, 2008) (plan of allocation should be approved if it is “fair and adequate”); *Taft v. Ackermans*, No. 02-cv-7951, 2007 U.S. Dist. LEXIS 9144, at *27 (S.D.N.Y. Jan. 31, 2007) (if plan of allocation is “formulated by ‘competent and experienced counsel, an allocation plan need only have a ‘reasonable, rational basis’”) (quoting *Hicks v. Morgan Stanley & Co.*, No. 01-cv-10071, 2005 U.S. Dist. LEXIS 24890, at *19-20 (S.D.N.Y. Oct. 19, 2005).

Plaintiffs also request that the Court approve the Claim Form attached to the Settlement Agreement as Exhibit E. It is designed to clearly and efficiently elicit the information necessary to implement the Plan of Allocation.

IX. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed preliminary approval order attached to the Settlement Agreement as Exhibit H.

June 23, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2014, I electronically filed the *Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Certification of Settlement Class, and Related Relief* with the Clerk of the Court using ECF, who in turn sent notice to all counsel of record.

Dated: June 23, 2014

/s/ Daniel A. Small

Daniel A. Small

EXHIBIT 1

WHEREAS, Plaintiffs have alleged in their Consolidated Amended Complaint (doc #78) (“CAC”) that BCBSM engaged in certain conduct in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL § 445.772, which caused damages to the Plaintiffs and Settlement Class Members, and for which Plaintiffs and Settlement Class Members seek an award of money damages and injunctive relief;

WHEREAS, BCBSM denies each and every one of Plaintiffs’ allegations of unlawful conduct, specifically denies all liability to Plaintiffs and the other Settlement Class Members, has not conceded or admitted any liability, has asserted affirmative and other defenses to each of Plaintiffs’ claims, and intends to continue with a vigorous defense of this Action in the event this Agreement is not approved by the Court;

WHEREAS, BCBSM, through its counsel, and Plaintiffs, through their counsel and on behalf of themselves and the other Settlement Class Members, have engaged in vigorous, arms’-length negotiations that led to this Agreement, which embodies all of the terms and conditions of the Settlement among the Parties, subject to approval of this Agreement by the Court;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding their claims and have concluded, after carefully considering the facts and circumstances of their claims and the applicable law, that a settlement with BCBSM according to the terms and conditions set forth below is in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, BCBSM, despite its belief that it is not liable for the claims asserted and that it has meritorious defenses to the claims alleged, has nevertheless concluded that it will enter into this Agreement solely to avoid the further expense, inconvenience and burden of protracted

litigation, and the distraction and diversion of its personnel and resources, and thereby to put to rest this controversy, and to avoid the risks inherent in uncertain, complex litigation;

WHEREAS, Plaintiffs and BCBSM agree that this Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by BCBSM or of the truth of any of the claims or allegations in the CAC or any prior complaint;

WHEREAS, Plaintiffs' motion to add Patrice Noah and Susan Baynard as additional named plaintiffs (Doc # 124) is pending in this Action;

WHEREAS, the Court entered an Order Adjourning all Deadlines (Doc # 146) on March 27, 2014;

WHEREAS, Plaintiffs will request that the Court add Patrice Noah and Susan Baynard as additional named plaintiffs and representatives of the Settlement Class;

WHEREAS, this Agreement, which is subject to the approval of the Court, sets forth all of the terms and conditions of the agreement between BCBSM and Plaintiffs and Proposed Plaintiffs, on behalf of themselves and the Settlement Class;

NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned, on behalf of BCBSM and on behalf of Plaintiffs, Proposed Plaintiffs and the Settlement Class, that the claims of Plaintiffs, Proposed Plaintiffs and the Settlement Class against BCBSM be settled, compromised and dismissed on the merits and with prejudice, without costs as to Plaintiffs, Proposed Plaintiffs, the Settlement Class, or BCBSM, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

The following terms, as used in this Agreement, have the following meanings:

1. “Action” means the above-captioned matter.
2. “BCBSM” means Blue Cross Blue Shield of Michigan.
3. “Claimants” means Settlement Class Members who do not timely and validly exclude themselves from the Settlement Class and who submit timely and valid claim forms to share in the Net Settlement Fund.
4. “Class Counsel” means The Miller Law Firm, P.C., 950 West University Drive, Suite 300, Rochester, MI, Cohen Milstein Sellers & Toll PLLC, 1100 New York Avenue, NW, Suite 500, Washington, DC; Gustafson Gluek, PLLC, Canadian Pacific Plaza, 120 South Sixth Street, #2600, Minneapolis, MN; and Wolf, Haldenstein, Adler, Freeman & Herz, LLC, 55 West Monroe Street, Suite 1111, Chicago, IL.
5. “Court” means the United States District Court for the Eastern District of Michigan, Southern Division.
6. “Escrow Agent” means Eagle Bank, a Maryland State Chartered Bank with offices located in the District of Columbia, including at 2001 K Street, NW, Washington, DC.
7. “Escrow Account” means the account maintained by the Escrow Agent in which the Settlement Fund shall be held.
8. “Execution Date” means June 23, 2014.
9. “Fairness Hearing” means the hearing held by the Court at which the Court will consider evidence and argument for the purposes of determining whether the Settlement encompassed by this Agreement and its exhibits should be finally approved, whether all claims

against BCBSM should be dismissed with prejudice, and whether a Final Judgment should be entered.

10. “Final Approval” of this Agreement means the last date by which all of the following have occurred:

(a) The Court has issued an order substantially in the form of Exhibit I attached hereto, without any modification objected to by Plaintiffs or BCBSM, finally approving the Settlement and dismissing with prejudice all claims against BCBSM (the “Final Approval Order”);

(b) The Court has entered a Final Judgment; and

(c) Expiration of the time for appeal or to seek permission to appeal from the entry of the Final Judgment or, if an appeal from the Final Judgment is taken, the affirmance of such Final Judgment in its entirety, without substantial modification, by the court of last resort to which an appeal of such Final Judgment may be taken, or by a lower appellate court and the time for seeking any further review has expired.

11. “Final Judgment” means an order granting final approval of this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure together with entry of a final judgment sufficient under Rule 58 of the Federal Rules of Civil Procedure dismissing the Action and all claims therein on the merits with prejudice as to all Settlement Class Members who do not timely and validly exclude themselves. Notwithstanding the foregoing, the Parties agree that the Court’s determination of the amount of any attorneys’ fee, expenses and incentive awards to be awarded to Plaintiffs or Plaintiffs’ Counsel, or the individual payments made to Settlement Class Members who submit claims pursuant to the terms of the Settlement, or any modification of such

attorneys' fees, expenses, incentive awards, or amounts of individual payments shall not affect whether a judgment or other order is deemed a final judgment.

12. "Michigan General Acute Care Hospital" means each of the hospitals in Michigan during the period January 1, 2006 through the Execution Date that BCBSM contemporaneously identified in its classification system as a Peer Group 1, 2, 3, 4, or 5 hospital. Each such hospital is listed in Exhibit G to this Agreement.

13. "Net Settlement Fund" means the Settlement Fund less any amounts for attorneys' fees, litigation expenses, settlement administration expenses (including Taxes and Tax Expenses), or plaintiff incentive awards.

14. "Notice" means the notices of Settlement to the Settlement Class Members described in the Notice Plan, attached hereto as Exhibit A, including notices substantially in the form of Exhibits B, C and D hereto.

15. "Notice Plan" means the plan for disseminating the Notice to Settlement Class Members, attached as Exhibit A hereto.

16. "Parties" means the parties to this Agreement: BCBSM, Plaintiffs and Proposed Plaintiffs.

17. "Plaintiffs" means Michigan Regional Council of Carpenters Employee Benefits Fund, The Shane Group, Inc., Bradley A. Veneberg, Abatement Workers National Health and Welfare Fund, Monroe Plumbers & Pipefitter Local 671 Welfare Fund, and Scott Steele.

18. "Plaintiffs' Counsel" means all counsel of record in this Action for the Plaintiffs.

19. "Plan of Allocation" means the plan by which the Net Settlement Fund shall be allocated to Settlement Class Members as described in Exhibit F hereto.

20. “Preliminary Approval” means the issuance of an order preliminarily approving the Settlement, substantially in the form of Exhibit H hereto, authorizing the distribution of the Notice, and setting a date for the Fairness Hearing.

21. “Proposed Plaintiffs” means Patrice Noah and Susan Baynard.

22. “Release” means the agreement to release claims described in Section H, below.

23. “Released Claims” means any and all claims or other matters described in Paragraphs 58-59, below.

24. “Released Parties” means BCBSM, as well as all of BCBSM’s past and present parents, predecessors, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of them.

25. “Releasers” shall refer jointly and severally, individually and collectively to Plaintiffs, the Proposed Plaintiffs, the Settlement Class Members who do not timely and validly exclude themselves, and the predecessors, successors, heirs, executors, administrators, and assigns of the foregoing.

26. “Settlement” means the agreement to settle this Action, as evidenced by this Agreement.

27. “Settlement Administration Expenses” means those expenses reasonably incurred to administer the Settlement.

28. “Settlement Administrator” means the entity approved by the Court to administer the Settlement according to its terms under the supervision of Class Counsel.

29. “Settlement Amount” means \$29,990,000.00 USD.

30. “Settlement Class” means “all Direct Purchasers of healthcare services from a Michigan General Acute Care Hospital from January 1, 2006 until June 23, 2014. Excluded from the Settlement Class are all Released Parties.” For purposes of this class definition, “Direct Purchasers” includes without limitation individuals who paid Michigan General Acute Hospitals in the form of co-pays, co-insurance or otherwise; insurers that paid Michigan General Acute Care Hospitals for their insureds; and self-insured entities whose health plan participants received healthcare services at Michigan General Acute Care Hospitals.

31. “Settlement Class Members” means the members of the Settlement Class.

32. “Settlement Fund” means the Settlement Amount plus any interest earned on that amount after it is paid by BCBSM. The Settlement Fund will be funded by two separate payments as described in Section B, below.

33. “Taxes” means any sums due to be paid to governmental taxing authorities from the Settlement Fund, including taxes, estimated taxes, interest and penalties.

34. “Tax Expenses” means any and all reasonable fees and costs due to be paid to tax preparers, tax consultants or others for determining the tax liability of the Settlement Fund.

B. Payment

35. No more than fifteen (15) days after Preliminary Approval, BCBSM shall pay, or cause to be paid, by wire transfer, one million U.S. Dollars into the Escrow Account. The purpose of this payment is to pay Settlement Administration Expenses in the period before Final Approval.

36. In the event that Final Approval does not occur for whatever reason, the payment described in Paragraph 35, plus any accrued interest, shall be returned to BCBSM, minus any Settlement Administration expenses incurred.

37. No more than five (5) days after Final Approval, BCBSM shall pay twenty-eight million, nine hundred and ninety thousand U.S. Dollars (\$28,990,000) into the Escrow Account.

38. Class Counsel shall instruct Eagle Bank to invest the Settlement Fund in instruments insured or guaranteed by the full faith and credit of the United States. All interest earned on the Settlement Amount shall become part of the Settlement Fund.

39. The only payments BCBSM is required to make under this Settlement are those in Paragraphs 35 and 37, and under no circumstances shall this Agreement be construed to require BCBSM to make any other payments.

C. Settlement Class Certification

40. In their motion for preliminary approval of this Settlement, Plaintiffs shall seek certification of the Settlement Class for the purposes of this Agreement only, and appointment of Class Counsel as co-lead class counsel under Federal Rule of Civil Procedure 23(g) for the Settlement Class. In addition, the motion for preliminary approval shall request that Proposed Plaintiffs Patrice Noah and Susan Baynard be added to the Action as additional named plaintiffs and class representatives.

41. BCBSM agrees not to oppose certification of a Settlement Class for settlement purposes only. BCBSM further agrees not to oppose (a) appointment of the law firms identified as Class Counsel in Paragraph 4 herein as co-lead class counsel for the Settlement Class; (b) Proposed Plaintiffs being added to the Action as additional named plaintiffs and class representatives; and (c) appointment of the Plaintiffs and Proposed Plaintiffs as representatives of the Settlement Class.

42. Plaintiffs, on behalf of themselves and the other Settlement Class Members, by and through counsel, acknowledge and agree that, in the event the Settlement is not given

Preliminary Approval and Final Approval, BCBSM has not waived, and has expressly reserved, the right to oppose class certification and seek an appeal under Fed. R. Civ. P. 23(f) of any litigation class certified in this Action. Nothing in this Agreement may be used in any judicial or administrative proceedings respecting the propriety of class certification other than for purposes of effectuating this Settlement. The Court's certification of the Settlement Class is not and shall not be deemed to be the adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Agreement, and shall not be considered as law of the case, *res judicata*, or collateral estoppel in this or any other proceeding unless the Final Approval Order approving the terms of this Agreement is entered and the Agreement receives Final Approval. In no circumstance is this Agreement, any documents, affidavits or submissions in support of this Agreement, or any Court order or action in this Action to be deemed an admission by BCBSM as to the propriety of class certification for any purpose other than this Agreement. In the event the Agreement is not given Final Approval for any reason, is materially modified in any fashion by the Court (including material revisions to the Exhibits hereto, unless Plaintiffs and BCBSM agree to such modification), or is otherwise terminated for any reason, or if any objection to a material term of this Agreement by a Settlement Class Member is sustained, then unless Plaintiffs and BCBSM otherwise thereafter agree: (1) this Agreement becomes null and void; (2) any Preliminary Approval Order shall be null and void and shall be vacated and thereafter no class will remain certified; and (3) this Action shall revert to its status held prior to the signing of the Agreement.

D. Effectuation, Approval, and Finality of this Agreement

43. The Parties shall use their best efforts to effectuate this Agreement, and Plaintiffs, in consultation with BCBSM, shall timely seek to obtain the Court's preliminary and final

approval of this Settlement. Plaintiffs shall use their best efforts to secure the prompt, complete and final dismissal with prejudice of the Action.

44. Within a reasonable time after the Execution Date, the Parties shall submit to the Court a motion requesting that the Court enter a Preliminary Approval Order substantially in the form of Exhibit H hereto. That motion shall request that the Court:

- (a) preliminarily approve this Agreement;
- (b) certify the Settlement Class for settlement purposes only;
- (c) permit the addition of the Proposed Plaintiffs as additional named plaintiffs in this Action, appoint Plaintiffs and Proposed Plaintiffs as representatives of the Settlement Class, and appoint Class Counsel as co-lead class counsel for the Settlement Class under Federal Rule of Civil Procedure 23(g);
- (d) appoint the Settlement Administrator to administer the Settlement under the supervision of Class Counsel;
- (e) appoint Eagle Bank to hold the Settlement Fund in the Escrow Account;
- (f) approve the form and content of the notices attached hereto as Exhibits B, C, and D, approve the Notice Plan attached hereto as Exhibit A, and direct that the Notice be provided to the Settlement Class Members in accordance with the Notice Plan;
- (g) authorize payment from the Settlement Fund of the expenses specified in Paragraph 70 herein as they are incurred;
- (h) set the date for a Fairness Hearing; and
- (i) stay all proceedings in the Action except those proceedings provided for or required by this Agreement.

45. Within ten (10) days of this Agreement's filing with the Court, BCBSM shall cause notice of the proposed Settlement that meets the requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to be served on the appropriate federal and state officials within the time period required by CAFA. BCBSM shall file with the Court a certification stating the date(s) on which the CAFA notices were sent.

46. Plaintiffs, in consultation with BCBSM, shall timely submit a motion for final approval of this Agreement to the Court, along with a proposed Final Approval Order substantially in the form of Exhibit I hereto. The proposed Final Approval Order shall comply with Fed. R. Civ. P. 23(c)(3), including by identifying all members of the Settlement Class who timely submitted valid requests for exclusion. The Final Approval Order shall request that the Court:

(a) approve finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

(b) direct that the Action against BCBSM be dismissed with prejudice and that all claims therein against BCBSM be dismissed with prejudice, and, except as provided for in this Agreement, without costs;

(c) reserve exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Settlement; and

(d) find that all persons and entities that timely and validly excluded themselves from the Settlement Class are not bound by the Settlement.

47. If this Agreement is finally approved by the Court in its current form, or in a form not materially different therefrom, the Parties agree not to take any appeal from entry of the Final Judgment.

E. Class Notice

48. Plaintiffs will propose that the Court direct them to disseminate the Notice to the Settlement Class as described in the Notice Plan. That Notice Plan is designed to comply with the requirements of Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States Constitution.

49. BCBSM shall have no liability with respect to the giving of any notice provided for in this Agreement.

F. Settlement Administration, Claims Process and Plan of Allocation

50. The Settlement Administrator shall administer the Settlement under the direction of Class Counsel. Class Counsel will consult with BCBSM's Counsel concerning the administration of the Settlement.

51. All costs, fees and expenses related to the administration of the Settlement, including the costs of notice, shall be paid from the Settlement Fund. Neither Plaintiffs nor the Settlement Class nor BCBSM, nor their respective counsel, shall have any responsibility for any such settlement administration payments.

52. The Net Settlement Fund will be allocated among the Claimants according to the Plan of Allocation.

53. All Settlement Class Members who seek payment from the Settlement Fund will be required to submit Claim Forms substantially in the form of either Exhibit E-1 or Exhibit E-2 hereto, subject to Court approval.

54. The Settlement Fund shall not revert, in part or in whole, to BCBSM as a result of the existence of undistributed portions of the Settlement Fund. BCBSM represents that it will make no claim for such a reversion.

G. Requests for Exclusion

55. The Settlement Administrator shall forward each request for exclusion from the Settlement Class to counsel for BCBSM and Class Counsel.

56. Each member of the Settlement Class who does not file a timely written request for exclusion in accordance with the procedures set forth in the Notice shall be bound upon Final Approval by all of the terms of this Agreement, including the Release set out in Section H herein and by all proceedings, orders and judgments in this Action, even if any of the Settlement Class Members has pending, or subsequently initiates, litigation, arbitration or any other action against BCBSM relating to the Released Claims.

57. No Party to this Agreement will make any effort, directly or through a third party, to influence any individual or entity to request exclusion from the Settlement Class.

H. Release and Discharge

58. In exchange for the relief included in this Agreement, upon Final Approval of the Agreement, and except as to such rights or claims as may be created by this Agreement, Releasers, jointly and severally, shall, and hereby do, fully release and discharge BCBSM and Released Parties from any and all claims, judgments, liens, losses, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, indemnities, actions, causes of action, and obligations of every kind and nature in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or accrued, arising out of or in any way relating to Most Favored Nation Clauses, or any matter or event occurring up to

the execution of this Agreement arising out of the dispute which is the subject of this Action, whether in contract, tort, local law, or violation of any state or federal statute, rule or regulation, including without limitation, claims under the Sherman Act, Clayton Act or any Michigan antitrust statute, from January 1, 2006, through the Execution Date (“Released Claims”).

Released Claims include any unknown claims that Settlement Class Members do not know or suspect to exist in their favor, which if known by them, might have affected this Agreement with BCBSM and the release of Released Parties.

59. As used in Paragraph 58, “Most Favored Nation Clauses” means all agreements and arrangements between BCBSM and general acute care hospitals in Michigan that (a) Plaintiffs have alleged or contended in this Action are most favored nation clauses, (b) are within the definition of a most favored nation clause contained in Section 3405a(4) of 1956 PA 218, or (c) have the same purpose or effect as the agreements and arrangements described in clauses (a) and (b) of this Paragraph.

60. The Release described in Paragraph 58 is not intended to, and shall not, release any claims for medical malpractice, insurance coverage, product liability, personal injury, or similar claims.

61. The Parties intend that the Agreement shall be binding on all Settlement Class Members who do not timely and validly request exclusion, whether or not they actually receive a payment pursuant to the Agreement. This Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims if raised in any other action.

62. The failure of any Settlement Class Member to claim or obtain any relief made available under this Agreement shall not affect the validity, scope, or enforceability of the Release, herein, and all Settlement Class Members who do not timely and validly request

exclusion shall remain bound by said releases. BCBSM shall not be required to remit any additional consideration to any Settlement Class Members following or on account of such forfeiture by any Settlement Class Member.

63. As part and parcel of this Agreement, all Settlement Class Members who do not timely and validly exclude themselves will be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit in any state, territorial or federal court, or any arbitration or administrative or regulatory or other proceeding in any jurisdiction that asserts any of the Released Claims.

64. With respect to all Released Claims, Plaintiffs, on behalf of themselves and each of the other Settlement Class Members who do not validly request exclusion from this Settlement, agree that they are expressly waiving and relinquishing to the fullest extent permitted by law:

(a) the provisions, rights and benefits conferred by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does 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; and

(b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 1542 of the California Civil Code.

65. BCBSM and Plaintiffs, on behalf of themselves and the other Settlement Class Members, hereby expressly agree that all provisions of this Section H together and separately constitute essential and material terms of this Agreement.

I. The Settlement Fund

66. The Settlement Fund shall be paid and distributed in accordance with the orders of the Court and this Agreement, including the Plan of Allocation. BCBSM shall have no obligation, responsibility or liability with respect to the investment, management, allocation, administration or distribution of the Settlement Fund.

67. The Parties to this Agreement and their counsel shall treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1 for all periods after the date of initial funding of the Settlement Fund. The Parties and their counsel agree to take no action inconsistent with the treatment of the Settlement Fund in such manner. As required, the Parties shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

68. All interest earned by the Settlement Amount shall become and remain part of the Settlement Fund.

69. Each member of the Settlement Class who does not timely and validly request exclusion shall look solely to the Settlement Fund for compensation under this Agreement. Any Settlement Class Member who fails to file a claim, or whose claim is denied by the Settlement

Administrator for any reason, shall remain bound by the Settlement and subject to the Release, unless the Settlement Class Member has timely submitted a valid request for exclusion. Except as provided by order of the Court, no member of the Settlement Class shall have any interest in the Settlement Fund or any portion thereof.

70. Upon Court approval, the Settlement Fund may be distributed to pay the following expenses as they are incurred in administering the Settlement: Taxes, Tax Expenses, charges of Eagle Bank, charges of the Settlement Administrator, and the cost of implementing the Notice Plan.

J. Attorneys' Fees

71. Plaintiffs, Proposed Plaintiffs and Plaintiffs' Counsel shall be paid and reimbursed solely out of the Settlement Fund for all attorneys' fees, expenses, and plaintiff incentive awards. BCBSM shall not be liable for any fees, expenses, or incentive awards of any of the Plaintiffs, Proposed Plaintiffs, or Plaintiffs' attorneys, experts, advisors, agents, or representatives, and all such fees, expenses, and incentive awards as approved by the Court shall be paid out of the Settlement Fund. BCBSM agrees not to oppose a request by Class Counsel for: (a) attorneys' fees to be paid out of the Settlement Fund of up to one-third of the Settlement Fund; and (b) reimbursement of all reasonable expenses incurred in connection with this Action. BCBSM further agrees not to oppose a request for incentive awards to the Plaintiffs and Proposed Plaintiffs not to exceed \$50,000 for an entity or \$10,000 for an individual.

72. In no event shall BCBSM be obligated to pay anything in addition to the Settlement Amount, including without limitation, class notice costs, attorneys' fees, litigation expenses, plaintiff incentive awards, settlement administration costs, escrow costs, Taxes, Tax Expenses or any other expense arising from or to be paid as part of this Agreement, all of which

shall be paid from the Settlement Fund. Plaintiffs, Proposed Plaintiffs and Plaintiffs' Counsel will be paid and reimbursed solely out of the Settlement Fund.

K. Rescission

73. BCBSM and Class Counsel shall each, in their respective sole discretion, have the option to rescind this Agreement in its entirety if the Court declines to approve this Agreement or any material part hereof, or if such approval is materially modified or set aside on appeal, or if the Court does not enter the Final Judgment, or if the Court enters the Final Judgment and appellate review is sought and, on such review, such Final Judgment is not affirmed or is materially modified.

74. Any Party wishing to rescind pursuant to Paragraph 73 must provide written notice of rescission to the other Party or Parties no later than twenty-one (21) calendar days after the event giving rise to the option to rescind.

75. BCBSM, in its sole discretion, shall have the option to rescind this Agreement in its entirety if BCBSM determines in good faith that the total dollar amount of Relevant Purchases (as defined in the Plan of Allocation) by Settlement Class Members who validly request exclusion materially undermines the value of the Settlement to BCBSM. In the event that Aetna Inc. requests exclusion, BCBSM agrees that it will not include the Relevant Purchases of Aetna Inc. in determining whether the total dollar amount of Relevant Purchases by Settlement Class Members who validly request exclusion materially undermines the value of the Settlement to BCBSM.

76. If BCBSM wishes to rescind pursuant to Paragraph 75, it must:

(a) no later than twenty-one (21) calendar days after BCBSM has received from the Settlement Administrator all timely requests for exclusion, provide Plaintiffs in writing: (i) a

reasonable basis for concluding that those requesting exclusion are Settlement Class Members, (ii) the estimated dollar amount of the Relevant Purchases of each Settlement Class Member requesting exclusion, and (iii) a reasonable basis for the estimate; and

(b) no later than twenty-eight (28) days after BCBSM has received from the Settlement Administrator all timely requests for exclusion, provide final written notice of rescission to Plaintiffs.

77. If the Agreement is rescinded pursuant to this Section K, BCBSM shall be reimbursed the Settlement Fund, including any accrued interest, less any funds disbursed pursuant to this Agreement.

78. A modification or reversal on appeal of any amount awarded or approved by the Court from the Settlement Fund for (a) Plaintiffs' Counsel's fees and expenses, (b) Plaintiff incentive awards, or (c) distribution to Claimants shall not be deemed a modification of this Agreement or the Final Judgment for purposes of this Section K and neither Party shall have the right to terminate the Agreement based on such a modification or reversal.

79. In the event that the Agreement is rescinded pursuant to this Section K, then:

(a) the terms and provisions of this Agreement, with the exception of this Section K (which shall continue in full force and effect), shall be null and void and shall have no force or effect; and

(b) neither the existence nor the terms of this Agreement, nor any negotiations preceding this Agreement, nor any acts performed pursuant to, or in furtherance of, this Agreement, shall be used or offered in evidence in any action or proceeding for any purpose (other than to enforce the terms remaining in effect).

L. Taxes

80. Class Counsel shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, funds to pay Taxes. All Taxes due with respect to the income earned by the Settlement Fund shall be paid, when due, from the Settlement Fund; Class Counsel shall direct Eagle Bank to do so in writing. BCBSM shall have no responsibility to make any tax filings relating to the Settlement Fund and will have no responsibility to pay Taxes, unless the Settlement is not consummated and the Settlement Fund is returned to BCBSM. In the event the Settlement is not consummated, BCBSM shall be responsible for the payment of any Taxes.

81. As set out in Paragraph 67 herein, the Parties to this Agreement and their counsel shall treat, and shall cause the Settlement Administrator and Eagle Bank to treat, the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1.

M. Use of this Agreement

82. This Agreement and the Settlement, including all negotiations and discussions leading up to the Settlement, shall not constitute any admission of liability or other evidence of any violation of any statute or law or of any liability or wrongdoing by BCBSM or of the truth of any of the claims or allegations Plaintiffs and Proposed Plaintiffs have asserted against BCBSM in this Action.

83. Notwithstanding the foregoing, this Agreement may be used or offered in evidence in order to enforce the terms of this Agreement, or filed in any action in support of any

defense asserted by BCBSM or other Releasees based upon *res judicata*, collateral estoppel, release, waiver, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

N. Reservation of Claims

84. This Agreement does not settle or compromise any claims by Plaintiffs, Proposed Plaintiffs or the other Settlement Class Members against any person or entity other than the Released Parties. All rights of any Settlement Class Member against any person or entity other than BCBSM and Released Parties are specifically reserved by Plaintiffs, Proposed Plaintiffs and the other Settlement Class Members.

O. Miscellaneous

85. This Agreement, including the Exhibits, constitutes the entire agreement among Plaintiffs, Proposed Plaintiffs and BCBSM pertaining to the Settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Parties in connection therewith. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party hereto to any other person or entity concerning the subject matter hereof. This is an integrated agreement. This Agreement may be modified or amended only by a writing executed by Class Counsel and BCBSM and approved by the Court.

86. This Agreement and any orders by the Court implementing this Agreement are not and shall not be a concession or admission of wrongdoing or liability by any Party hereto and shall not be cited to or otherwise used or construed as an admission of any fault, omission, liability, or wrongdoing on the part of any Party hereto, except in a proceeding to enforce or interpret this Agreement.

87. The Parties agree that they will not issue any press release or press statement, or otherwise initiate media coverage, concerning the Action, the events underlying the Action, or this Settlement. However, the Parties may summarize the litigation and settlement publicly for a professional purpose only, such as on their counsel's law firm websites and in class counsel applications, and consistent with their agreement not to initiate media coverage. If the Parties receive media inquiries, they will respond by making the following statement or a substantively equivalent statement: "Blue Cross Blue Shield of Michigan and the Class Plaintiffs are pleased to announce that they have reached an amicable resolution of the Plaintiffs' lawsuit about most favored nation clauses in Blue Cross's contracts with Michigan hospitals. This settlement, the parties agree, is an amicable resolution reached before the court or the jury had decided the merits of either party's legal position."

88. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of Michigan without regard to its choice of law or conflict of law principles.

89. The headings used in this Agreement are for the purposes of convenience and do not constitute part of the Agreement, and no heading shall be used to help construe the meaning of the Agreement.

90. The United States District Court for the Eastern District of Michigan, Southern Division, shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Agreement.

91. Neither BCBSM or its counsel nor Plaintiffs, Proposed Plaintiffs or their counsel shall be considered to be the drafter of this Agreement, or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

92. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Plaintiffs, Proposed Plaintiffs, the other Settlement Class Members, and BCBSM any right or remedy under or by reason of this Agreement.

93. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs, Proposed Plaintiffs, the other Settlement Class Members who do not timely and validly exclude themselves, and BCBSM.

94. Where this Agreement requires any Party to provide notice or any other communication or document to any other Party, such notice, communication, or document shall be provided by email, facsimile or letter by overnight delivery at the address reflected on the signature pages, with notice to be considered received on the day of receipt; provided, however, that any notice of non-delivery shall cause such notice to be invalid.

95. This Agreement may be executed in counterparts by Class Counsel and BCBSM, and a facsimile or electronic image of a signature shall be deemed an original signature for purposes of executing this Agreement.

96. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, by and on behalf of his or her respective clients.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date first herein written above.

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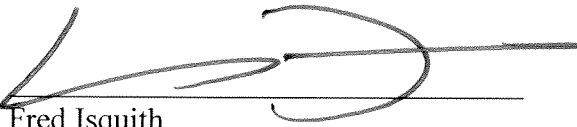
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Interim Co-Lead Counsel for the Settlement Class

EXHIBIT A

Notice Plan

Notice to potential Settlement Class Members will be made by mail; by advertisements in newspapers, a magazine, and newspaper supplements, and on the Internet; and on the settlement website. The details of each form of notice are as follows:

Notice by Mail

Mailed notice will be provided to those Settlement Class Members for whom Plaintiffs possess contact information. The following contact information is currently available:

- a. The names and addresses of Blue Cross Blue Shield of Michigan (“BCBSM”) customers and members, produced as part of BCBSM’s production of its claims database in this litigation.
- b. The names and addresses for Aetna’s self-insured customers, produced by Aetna during the litigation. Plaintiffs do not currently possess names and addresses for Aetna’s insured individuals.

Plaintiffs are in the process of seeking additional contact information, as follows:

- c. Plaintiffs have requested that Priority Health (“Priority”) provide full name and address information for its members, which was not produced by Priority during the litigation. Priority has agreed to do so.
 - d. Plaintiffs have requested that Health Alliance Plan (“HAP”) provide full name and address information for its members, which was not produced by HAP during the litigation. To date, HAP has not agreed to do so.
 - e. Plaintiffs will request that Aetna provide names and address for Aetna’s members after filing their motion for preliminary approval.
2. In total, Plaintiffs currently have names and addresses for 2,394,079 BCBSM members;

1,134 BCBSM self-insured groups; 179 Aetna self-insured groups; and 99 commercial health insurers. In early July, Plaintiffs expect to receive names and addresses for 604,488 Priority insured individuals and 99 Priority self-funded groups. Until the Settlement Administrator “de-duplicates” the lists across insurers, the number of Settlement Class Members to whom individual notice will be mailed is not known but it is certain that the number will be in the millions.

3. The Settlement Administrator will send Notice via mail to all Settlement Class Members for whom contact information is obtained before the deadline for mailing notice.

4. The mailed Notice will consist of a Postcard Notice (attached to the Settlement Agreement as Exhibit B), which will provide Class Members with opportunities to see, read, and understand their rights, and act if they so choose. The Postcard Notice will provide a toll-free number and will direct Settlement Class Members to the Settlement Administrator’s website, which will have detailed information about the Settlement, including the Settlement Agreement, Long Form Notice, and Claim Forms.

5. Prior to mailing, the Settlement Administrator will check all addresses against the National Change of Address database maintained by the United States Postal Service (“USPS”). In order to ensure the most accurate mailings possible, the administrator will also certify addresses via the Coding Accuracy Support System and verify them through Delivery Point Validation.

6. For any Postcard Notices that are returned as non-deliverable, the Settlement Administrator will re-mail them to any address indicated by the USPS in the case of an expired automatic forwarding order. For Notices returned as non-deliverable, but for which a new address is not indicated by the USPS, the Settlement Administrator will further search through another vendor to obtain a more current address. If any such address is found, the Settlement Administrator will re-mail the Notice.

Paid Media

7. To supplement the Individual Notice and to reach those Settlement Class Members for whom the Parties lack contact information, notice will be placed in various paid media outlets.

8. The Publication Notice will appear in the following newspapers:

- a. A one fourth-page ad (4.949" x 10.5") in the daily edition of *Alpena News* with an estimated circulation of 7,616.
- b. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Bay City Times* with an estimated circulation of 16,549.
- c. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Bay City Times* with an estimated circulation of 26,619.
- d. A one fourth-page ad (5.75" x 11") in the daily edition of *Detroit Free Press* with an estimated circulation of 219,032.
- e. A one fourth-page ad (5.75" x 11") in the daily edition of *Detroit News* with an estimated circulation of 118,325.
- f. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Flint Journal* with an estimated circulation of 39,900.
- g. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Flint Journal* with an estimated circulation of 54,181.
- h. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Grand Rapids Press* with an estimated circulation of 62,973.

- i. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Grand Rapids Press* with an estimated circulation of 135,592.
- j. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Jackson Citizen Patriot* with an estimated circulation of 16,874.
- k. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Jackson Citizen Patriot* with an estimated circulation of 22,689.
- l. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Kalamazoo Gazette* with an estimated circulation of 26,968.
- m. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Kalamazoo Gazette* with an estimated circulation of 43,309.
- n. A one fourth-page ad (4.918" x 10.5") in the weekday edition of *Lansing State Journal* with an estimated circulation of 37,965.
- o. A one fourth-page ad (4.918" x 10.5") in the Sunday edition of *Lansing State Journal* with an estimated circulation of 52,398.
- p. A one fourth-page ad (4.95" x 10.5") in the weekday edition of *Marquette Mining Journal* with an estimated circulation of 10,268.
- q. A one fourth-page ad (4.95" x 10.5") in the Sunday edition of *Marquette Mining Journal* with an estimated circulation of 12,345.
- r. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Saginaw News* with an estimated circulation of 19,880.

- s. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Saginaw News* with an estimated circulation of 29,879.
- t. A one fourth-page ad (5.44" x 10.5") in the weekday edition of *Traverse City Record-Eagle* with an estimated circulation of 17,383.
- u. A one fourth-page ad (5.44" x 10.5") in the Sunday edition of *Traverse City Record-Eagle* with an estimated circulation of 22,585

9. The Publication Notice will appear in the following newspaper supplements:

- a. An M-page ad (6.25" x 9") in *Parade* – Michigan state edition with an estimated circulation of 960,938.
- b. An M-page ad (6.25" x 9") in *USA Weekend* – Michigan state edition with an estimated circulation of 540,835.

10. The Publication Notice will also appear as a full-page ad (7" x 10") in *People* – Michigan state edition with an estimated circulation of 131,600.

11. Finally, the Notice Plan incorporates Internet advertising to reach Settlement Class Members from out of state or who moved out of state.

12. Internet advertising will consist of banner advertisements measuring 728 x 90, 300 x 250, and 160 x 600 pixels, which will appear on a rotating basis on websites that are part of the *Xaxis*¹ Network. Impressions will be delivered both nationally and to Michigan-specific IP addresses.

¹ *Xaxis* is a network that represents over 5,000 websites.

Settlement Website, Toll-Free Phone Number, and Mailing Address

13. The Settlement Administrator, Epiq Systems, will establish a website to enable Settlement Class Members to get information on the Settlement, including the Long Form Notice and the Settlement Agreement.

14. The Settlement Administrator will establish a toll-free phone number to allow Settlement Class Members to call and request that a Long Form Notice be mailed to them or listen to answers to frequently asked questions.

15. The Settlement Administrator will establish a post office box and email address to allow Settlement Class Members to contact the Settlement Administrator and Class Counsel with any specific requests or questions.

EXHIBIT B

Court-Ordered Legal Notice

SETTLEMENT CLAIMS ADMINISTRATOR
PO BOX 0000
CITY, ST 00000

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID

**If You Paid For
Medical Services at a
Michigan Hospital
from January 1, 2006
through June 23, 2014,**

**You Could Get Money
from a Class Action
Settlement**

NAME
ADDRESS
CITY STATE ZIP CODE

A Settlement has been reached in a class action lawsuit against Blue Cross Blue Shield of Michigan ("BCBSM"). Plaintiffs claim that certain clauses in contracts between BCBSM and some hospitals in Michigan violate federal and state laws and inflated prices for medical care at certain Michigan hospitals. BCBSM denies all wrongdoing and liability, but has concluded that it is in its best interests to settle to avoid the expense, inconvenience, and interference with ongoing business operations.

Are you included? Records show that you are either an individual who paid for healthcare services at a general acute care hospital in Michigan between January 1, 2006 and June 23, 2014, an insurer who paid for such services for your insureds, or a self-insured entity whose health plan participants received such services. You do not need to be a BCBSM customer to be eligible.

What does the Settlement provide? A \$29,990,000 Settlement Fund will be established to make payments to Class Members who submit valid claims. There are minimum payments of up to \$40 for small hospital healthcare purchases and much higher payments for large relevant hospital healthcare purchases. The Settlement Fund will also be used to pay Court-approved attorneys' fees and expenses, costs of notice and claims administration, plaintiff incentive awards, and potentially a small payment to Free Clinics of Michigan.

How do you ask for a payment? To receive a payment, you must submit a Claim Form by **Month 00, 2014**. You can file a claim online or by mail. Claim Forms are available at the website and toll-free number listed below.

Your other options. If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement by **Month 00, 2014**. If you do not exclude yourself, you will not be able to sue, or continue to sue, BCBSM about its conduct challenged in this case or related conduct. The full release is included in the Settlement Agreement, which is available at the website and toll-free number listed below. If you exclude yourself, you cannot get a payment from the Settlement. If you do not exclude yourself, you may object to the Settlement and the upcoming request for attorneys' fees, expenses, and plaintiff incentive awards by **Month 00, 2014**. A detailed Notice, available at the website or toll-free number listed below, explains how to exclude yourself or object and has more information about the Settlement.

The Court will hold a hearing on **Month 00, 2014**, to consider whether to approve the Settlement, and a request by Plaintiffs' Counsel for attorneys' fees up to one-third of the Settlement Fund, litigation expenses up to \$3,500,000, and plaintiff incentive awards up to \$150,000. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost.

EXHIBIT C

If You Paid For Medical Services at a Michigan Hospital

from January 1, 2006, through June 23, 2014,

You Could Get Money from a Class Action Settlement

A Settlement has been reached in a class action lawsuit against Blue Cross Blue Shield of Michigan ("BCBSM"). Plaintiffs claim that certain clauses in contracts between BCBSM and some hospitals in Michigan violate federal and state laws and inflated prices for medical care at certain Michigan hospitals. BCBSM denies all wrongdoing and liability, but has concluded that it is in its best interests to settle to avoid expense, inconvenience, and interference with ongoing business operations.

Who is included?

The Class includes all:

- Individuals who paid for health care services at a general acute care hospital in Michigan between January 1, 2006 and June 23, 2014;
- Insurers who paid for such services for their insureds; and
- Self-insured entities whose health plan participants received such services.

Class Members do not need to be BCBSM customers to be eligible.

What Does the Settlement Provide?

A \$29,990,000 Settlement Fund will be established to make payments to Class Members who submit valid claims. There are minimum payments of up to \$40 for small hospital healthcare purchases and much higher payments for large relevant hospital healthcare purchases. The Settlement Fund will also be used to pay Court-approved attorneys' fees and expenses, costs of notice and claims administration, plaintiff incentive awards, and potentially a small payment to Free Clinics of Michigan.

How Do You Ask For a Payment?

To receive a payment, you must submit a Claim Form by Month 00, 2014. You can file a claim online or by mail. Claim Forms are available at the website and toll-free number listed below.

Your Other Options

If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement by Month 00, 2014. If you do not exclude yourself, you will not be able to sue, or continue to sue, BCBSM about its conduct challenged in this case or related conduct. The full release is included in the Settlement Agreement, which is available at the website and toll-free number listed below. If you exclude yourself, you cannot get a payment from the Settlement. If you do not exclude yourself, you may object to the Settlement and the upcoming request for attorneys' fees, expenses, and plaintiff incentive awards by Month 00, 2014. A detailed Notice, available at the website or toll-free number listed below, explains how to exclude yourself or object and has more information about the Settlement.

Court Hearing

The Court will hold a hearing on Month 00, 2014, to consider whether to approve the Settlement, and a request by Plaintiffs' Counsel for attorneys' fees up to one-third of the Settlement Fund, litigation expenses up to \$3,500,000, and plaintiff incentive awards up to \$150,000. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost.

www.MichiganHospitalPaymentsLitigation.com
[TOLL-FREE NUMBER]

EXHIBIT D

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

You Could Get Money from a Class Action Settlement if You Paid For Medical Services at a Michigan Hospital from 2006 to June 23, 2014

A federal court authorized this notice. This is not a solicitation from a lawyer.

- There is a Settlement with Blue Cross Blue Shield of Michigan (“BCBSM”) concerning its contracts with general acute care hospitals in Michigan. **Your legal rights are affected whether you act or do not act. Read this notice carefully.**
- The lawsuit alleges that BCBSM had clauses in its contracts with some Michigan general acute care hospitals that violated federal and state antitrust laws and inflated prices for medical care at certain Michigan hospitals. BCBSM denies all wrongdoing and liability but has concluded that it is in its best interests to settle the litigation to avoid the expense, inconvenience, and interference with ongoing business operations.
- Under the Settlement, BCBSM will pay \$29,990,000 into a Settlement Fund that will be used to make payments to individuals and entities that paid Michigan general acute care hospitals for healthcare services from January 1, 2006 to June 23, 2014.
- You do not need to be a BCBSM customer to be eligible.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to receive a cash payment from the Settlement.
EXCLUDE YOURSELF	Receive no benefits from the Settlement, but keep your rights to start or remain part of any other lawsuit against BCBSM about its conduct challenged in this case or related conduct.
OBJECT	Submit a written statement to the Court about why you don’t like the Settlement.
GO TO FAIRNESS HEARING	Ask to speak in Court about the fairness of the Settlement
DO NOTHING	You will receive no payment from the Settlement and will give up your rights to start or remain part of any lawsuit against BCBSM about its conduct challenged in this case or related conduct.

****These rights – and the deadlines to exercise them – are explained in this notice. ****

- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are resolved, money will be distributed to those who qualify. Please be patient.

Habla Espanol? Visite la página web: www.MichiganHospitalPaymentsLitigation.com

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BASIC INFORMATION

1. Why is this notice being provided?

Judge Denise Page Hood of the United States District Court for the Eastern District of Michigan authorized this notice to inform you about a proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to approve the Settlement. This notice explains the lawsuit, the Settlement, your legal rights, what money is available, who is eligible to share in this money, and how to get your share if you are eligible.

The persons and entities who started the lawsuit are the “Plaintiffs.” The company they sued, Blue Cross Blue Shield of Michigan (“BCBSM”), is the “Defendant.” The case is known as *The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, Case No. 2:10-cv-14360. This notice summarizes the Settlement, but you can view the complete Settlement Agreement at www.MichiganHospitalPaymentsLitigation.com.

2. What is this lawsuit about?

Plaintiffs allege that BCBSM violated federal and state laws by using most favored nation clauses in contracts with 70 general acute care hospitals in Michigan. Plaintiffs claim that these clauses inflated prices for healthcare services at several Michigan hospitals. BCBSM denies Plaintiffs’ allegations, denies any wrongdoing, and contends that its actions caused lower, not higher, hospital prices.

3. Why is this a Class Action?

In a Class Action, one or more people (in this case, Michigan Regional Council of Carpenters Employee Benefits Fund, The Shane Group, Inc., Bradley A. Veneberg, Abatement Workers National Health and Welfare Fund, Monroe Plumbers & Pipefitter Local 671 Welfare Fund, Scott Steele, Patrice Noah, and Susan Baynard) sue on behalf of businesses, other organizations, and people who have similar claims. If allowed by a court, all of these organizations and people become part of a “Class” or “Class Members.” One lawsuit resolves the claims of all Class Members, except for any who exclude themselves from the class.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or BCBSM. Instead, both sides agreed to settle this case to avoid the burden, cost, and risk of further litigation. The Settlement does not mean that any law was broken or that BCBSM did anything wrong. By settling, BCBSM is not admitting any wrongdoing or liability. BCBSM continues to deny all legal claims in this case. The Plaintiffs and their lawyers think the Settlement is best for all Class Members.

WHO IS INCLUDED IN THE SETTLEMENT

To see if you will be affected by this Settlement and if you are eligible to get money from it, you first have to determine if you are a Class Member.

5. How do I know if I am part of the Settlement?

The Settlement includes all direct purchasers of healthcare services from a Michigan General Acute Care Hospital between January 1, 2006 and June 23, 2014. The Class includes:

- Individuals who paid Michigan General Acute Care Hospitals in the form of co-pays, co-insurance, or otherwise;
- Insurers that paid Michigan General Acute Care Hospitals for their insureds; and
- Self-insured entities whose health plan participants received healthcare services at Michigan General Acute Care Hospitals.

There are over 130 general acute care hospitals in Michigan. A list of these hospitals is available at www.MichiganHospitalPaymentsLitigation.com. The Class does not include BCBSM and related individuals and entities.

If you received a postcard notice in the mail, you have been identified as a potential Class Member based on insurance records. If you did not receive a postcard notice in the mail, you still may be a Class Member if you paid a Michigan general acute care hospital during the relevant time period. If you are not sure whether you are included in the Settlement, visit www.MichiganHospitalPaymentsLitigation.com for more information. You may also send an email to [EMAIL ADDRESS], call [TOLL FREE NUMBER], or write to: [CLAIMS ADMINISTRATOR ADDRESS].

THE SETTLEMENT – WHAT YOU GET AND GIVE UP IF YOU QUALIFY

6. What does the Settlement provide?

BCBSM will pay \$29,990,000 into a Settlement Fund. This money, plus interest, will be paid to:

- The lawyers representing the Class for their work and to reimburse the expenses they paid, in an amount approved by the Court.
- An incentive award for the Plaintiffs for their services on behalf of the Class, if approved by the Court.
- Expenses incurred in administering the Settlement, such as sending this notice and the cost to process claims submitted by Class Members.
- Class Members who submit valid claim forms.
- The non-profit organization Free Clinics of Michigan, in certain circumstances.

7. How will payments be calculated?

Class Members with small purchases of hospital healthcare services may be eligible for minimum payments of up to \$40. Class Members with large purchases may be eligible for much higher payments, with the size of their payment depending on the factors described below. The maximum possible payment is 3.5% of the Class Member's total purchases of healthcare services from Michigan general acute care hospitals from January 1, 2006 through June 23, 2014.

The size of the payment will be determined by:

- Which general acute care hospital(s) in Michigan the Class Member paid;
- The amounts paid to the hospital(s) from January 1, 2006 through June 23, 2014; and
- Which insurer paid the hospital, provided the insurance coverage, or administered the self-insured plan.

The Settlement Administrator will review each Claimant's reported purchases to determine how much money, if any, they will receive. For specifics on how payments will be determined, please contact the Settlement Administrator or see the Plan of Allocation available at www.MichiganHospitalPaymentsLitigation.com.

8. When will Settlement money be distributed to Claimants?

Settlement money will be mailed to Claimants after the Court approves the Settlement and after any appeals are resolved. It is uncertain when any appeals taken will be resolved, and resolving them can take time. Please be patient. Updates will be posted at www.MichiganHospitalPaymentsLitigation.com.

9. What do I give up if the Settlement is given Final Approval?

If the Settlement is given Final Approval, you and all other Class Members will release certain claims defined in the Settlement as "Released Claims." In general terms, Class Members who do not validly request to be excluded from the Settlement will each release all of their claims against BCBSM and its affiliated persons and entities arising out of - or in any way relating to - BCBSM's most favored nation clauses with Michigan General Acute Hospitals, or any matter or event arising out of the dispute being resolved in this Settlement. If the Settlement is given Final Approval, the claims that were asserted against BCBSM in the lawsuit will be dismissed, with prejudice. A complete copy of the Release is attached as Appendix A to this Notice.

SUBMITTING A CLAIM FORM

10. How can I get a payment?

To ask for a payment you must submit a Claim Form. Claim Forms are available at the Settlement website, upon request from the Settlement Administrator, or by calling the toll free number.

After carefully reading the Claim Form instructions, fill out the Claim Form, attach the required documentation, sign it, and mail it postmarked no later than [DATE] to:
[CLAIMS ADMINISTRATOR ADDRESS]

11. What do I do if I have questions about the Claim Form?

If you have questions about how to file a claim, call the toll-free number ([TOLL FREE NUMBER]) or send an email to [EMAIL ADDRESS] or a letter to [MAILING ADDRESS].

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to participate in this Settlement, and you want to keep the right to sue BCBSM about the dispute in this case, then you must take steps to get out of the Settlement. This is called asking to be excluded from - or sometimes called “opting out” of - the Settlement.

12. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you may not submit a claim for a payment from the Settlement, and you cannot object to the Settlement. However, if you ask to be excluded, you may sue BCBSM based on the dispute in this case.

13. If I do not exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue BCBSM for any of the claims that this Settlement resolves. You must exclude yourself from the Class to start your own lawsuit, continue with a lawsuit, or be part of any other lawsuit against BCBSM relating to the “Released Claims” described in Section H of the Settlement Agreement.

14. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement with BCBSM, you must send a letter by mail clearly stating that you want to be excluded from the Settlement in *The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, Case No. 2:10-cv-14360. Include your name, your business name (if applicable), address, telephone number, signature, and date. If applicable, your letter must also describe the position that authorizes you to request exclusion on behalf of your company.

You must mail your request for exclusion postmarked by [DATE] to:

[CLAIMS ADMINISTRATOR ADDRESS]

You cannot ask to be excluded on the phone, by email, or at the website.

OBJECTING TO THE SETTLEMENT

15. How can I tell the Court I don't like the Settlement?

You can object to the Settlement if you do not like some part or all of it. You must give reasons why you think the Court should not approve the Settlement. You may also object to Plaintiffs' Counsel's request for attorneys' fees, reimbursement of expenses, and Plaintiff incentive awards. To object, send a letter to the two addresses below, saying that you object to the Settlement in *The Shane Group, Inc., v. Blue Cross Blue Shield of Michigan*, Case No. 2:10-cv-14360, and file your objection with the Court. Be sure to include any papers or briefs that support your objections.

You must file your objection with the Court no later than [DATE] and mail your objection to these two addresses postmarked no later than [DATE]:

PLAINTIFFS' COUNSEL	COUNSEL FOR BCBSM
COHEN MILSTEIN SELLERS & TOLL PLLC Daniel A. Small Brent W. Johnson 1100 New York Avenue, NW Suite 500 Washington, DC 20005	HUNTON & WILLIAMS LLP Todd M. Stenerson D. Bruce Hoffman 2200 Pennsylvania Ave NW Washington, DC 20037

16. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you cannot object to the Settlement because the Settlement no longer affects you.

17. What happens if I object and the Settlement is approved?

If the Settlement is finally approved and you did not request to be excluded from the Settlement, you will remain a Class Member regardless of whether you objected. You will remain bound by the terms of the Settlement and will not be able to sue BCBSM about the claims in this case.

THE LAWYERS WHO REPRESENT YOU

18. Do I have a lawyer in this case?

The Court appointed four law firms to represent the class: The Miller Law Firm, P.C.; Cohen Milstein Sellers & Toll PLLC; Gustafson Gluek PLLC; and Wolf, Haldenstein, Adler, Freeman & Herz LLC. These four law firms, together with other law firms that have assisted them, are called "Plaintiffs' Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

19. How will the lawyers in the case be paid?

Plaintiffs' Counsel will ask the Court for attorneys' fees of no more than one-third of the Settlement Fund and reimbursement of the expenses they had in this case of approximately \$3,500,000. Plaintiffs' Counsel will also ask the Court to reimburse the costs of administering this Settlement. Plaintiffs' Counsel's application for attorneys' fees and expenses will be filed with the Court by [DATE] and posted on the Settlement website. Plaintiffs' Counsel will also ask for incentive awards of up to \$50,000 for each Plaintiff organization and up to \$10,000 for each Plaintiff individual, for their services on behalf of the class.

The Court may award less than the amounts requested by Plaintiffs' Counsel. Payments approved by the Court will be made from the Settlement Fund.

THE COURT'S FAIRNESS HEARING

20. How will the Court decide whether to approve the Settlement?

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider Plaintiffs' Counsel's request for attorney fees and expenses and Plaintiff incentive awards. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement and how much to award for fees, expenses, and incentive awards.

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing at [TIME], on [DATE], at the United States Courthouse, Theodore Levin U.S. Courthouse, 231 W. Lafayette Boulevard, Detroit, Michigan, 48226. A motion for final approval of the Settlement will be filed by Plaintiffs' Counsel by [DATE]. The motion will also be posted on the Settlement website.

The Fairness Hearing may be moved to a different date or time without additional notice, so it is recommended that you periodically check www.MichiganHospitalPaymentsLitigation.com for updated information.

22. Do I need to come to the hearing?

No. Plaintiffs' Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. If you send in a written objection, you do not have to come to the Fairness Hearing to talk about it. As long as you mailed your written objection on time, the Court will consider it. You also may pay your own lawyer to attend the Fairness Hearing, but his or her attendance is not necessary.

23. May I speak at the hearing?

You may speak at the Fairness Hearing if you submitted an objection as described in the answer to question 15 and stated in your objection that you wish to be heard at the Fairness Hearing. You cannot speak at the hearing if you exclude yourself from the Settlement.

If you choose to appear in person at the Fairness Hearing, you can appear yourself or by retaining an attorney at your own expense to appear on your behalf. If the attorney is appearing on behalf of more than one Class Member, he or she must identify each of those Class Members.

OTHER INFORMATION

24. What happens if I do nothing?

If you are a Class Member and do nothing, you will not get a payment from this Settlement. And, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against BCBSM relating to claims being resolved by this Settlement, ever again.

25. How do I get more information?

This notice summarizes the Settlement. More details are in the Settlement Agreement available at www.MichiganHospitalPaymentsLitigation.com. If you still have questions, call the Settlement Administrator at [TOLL FREE NUMBER], send an email to [EMAIL], or write to [MAILING ADDRESS].

Please do not contact BCBSM, its counsel, the Court, or the Clerk's office.

EXHIBIT E-1

The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan
No. 2:10-cv-14360
U.S. District Court for the Eastern District of Michigan

CONSUMER CLAIM FORM

If you are an individual who paid a general acute care hospital in Michigan for healthcare services at any time between January 1, 2006 and June 23, 2014, you are a member of the Settlement Class in a lawsuit against Blue Cross Blue Shield Michigan (“BCBSM”) and are entitled to submit a claim to share in the settlement money. You do not need to be a BCBSM customer to be eligible. A list of the relevant hospitals is attached to this form.

If you wish to submit a claim, complete this form and mail it, postmarked on or before [DATE], to the address below. You may also complete the Claim Form electronically at www.MichiganHospitalPaymentsLitigation.com on or before [DATE].

Your claim will be reviewed to determine whether or not you are entitled to payment and the amount of any payment. More information, including details on how payments are determined, is available at www.MichiganHospitalPaymentsLitigation.com or by writing, emailing, or calling the Settlement Administrator. Inquiries regarding your claim can be made by contacting the Settlement Administrator by writing to the address below, emailing [Claims Administrator Email Address], or calling [Toll-Free Number].

You may not share in the settlement fund if you exclude yourself from the Settlement. BCBSM, related corporate entities, and BCBSM’s officers, directors, employees, agents, and attorneys are not eligible to share in the Settlement money and are excluded from the Settlement Class.

Please mail your claim to: [Claims Administrator Mailing Address]

SECTION A: CLAIMANT INFORMATION

Claimant Name: _____

(Please write the Claimant Name as you would like it to appear on the check, if eligible for payment)

Street Address: _____

City: _____

State: _____ **Zip Code:** _____

Country (if other than US): _____

Daytime Telephone Number: _____

Evening Telephone Number: _____

Email Address: _____

Questions?

Call Toll-Free ###-###-### or Visit www.MichiganHospitalPaymentsLitigation.com

Habla Espanol? Visite la página web: www.MichiganHospitalPaymentsLitigation.com

(By providing an email address, you are authorizing the Settlement Administrator to provide you with information relevant to your claim via email).

The Settlement Administrator will use this information for all communications relevant to this Claim (including the check, if eligible for payment). If your contact information changes, you **MUST** notify the Settlement Administrator in writing at the mailing or email address above.

SECTION B: REPRESENTATIVE CONTACT INFORMATION

Please indicate whether you are filing on your own behalf as a Class Member or as the authorized representative of someone else who is a Class Member:

-- I am the Class Member named in Section A above.
(If so, you may skip the rest of this section)

-- I am filing on behalf of the Class Member named in Section A above.

If you are filing on behalf of a Class Member, state your relationship to the Class Member (e.g., family member, attorney, etc.):

Representative Name: -----
Street Address: -----
City: -----
State:----- **Zip Code:** -----
Country (if other than US): -----
Daytime Telephone Number: -----
Evening Telephone Number: -----
Email Address: -----

(By providing an email address, you are authorizing the Settlement Administrator to provide you with information relevant to your claim via email).

SECTION C: YOUR HOSPITAL HEALTHCARE PAYMENTS

To make a claim, you must provide two things: (1) a completed and signed copy of this form, stating all eligible hospital healthcare payments that you wish to be included in your claim; and (2) a copy of records documenting the hospital charges that you paid.

C-1: Claim Table

On the Claim Table, please list each hospital from the attached list which you paid for healthcare services, the date(s) the hospital provided the services, and the amount(s) you paid to the hospital. You may include only payments for hospital healthcare services provided between January 1, 2006 and June 23, 2014. You may include co-payments, co-insurance

payments, and deductible payments you paid to the hospital. You may include amounts you paid to the hospital even if an insurer or self-insured entity reimbursed you.

Do not include the following:

- Purchases from a hospital pharmacy
- Payments that you made to your insurer or any entity other than a hospital
- Payments that your insurer or any other entity made to the hospital

If you are submitting your claim online, you can either fill out the Claim Table on the website or attach a spreadsheet or other file containing the information required by the Claim Table.

If you are submitting your claim by mail and need additional room, you may attach additional pages. Please number all additional pages to ensure review.

C-2: Copy of Purchase Records

You must also submit a copy of hospital bill(s) or other record(s) for all payments that you wish to include in your claim. The records must show (a) the hospital providing the services, (b) the amount charged, and (c) the date(s) the services were provided. If you did not pay the hospital the full amount of the charges (because somebody else, such as your insurer, paid part, or for any other reason), the record must show the portion you paid. If you do not have these records, you may be able to obtain them from the relevant hospital or your insurer.

If you submit by mail, please submit copies of your records, not the original records. If you are claiming a large number of payments, you can submit your supporting documentation on a CD or flash drive containing electronic or scanned copies of your records. If you submit online, you can submit electronic or scanned copies of your records as attachments to your claim.

If you are unable to locate or obtain your complete records, you should still submit the records that you do have. Even small payments for healthcare services at Michigan hospitals may entitle you to a minimum payment of up to \$40.

Section D: YOUR SHARE OF THE SETTLEMENT MONEY, IF ANY

Your share of the settlement money, if any, will depend on the hospital(s) you paid, the date(s) the hospital provided the services, the amount of your payment(s), and the number of others who submit a valid Claim Form and the amount of their hospital payments. For more information, please review the Plan of Allocation, which is located on the website www.MichiganHealthcarePaymentsLitigation.com as an exhibit to the Settlement Agreement, or contact the Settlement Administrator at:

[CLAIMS ADMINISTRATOR MAILING ADDRESS]

[CLAIMS ADMINISTRATOR EMAIL ADDRESS]

Toll-Free Number: [TOLL-FREE NUMBER]

Section E: CONFIDENTIALITY

All information you submit will be kept confidential by the Settlement Administrator and Class Counsel. It will not be used for any purpose other than administering your claim and determining the amount, if any, of your payment. It will not be disclosed to BCBSM, the Plaintiffs, or any entity other than the Settlement Administrator and Class Counsel, and potentially the Court, under seal, if the Court needs to resolve a dispute concerning your claim. All documents you provide will be destroyed after all claims are finally resolved.

Section F: RELEASE

If you are a Settlement Class Member and do not timely and validly request to be excluded from the Settlement, and the Settlement receives Final Approval, you will release and discharge forever all Released Claims against BCBSM and related entities and individuals, whether or not you submit a Claim Form. For more information, see Paragraphs 58-59 of the Settlement Agreement, available at www.MichiganHospitalPaymentsLitigation.com.

Section G: CLAIMANT CERTIFICATION AND SIGNATURE

I hereby certify under penalty of perjury that:

1. The information in this Claim Form is true and accurate to the best of my knowledge, information, and belief.
2. I am a member of the Settlement Class and did not request to be excluded from the Settlement; or, I have been authorized by the

Claimant to file a claim on his or her behalf, and the Claimant is a member of the Settlement Class and did not request exclusion.

- 3. I have read and agree to the Release in Paragraphs 58-59 of the Settlement Agreement.
- 4. I understand that I may be asked to provide additional information to validate my claim, and that my claim may be denied if I am unable to provide the requested information.
- 5. I have not assigned or transferred (or purported to assign or transfer) or submitted any other claim for the same hospital payments and have not authorized any other person or entity to do so and know of no other person or entity having done so on the Claimant's behalf.
- 6. In the event that the Claimant later claims that I did not have the authority to claim or receive payments from the Settlement Fund on its behalf, I and/or my employer will indemnify and hold the parties, their counsel, and the Settlement Administrator harmless with respect to such claims.

Signature: _____ Date:_____

Type/Print name: _____

Claimant name (if different than above): _____

**ACCURATE PROCESSING OF CLAIMS MAY TAKE SIGNIFICANT TIME.
THANK YOU IN ADVANCE FOR YOUR PATIENCE.**

EXHIBIT E-2

The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan
No. 2:10-cv-14360
U.S. District Court for the Eastern District of Michigan

CLAIM FORM FOR INSURERS OR SELF-INSURED ENTITIES

If you are an insurer that paid a general acute care hospital in Michigan for your insureds' health care services or a self-insured entity whose health plan participants received healthcare services at a general acute care hospital in Michigan between January 1, 2006 and June 23, 2014, you are a member of the Settlement Class in a lawsuit against Blue Cross Blue Shield Michigan ("BCBSM") and are entitled to submit a claim to share in the settlement money. A list of the relevant hospitals is attached to this form.

If you wish to submit a claim, complete this form and mail it, postmarked on or before [DATE], to the address below. You may also complete the Claim Form electronically at www.MichiganHospitalPaymentsLitigation.com on or before [DATE].

Your claim will be reviewed to determine whether or not you are entitled to payment and the amount of any payment. More information, including details on how payments are determined, is available at www.MichiganHospitalPaymentsLitigation.com or by writing, emailing, or calling the Settlement Administrator. Inquiries regarding your claim can be made by contacting the Settlement Administrator by writing to the address below, emailing [Claims Administrator Email Address], or calling [Toll-Free Number].

You may not share in the settlement fund if you exclude yourself from the Settlement. BCBSM, related corporate entities, and BCBSM's officers, directors, employees, agents, and attorneys are not eligible to share in the Settlement money and are excluded from the Settlement Class.

Please mail your claim to: [Claims Administrator Mailing Address]

SECTION A: CLAIMANT INFORMATION

Claimant's Name: _____
(Please write the Claimant Name as you would like it to appear on the check, if eligible for payment)

Claimant's Contact Person: _____

Claimant's Tax Identification Number: _____

Street Address: _____

City: _____

State: _____ **Zip Code:** _____

Country (if other than US): _____

Questions?

Call Toll-Free ###-###-### or Visit www.MichiganHospitalPaymentsLitigation.com

Habla Espanol? Visite la página web: www.MichiganHospitalPaymentsLitigation.com

Telephone Number: _____

Email Address: _____

(By providing an email address, you are authorizing the Settlement Administrator to provide you with information relevant to your claim via email).

The Settlement Administrator will use this information for all communications relevant to this Claim (including the check, if eligible for payment). If your contact information changes, you **MUST** notify the Settlement Administrator in writing at the mailing or email address above.

SECTION B: AUTHORIZED AGENT INFORMATION

Please indicate whether you are filing on your own behalf as a Class Member or as the authorized agent of a Class Member.

-- I am the Class Member named in Section A above.
(If so, you may skip the rest of this section)

-- I am filing on behalf of the Class Member named in Section A above.

If you are filing on behalf of a Class Member, state your relationship to the Class Member (e.g., third party administrator, attorney, etc.):

Agent's Contact Name: _____

Agent's Business Name: _____

Agent's Tax Identification Number: _____

Street Address: _____

City: _____

State: _____ **Zip Code:** _____

Country (if other than US): _____

Telephone Number: _____

Email Address: _____

(By providing an email address, you are authorizing the Settlement Administrator to provide you with information relevant to your claim via email).

SECTION C: YOUR HOSPITAL HEALTHCARE PAYMENTS

To make a claim, you must provide two things: (1) a completed and signed copy of this form, stating all eligible hospital healthcare payments that you wish to be included in your claim; and (2) a copy of records documenting the hospital charges that you paid. **YOU ARE NOT ELIGIBLE TO FILE A CLAIM FOR CHARGES PAID BY YOUR INSURED; YOU MAY ONLY FILE A CLAIM FOR CHARGES YOU ACTUALLY PAID.**

C-1: Claim Table

On the Claim Table, please list each hospital from the attached list which you paid for healthcare services, the date(s) the hospital provided the services, and the amount(s) you paid to the hospital. You may include only payments for hospital healthcare services provided between January 1, 2006 and June 23, 2014. Purchases from a hospital pharmacy are **not** included in the settlement, and may not be included in your claim.

If you are a self-insured entity, you may include amounts paid to the hospital for services received by your health plan participants, even if your health plan participants reimbursed you. You may **not** include amounts paid to the hospital by the plan participants themselves, even if you reimbursed the participant.

If you are an insurer, you may include amounts you paid to the hospital for services received by your insureds, even if your health plan participants reimbursed you. You may **not** include amounts paid to the hospital by your insureds, even if you reimbursed the insured.

If you are submitting your claim online, you can either fill out the Claim Table on the website or attach a spreadsheet or other file containing the information required by the Claim Table.

If you are submitting your claim by mail and need additional room, you may attach additional pages or recreate the Claim Table in a spreadsheet. Please number all additional pages to ensure review.

C-2: Copy of Purchase Records

You must also submit a copy of hospital bill(s) or other record(s) for all of your payments to the hospital that you wish to include in your claim. The records must show (a) the hospital providing the services, (b) the amount charged, and (c) the date(s) the services were provided. If you did not pay the hospital the full amount of the charges (because somebody else, such as your insured, paid part or for any other reason), the record must show the portion you paid. If you do not have these records, you may be able to obtain them from the relevant hospital.

If you submit by mail, please submit copies of your records, not the original records. If you are claiming a large number of payments, you can submit your supporting documentation and Claim Table on a CD or flash drive containing electronic or scanned copies of your records. If you submit online, you can submit electronic or scanned copies of your records as attachments to your claim.

If you are unable to locate or obtain your complete records, you should still submit the records that you do have. Even small payments for healthcare services at Michigan hospitals may entitle you to a minimum payment of up to \$40.

Section D: YOUR SHARE OF THE SETTLEMENT MONEY, IF ANY

Your share of the settlement money, if any, will depend on the hospital(s) you paid, the date(s) the hospital provided the services, the amount of your payment(s), and the number of others who submit a valid Claim Form and the amount of their hospital payments. For more information, please review the Plan of Allocation, which is located on the website www.MichiganHealthcarePaymentsLitigation.com as an exhibit to the Settlement Agreement, or contact the Settlement Administrator at:

[CLAIMS ADMINISTRATOR MAILING ADDRESS]

[CLAIMS ADMINISTRATOR EMAIL ADDRESS]

Toll-Free Number: [TOLL-FREE NUMBER]

Section E: HIPAA SAFE HARBOR

The records you submit may contain information identifying the recipients of services or other personal health information. If so, you will fall within the safe harbor of the Health Insurance Portability and Accountability Act ("HIPAA") for court-ordered production of personal health information, 45 C.F.R. § 164.512(e)(1)(i), and have no liability under HIPAA or any state confidentiality statute, regulation, or other requirement, for supplying such member information to the Claims Administrator.

Section F: CONFIDENTIALITY

All information you submit will be kept confidential by the Settlement Administrator and Class Counsel. It will not be used for any purpose other than administering your claim and determining the amount, if any, of your payment. It will not be disclosed to BCBSM, the Plaintiffs, or any entity other than the Settlement Administrator and Class Counsel, and potentially the Court, under seal, if the Court needs to resolve a dispute concerning your claim. All documents you provide will be destroyed after all claims are finally resolved.

Section G: RELEASE

If you are a Settlement Class Member and do not timely and validly request to be excluded from the Settlement, and the Settlement receives Final Approval, you will release and discharge forever all Released Claims against BCBSM and related entities and individuals, whether or not you submit a

Claim Form. For more information, see Paragraphs 58-59 of the Settlement Agreement, available at www.MichiganHospitalPaymentsLitigation.com.

Section H: CLAIMANT CERTIFICATION AND SIGNATURE

I hereby certify under penalty of perjury that:

1. I have been authorized by the Claimant to file a claim on its behalf and to receive on behalf of the Claimant any and all amounts that may be allocated to it from the Settlement Fund.
2. The information in this Claim Form is true and accurate to the best of my knowledge, information, and belief.
3. The Claimant is a member of the Settlement Class and did not request to be excluded from the Settlement.
4. I have read and agree to the Release in Paragraphs 58-59 of the Settlement Agreement.
5. I understand that I may be asked to provide additional information to validate this claim, and that the claim may be denied if I am unable to provide the requested information.
6. Neither I nor the Claimant have assigned or transferred (or purported to assign or transfer) or submitted any other claim for the same hospital payments and have not authorized any other person or entity to do so and know of no other person or entity having done so on the Claimant's behalf.
7. In the event that the Claimant later claims that I did not have the authority to claim or receive payments from the Settlement Fund on its behalf, I and/or my employer will indemnify and hold the parties, their counsel, and the Settlement Administrator harmless with respect to such claims.

Signature: _____ Date:_____

Type/Print name: _____

Company Name: _____

Title of Signatory:

Claimant name (if different than above):_____

**ACCURATE PROCESSING OF CLAIMS MAY TAKE SIGNIFICANT TIME.
THANK YOU IN ADVANCE FOR YOUR PATIENCE.**

EXHIBIT F

PLAINTIFFS' PROPOSED PLAN OF ALLOCATION

The Net Settlement Fund¹ will be divided into three amounts corresponding to three categories of purchases by Claimants. Within each category, the allocated Settlement money will be distributed pro rata based on the amount of each Claimant's purchases, relative to the total amount of the other Claimants' purchases, within that category. This pro rata distribution is subject to certain minimum distribution amounts, per-Claimant caps, roll-over of any undistributed funds, and a possible cy pres distribution. Claimants may receive funds from any or all of the three categories for which they qualify.

Any portion of a pro rata share that is not distributed to a Claimant because of the per-Claimant cap in Category 1 will roll over to Category 2, and vice versa. After the roll-over, any amount still not distributed to Claimants because of the cap will roll over to Category 3.

For purposes of this Plan of Allocation, "Relevant Purchases" are the Claimant's total purchases of hospital healthcare services from all Michigan General Acute Care Hospitals during the period January 1, 2006 through June 23, 2014.

Following are the specific parameters, category by category, of the allocation of the Net Settlement Fund.

Category 1

Purchases within Category 1 are those by Settlement Class Members at the Affected Combinations (as defined in the expert report of Plaintiffs' economist) during the relevant time periods. The list of Category 1 combinations is attached as Exhibit A to this Plan of Allocation.

Seventy-eight percent (78%) of the Net Settlement Fund will be allocated for pro rata distribution based on Category 1 purchases. Specifically, the funds allocated to Category 1 will be allocated among Claimants under the following formula: total dollars spent on Category 1 purchases for each Claimant divided by total dollars spent by all Claimants on Category 1 purchases combined.

However, this pro rata distribution is subject to a per-claimant cap. No Claimant will receive a distribution of money allocated for Category 1 purchases of greater than 3.5% of the dollar amount of the Claimant's total Relevant Purchases.

The pro rata distribution of the money allocated to Category 1 is also subject to a minimum distribution amount of \$25 per Claimant for the Claimant's purchases in Category 1. Any amount of Category 1 purchases entitles the Claimant to the \$25 minimum amount. However, if the payments of the \$25 per-Claimant minimum would total more than 25% of the money allocated to Category 1, then this minimum will be reduced to an amount such that the total payments of the (lowered) minimum amount equal 25% of the Category 1 money.

¹ Capitalized terms herein have the same meaning they have in the Settlement Agreement.

Category 2

Purchases within Category 2 are those by Settlement Class Members at Michigan General Acute Care Hospitals when a Most Favored Nation Clause between BCBSM and the hospital was in effect, excluding Category 1 purchases. Category 2 comprises purchases from all hospital-date combinations listed in Exhibit B to this Plan of Allocation, excluding Category 1 purchases.

Twenty percent (20%) of the Net Settlement Fund will be allocated for pro rata distribution based on Category 2 purchases. Specifically, the funds allocated to Category 2 will be allocated among Claimants under the following formula: total dollars spent on Category 2 purchases for each Claimant divided by total dollars spent by all Claimants on Category 2 purchases combined.

However, this pro rata distribution is subject to a per-Claimant cap. No Claimant will receive a distribution of money allocated for Category 2 purchases of greater than 1% of the dollar amount of the Claimant's total Relevant Purchases.

The pro rata distribution of the money allocated to Category 2 is also subject to a minimum distribution amount of \$15 per Claimant for the Claimant's purchases in Category 2. Any amount of Category 2 purchases entitles the Claimant to the \$15 minimum amount. However, if the payments of the \$15 per-Claimant minimum would total more than 25% of the money allocated to Category 2, then this minimum will be reduced to an amount such that the total payments of the (lowered) minimum amount equal 25% of the Category 2 money.

Category 3

Purchases within Category 3 are those by Settlement Class Members at Michigan General Acute Care Hospitals during the period January 1, 2006 through June 23, 2014, excluding Category 1 and 2 purchases.

Two percent (2%) of the Net Settlement Fund will be allocated for pro rata distribution based on Category 3 purchases. Specifically, the funds allocated to Category 3 will be allocated among Claimants under the following formula: total dollars spent on Category 3 purchases for each Claimant divided by total dollars spent by all Claimants on Category 3 purchases combined.

However, no distribution will be made to a Claimant for Category 3 purchases unless at least one of the following conditions applies: (1) the Claimant also has Category 1 or 2 purchases; (2) the Claimant's pro rata share of Category 3 funds is \$10 or more; or (3) the Claimant does not satisfy condition (1) or (2) but the total number of Category 3 Claimants that do not satisfy condition (1) or (2) is fewer than 100.

Cy Pres

Any Category 3 funds not distributed to Claimants because of these restrictions will be distributed cy pres to Free Clinics of Michigan, as determined by the Court.

Plan of Allocation Exhibit A

Affected Combinations		
Provider Agreement	Hospital	Dates of Affected Purchases
Aetna PPO Agreement	Bronson LakeView Hospital Three Rivers Health	01/01/08 – 05/18/12 01/01/10 – 05/24/12
BCBSM Non-HMO Agreement (inpatient claims only)	Beaumont Hospital - Gross Pointe Beaumont Hospital - Royal Oak Beaumont Hospital - Troy Providence Park Hospital St. John Hospital and Medical Center	01/01/09 – 01/01/12 02/07/06 – 01/01/12 02/07/06 – 01/01/12 07/01/07 – 07/01/10 07/01/07 – 07/01/10
HAP HMO Agreement (inpatient claims only)	Beaumont Hospital - Royal Oak	07/15/06 – 01/18/13
HAP PPO Agreement	Beaumont Hospital - Gross Pointe Beaumont Hospital - Royal Oak Beaumont Hospital – Troy	01/01/10 – 01/09/13 05/01/08 – 02/01/13 05/01/08 – 01/15/13
Priority PPO Agreement	Allegan General Hospital Charlevoix Area Hospital Kalkaska Memorial Health Center Mercy Health Partners - Lakeshore Paul Oliver Memorial Hospital	01/01/09 – 10/04/12 01/01/09 – 10/07/12 07/01/09 – 10/05/12 01/01/09 – 10/02/12 07/01/09 – 10/04/12
Priority HMO Agreement	Allegan General Hospital Mercy Health Partners - Lakeshore Paul Oliver Memorial Hospital Sparrow Ionia Hospital	01/01/09 – 10/05/12 01/01/09 – 10/04/12 07/01/09 – 10/04/12 12/01/08 – 10/02/12

Plan of Allocation Exhibit B

Michigan Acute Care Hospitals with MFNs		
Hospital Name	MFN Effective Date	MFN Expiration Date
Allegan General Hospital	2010.01.01	2013.02.01
Allegiance Health	2009.07.01	2012.06.30
Alpena Regional Medical Center	2010.01.01	2013.02.01
Ascension Borgess Lee Memorial Hospital	2009.07.01	2013.02.01
Ascension Borgess Medical Center	2008.07.01	2013.02.01
Ascension Borgess Pipp Hospital	2008.07.01	2013.02.01
Ascension Genesys Regional Medical Center	2008.07.01	2013.02.01
Ascension Providence Hospital and Medical Centers	2008.07.01	2013.02.01
Ascension Providence Park Hospital Novi	2008.07.01	2013.02.01
Ascension St. John Hospital and Medical Center	2008.07.01	2013.02.01
Ascension St. John Macomb Oakland Hospital - Macomb Center	2008.07.01	2013.02.01
Ascension St. John North Shores Hospital	2008.07.01	2013.02.01
Ascension St. John River District Hospital	2008.07.01	2013.02.01
Ascension St. Mary's of Michigan Medical Center (Saginaw)	2008.07.01	2013.02.01
Ascension St. Mary's of Michigan Medical Center (Standish)	2009.07.01	2013.02.01
Ascension Tawas St. Joseph Hospital	2008.07.01	2013.02.01
Aspirus Grand View Hospital	2010.01.01	2013.02.01
Aspirus Keweenaw Hospital	2009.07.01	2013.02.01
Aspirus Ontonagon Hospital	2009.07.01	2013.02.01
Baraga County Memorial Hospital	2009.10.01	2013.02.01
Bell Memorial Hospital	2009.07.01	2013.02.01
Botsford Hospital	2008.01.01	2012.12.31
Bronson Lakeview Hospital	2010.01.01	2013.02.01
Bronson Vicksburg Hospital	2010.01.01	2013.02.01
Caro Community Hospital	2010.01.01	2013.02.01
Charlevoix Area Hospital	2009.07.01	2013.02.01
Cheboygan Memorial Hospital	2008.04.01	2011.03.31
Community Health Center of Branch County	2006.01.01	2006.12.31
Community Hospital - Watervliet	2009.10.01	2013.02.01
Covenant Medical Center	2009.07.01	2012.06.30
Deckerville Community Hospital	2009.07.01	2013.02.01
Dickinson County Memorial Hospital	2008.01.01	2010.12.31
Eaton Rapids Medical Center	2009.07.01	2013.02.01
Harbor Beach Community Hospital	2010.01.01	2013.02.01
Hayes Green Beach Memorial Hospital	2010.04.01	2013.02.01
Helen Newberry Joy Hospital	2010.01.01	2013.02.01
Hills & Dales General Hospital	2009.10.01	2013.02.01
Huron Medical Center	2009.10.01	2013.02.01
Kalkaska Memorial Health Center (Munson)	2009.07.01	2013.02.01
Mackinac Straits Hospital and Health Center	2010.04.01	2013.02.01
Marlette Regional Hospital	2009.07.01	2013.02.01
Marquette General Health System	2008.07.01	2012.06.30
McKenzie Memorial Hospital	2009.10.01	2013.02.01
Memorial Medical Center of West Michigan	2006.01.01	2006.09.30
Metro Health Hospital	2008.07.01	2012.06.30
MidMichigan Medical Center - Clare	2009.07.01	2011.06.30
MidMichigan Medical Center - Gladwin	2009.07.01	2011.06.30

Michigan Acute Care Hospitals with MFNs		
Hospital Name	MFN Effective Date	MFN Expiration Date
MidMichigan Medical Center - Gratiot	2006.01.01	2006.06.30
MidMichigan Medical Center - Gratiot	2008.07.01	2011.06.30
MidMichigan Medical Center - Midland	2008.07.01	2011.06.30
Munising Memorial Hospital	2010.04.01	2013.02.01
Munson Medical Center	2009.07.01	2012.06.30
Northstar Health System	2010.01.01	2013.02.01
Otsego Memorial Hospital	2009.08.01	2013.02.01
Paul Oliver Memorial Hospital (Munson)	2009.07.01	2013.02.01
Pennock Hospital	2006.01.01	2006.09.30
Portage Health Hospital	2009.07.01	2013.02.01
ProMedica -- Herrick Medical Center	2010.01.01	2013.02.01
Scheurer Hospital	2009.07.01	2013.02.01
Schoolcraft Memorial Hospital	2009.01.01	2013.02.01
Sheridan Community Hospital	2010.04.01	2013.02.01
South Haven Community Hospital	2009.07.01	2013.02.01
Sparrow Clinton Hospital	2010.01.01	2013.02.01
Sparrow Hospital	2008.01.01	2013.02.01
Sparrow Ionia Hospital	2009.07.01	2013.02.01
Spectrum Health Kelsey Hospital	2009.07.01	2010.07.01
Spectrum Health Reed City Hospital	2009.07.01	2010.07.01
Three Rivers Health	2010.01.01	2013.02.01
Trinity MHP Mercy Lakeshore Campus	2010.07.01	2013.02.01
West Shore Medical Center	2009.07.01	2013.02.01
William Beaumont Hospital Grosse Pointe	2009.01.01	2011.12.31
William Beaumont Hospital Royal Oak	2006.02.07	2011.12.31
William Beaumont Hospital Troy	2006.02.07	2011.12.31

EXHIBIT G

Michigan Acute Care Hospitals
Allegan General Hospital
Allegiance Health
Alpena Regional Medical Center
Ascension Borgess Lee Memorial Hospital
Ascension Borgess Medical Center
Ascension Borgess Pipp Hospital
Ascension Genesys Regional Medical Center
Ascension Providence Hospital and Medical Centers
Ascension Providence Park Hospital Novi
Ascension St. John Hospital and Medical Center
Ascension St. John Macomb Oakland Hospital - Macomb Center
Ascension St. John North Shores Hospital
Ascension St. John River District Hospital
Ascension St. Mary's of Michigan Medical Center (Saginaw)
Ascension St. Mary's of Michigan Medical Center (Standish)
Ascension Tawas St. Joseph Hospital
Aspirus Grand View Hospital
Aspirus Keweenaw Hospital
Aspirus Ontonagon Hospital
Baraga County Memorial Hospital
Bell Memorial Hospital
Botsford Hospital
Bronson Battle Creek
Bronson Lakeview Hospital
Bronson Methodist Hospital
Bronson Vicksburg Hospital
Caro Community Hospital
Charlevoix Area Hospital
Cheboygan Memorial Hospital
Chippewa County War Memorial Hospital
Community Health Center of Branch County
Community Hospital - Watervliet
Covenant Medical Center
Crittenton Hospital
Deckerville Community Hospital
Dickinson County Memorial Hospital
DMC -- Children's Hospital of Michigan
DMC -- Detroit Receiving Hospital And University Health Center
DMC -- Harper University Hospital & Hutzel Women's Hospital
DMC -- Huron Valley Sinai Hospital
DMC -- Sinai-Grace Hospital
Doctors' Hospital of Michigan
Eaton Rapids Medical Center
Forest Health Medical Center
Garden City Hospital
Harbor Beach Community Hospital
Hayes Green Beach Memorial Hospital
Helen Newberry Joy Hospital

Henry Ford Hospital
Henry Ford Cottage Hospital
Henry Ford Macomb Hospital
Henry Ford Macomb Hospital Warren Campus
Henry Ford West Bloomfield Hospital
Henry Ford Wyandotte Hospital
Hills & Dales General Hospital
Hillsdale Community Health Center
Holland Hospital
Hurley Medical Center
Huron Medical Center
Kalkaska Memorial Health Center (Munson)
Karmanos Cancer Center
Lakeland Hospitals at Niles and St. Joseph
Mackinac Straits Hospital and Health Center
Marlette Regional Hospital
Marquette General Health System
McKenzie Memorial Hospital
McLaren Bay Regional Medical Center
McLaren Central Michigan Community Hospital
McLaren Ingham Regional Medical Center (Greater Lansing)
McLaren Lapeer Regional Medical Center
McLaren Mount Clemens Regional Medical Center
McLaren Northern Michigan Regional Hospital
McLaren POH Regional Medical Center
McLaren Regional Medical Center
Mecosta County Medical Center
Memorial Healthcare (Owosso)
Memorial Medical Center of West Michigan
Mercy Memorial Hospital System
Metro Health Hospital
MidMichigan Medical Center - Clare
MidMichigan Medical Center - Gladwin
MidMichigan Medical Center - Gratiot
MidMichigan Medical Center - Midland
Munising Memorial Hospital
Munson Medical Center
North Ottawa Community Hospital
Northstar Health System
Oakland Regional Hospital
Oaklawn Hospital
Oakwood Annapolis Hospital
Oakwood Heritage Hospital
Oakwood Hospital & Medical Center Dearborn
Oakwood Southshore Medical Center
OSF St. Francis Hospital
Otsego Memorial Hospital
Paul Oliver Memorial Hospital (Munson)
Pennock Hospital

Port Huron Hospital
Portage Health Hospital
ProMedica -- Bixby Medical Center
ProMedica -- Herrick Medical Center
Scheurer Hospital
Schoolcraft Memorial Hospital
Sheridan Community Hospital
South Haven Community Hospital
Southeast Michigan Surgical Hospital
Sparrow Carson City Hospital
Sparrow Clinton Hospital
Sparrow Hospital
Sparrow Ionia Hospital
Spectrum Health Butterworth
Spectrum Health Gerber Memorial
Spectrum Health Kelsey Hospital
Spectrum Health Reed City Hospital
Spectrum Health United Hospital
Spectrum Zeeland Community Hospital
Straith Hospital for Special Surgery
Sturgis Hospital
Three Rivers Health
Trinity Chelsea Community Hospital
Trinity Mercy Hospital - Cadillac
Trinity Mercy Hospital - Grayling
Trinity MHP Hackley Campus
Trinity MHP Mercy Campus
Trinity MHP Mercy Lakeshore Campus
Trinity St. Joseph Mercy Ann Arbor
Trinity St. Joseph Mercy Livingston
Trinity St. Joseph Mercy Oakland
Trinity St. Joseph Mercy Port Huron
Trinity St. Joseph Mercy Saline
Trinity St. Mary Mercy Livonia
Trinity St. Mary's Health Care Grand Rapids
University of Michigan Health System
VA -- Aleda E Lutz Medical Center
VA -- Ann Arbor Healthcare System
VA -- Battle Creek Medical Center
VA -- Iron Mountain Medical Center
VA -- John D Dingell Medical Center
West Branch Regional Medical Center
West Shore Medical Center
William Beaumont Hospital Grosse Pointe
William Beaumont Hospital Royal Oak
William Beaumont Hospital Troy

EXHIBIT H

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

THE SHANE GROUP, INC. *ET AL.*,

Plaintiffs, on behalf of themselves
and all others similarly situated,

vs.

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Defendant.

Civil Action No. 2:10-cv-14360-DPH-
MKM

Judge Denise Page Hood

Magistrate Judge Mona K. Majzoub

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
TO PROPOSED CLASS SETTLEMENT**

The Plaintiffs in the above-captioned matter have filed a Motion for entry of an Order determining certain matters in connection with the proposed Settlement of this class action, pursuant to the terms of the Settlement Agreement reached by the parties and presented to the Court for approval (hereinafter, the “Settlement Agreement”). After consideration of the Settlement Agreement and the exhibits annexed thereto, and after due deliberation and consideration of the totality of the circumstances and the record, and for good cause shown, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

1. **Defined Terms**: This Court adopts the defined terms set forth in Section A (Definitions) of the Settlement Agreement for purposes of this Order, unless otherwise specified herein.

2. **Additional Named Plaintiffs**: Pursuant to Federal Rule of Civil Procedure 21, Patrice Noah and Susan Baynard are hereby joined as additional named plaintiffs and class representatives. Hereinafter, references to “Plaintiffs” include Patrice Noah and Susan Baynard.

3. **Preliminary Approval of Settlement**: The terms of the Settlement Agreement, including the Plan of Allocation attached thereto as Exhibit F, are **preliminarily approved**, subject to further consideration at the Fairness Hearing provided for below. The Court concludes that the proposed Settlement is sufficiently within the range of reasonableness to warrant the scheduling of the Fairness Hearing, and the circulation of the Notice to the Settlement Class, each as provided for in this Order.

4. **Certification for Settlement Purposes**: For purposes of Settlement only, pursuant to Federal Rule of Civil Procedure 23, the Settlement Class is certified as follows:

All Direct Purchasers of healthcare services from a Michigan General Acute Care Hospital from January 1, 2006 until the Execution Date. Excluded from the Settlement Class are all Released Persons. For purposes of this class definition, “Direct Purchasers” includes

without limitation individuals who paid Michigan General Acute Hospitals in the form of co-pays, co-insurance or otherwise; insurers that paid Michigan General Acute Care Hospitals for their insureds; and self-insured entities whose health plan participants received healthcare services at Michigan General Acute Care Hospitals.

The Michigan Regional Council of Carpenters Employee Benefits Fund, The Shane Group, Inc., Bradley A. Veneberg, Abatement Workers National Health and Welfare Fund, Monroe Plumbers & Pipefitter Local 671 Welfare Fund, Scott Steele, Patrice Noah and Susan Baynard are appointed as representatives of the Settlement Class defined above, and The Miller Law Firm, P.C., Cohen Millstein Sellers & Toll PLLC, Gustafson Gluek PLLC, and Wolf, Haldenstein, Adler, Freeman & Herz LLC are appointed as Class Counsel. This certification of the Settlement Class and the appointment of class representatives and Class Counsel are solely for purposes of effectuating the proposed Settlement. If the Settlement Agreement is rescinded or does not receive Final Approval for any reason, the foregoing certification of the Settlement Class and appointment of the class representatives shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order, without prejudice to any legal argument that any of the parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

Based on the Court's review of the Motion and supporting materials, the Court finds that the proposed Settlement Class satisfies Rule 23 of the Federal Rules of Civil Procedure in that:

a. The Settlement Class, which consists of millions of individuals and entities, is so numerous that joinder of all persons who fall within the Settlement Class definition is impracticable;

b. The commonality requirement is satisfied where members of the Settlement Class share at least one common legal or factual issue. Here, there are questions of law and fact common to the Settlement Class, including questions relating to Blue Cross Blue Shield of Michigan's ("BCBSM") use of Most Favored Nation Clauses;

c. The claims of the class representatives are typical of the claims of the Settlement Class; and

d. The class representatives and Class Counsel will fairly and adequately protect the interests of the Settlement Class.

The Court further finds that the proposed Settlement Class satisfies Rule 23(b)(3) of the Federal Rules of Civil Procedure, which requires that common issues predominate and that a class action be superior to other available methods for the fair and efficient resolution of this controversy. The Court notes that because the litigation is being settled, rather than litigated, it need not consider the

manageability issues that would be presented by this litigation. Amchem Prods. Inc. v. Windsor, 117 S. Ct. 2231, 2240 (1997).

5. **Fairness Hearing**: A Fairness Hearing shall take place before the undersigned, the Honorable Denise Page Hood, at _____, on _____ to determine:

a. whether the proposed Settlement, on the terms and conditions provided for in the Settlement Agreement, should be finally approved by the Court as fair, reasonable, and adequate;

b. whether this Action and all claims asserted therein should be dismissed on the merits and with prejudice;

c. whether the application for attorneys' fees, expenses and plaintiff incentive awards filed by Class Counsel should be approved; and

d. such other matters as the Court may deem necessary or appropriate.

The Fairness Hearing may be continued without further notice to the Settlement Class.

6. **Approval with Modifications**: The Court may finally approve the proposed Settlement Agreement at or after the Fairness Hearing with any modifications agreed to by BCBSM and the class representatives and without further notice to the Settlement Class.

7. **Right to Appear and Object:** Any Settlement Class Member who has not timely and properly requested exclusion from the proposed Settlement in the manner set forth below may appear at the Fairness Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matter to be considered at the hearing, provided, however, that no Settlement Class Member who has requested exclusion from the Settlement shall be entitled to object; and provided further that no person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in connection with its consideration of those matters, unless such person complies with the following:

a. Any objection must be submitted in writing and must be filed with the Court no later than ninety (90) days after Preliminary Approval.

b. Settlement Class Members may object either on their own or through an attorney hired at their own expense. If a Settlement Class Member hires an attorney to represent him or her at the Fairness Hearing, he or she must do so at his or her own expense. No Settlement Class Member represented by an attorney shall be deemed to have objected to the Settlement Agreement unless an objection signed by the Settlement Class Member is also served as provided herein.

c. Any objection regarding or related to the Settlement

Agreement or Settlement: (1) shall identify itself as an objection to the Settlement and/or Class Counsel's application for attorneys' fees, expenses and plaintiff incentive awards; (2) shall contain information sufficient to identify the objecting Settlement Class Member, including the objecting Settlement Class Member's name, address, and telephone number, and the contact information for any attorney retained by the Settlement Class Member in connection with the objection; and (3) shall contain a statement of whether the objecting Settlement Class Member intends to appear, either in person or through counsel, at the Fairness Hearing.

d. Any Settlement Class Member who objects to the Settlement shall still be entitled to submit a Claim Form in accordance with this Order and the Claim Form instructions.

8. Notice: The forms of Notice attached to the Settlement Agreement as Exhibits B (Postcard Notice), C (Publication Notice) and D (Long Form Notice) are hereby approved. The Notice Plan described in Exhibit A to the Settlement Agreement is hereby approved and shall be implemented according to its terms. The Long Form Notice, Publication Notice and Postcard Notice shall be disseminated in accordance with the Notice Plan substantially in the form approved. Plaintiffs shall cause the Settlement Administrator to send the Postcard Notice by first-class mail, postmarked no later than 40 days after entry of this

Order, to the Settlement Class Members who can be identified from the names and addresses produced to Plaintiffs by BCBSM, Priority Health and Aetna Inc. Plaintiffs shall cause all forms of publication notice provided for in the Notice Plan to be completed no later than 45 days after entry of this Order. Plaintiffs shall cause the Settlement Administrator to activate the Settlement website and the mailing address, email address and toll free number by which Settlement Class Members can communicate with the Settlement Administrator no later than the date Notice is first mailed or published.

The Court finds that the form and method of providing notice described in the Notice Plan is the best practicable under the circumstances and, if carried out, shall constitute due and sufficient notice of the Settlement Agreement under Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States Constitution.

9. Settlement Administrator: The Court approves the retention of Epiq Class Action & Mass Tort Solutions, Inc. to administer the Settlement Agreement pursuant to its terms under the supervision of Class Counsel.

10. Escrow Agent: The Court approves of Eagle Bank, a Maryland State Chartered Bank, as the Escrow Agent to maintain the Escrow Account in which the Settlement Fund shall be held and to disburse funds from the Escrow Account in accordance with the orders of this Court. No money shall be

disbursed from the Escrow Account except as provided by an order of this Court.

11. Ability of Settlement Class Members to Request Exclusion: All Settlement Class Members who wish to exclude themselves from the Settlement must do so by sending a written request for exclusion to the Settlement Administrator by first-class mail as provided in the Notice, signed by the Settlement Class Member. To be considered timely, and thereby exclude a person from the Settlement, the envelope delivering a request for exclusion must be postmarked no later 90 days after Preliminary Approval. Plaintiffs shall attach to their motion for final approval a final list of all requests for exclusion, identifying any requests that Plaintiffs believe not to be valid and the basis for their belief.

Any Settlement Class Member who does not properly and timely request exclusion from the Settlement Class shall be included in such Settlement Class and, if the proposed Settlement receives Final Approval, shall be bound by all the terms and provisions of the Settlement Agreement, including but not limited to the releases and waivers described therein, whether or not such person has objected to the Settlement or submitted a Claim Form.

12. Claim Forms: The Claim Forms, attached to the Settlement Agreement as Exhibits E-1 and E-2, are hereby approved. Plaintiffs shall cause the Settlement Administrator to disseminate the Claim Forms substantially in the form of Exhibits E-1 and E-2 to the Settlement Agreement. Specifically,

Plaintiffs shall cause the Settlement Administrator to post the Claim Forms on the Settlement website no later than the date the Notice is first mailed or published, and, upon request of a Settlement Class Member made to the Settlement Administrator on or before November 14, 2014, to promptly send a Claim Form to the class member by first-class mail or email. To be considered timely and valid, a Claim Form must be completed in accordance with its instructions and sent to the Settlement Administrator by first-class mail, postmarked no later than November 14, 2014.

13. CAFA Notice: No later than 30 days after the entry of this Order, BCBSM shall file with the Court and serve a certificate stating its compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.

14. Attorneys' Fees, Expenses, Incentive Awards: Class Counsel shall file with the Court and serve their application for attorneys' fees, reimbursement of expenses and plaintiff incentive awards no later than 30 days after the entry of this Order.

15. Notice Declaration: No later than 75 days after the entry of this Order, Plaintiffs shall file with the Court and serve a declaration of the person(s) under whose general direction the Notice was disseminated showing that the Notice Plan was effectuated according to its terms and this Order.

16. **Final Approval Motion**: Plaintiffs shall file with the Court and serve their motion for final approval of the Settlement within 120 days after the entry of this Order.

17. **Appearance by Settlement Class Member**: Any Settlement Class Member may enter an appearance in this litigation, at his, her or its own expense, pro se or through counsel of his, her or its own choice. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

18. **Settlement Administration Expenses**: Class Counsel are authorized to disburse up to \$1 million from the Settlement Fund to pay the following costs of administering the Settlement, as they are incurred: Taxes, Tax Expenses, charges of Eagle Bank, charges of the Settlement Administrator, and the cost of implanting the Notice Plan. To the extent these costs exceed \$1 million, Class Counsel may request in their application for attorneys' fees, reimbursement of expenses and incentive awards that amounts above \$1 million be paid or reimbursed from the Settlement Fund.

19. **Discovery and Other Litigation Activity**: All discovery and other litigation activity in this Action is hereby stayed pending a decision on Final Approval of the Settlement Agreement.

20. **No Admission**: Neither the Settlement nor the Settlement Agreement shall constitute an admission, concession, or indication of the validity

of any claims or defenses in the Action, or of any wrongdoing, liability or violation by BCBSM, which vigorously denies all of the claims and allegations raised in the Action.

SO ORDERED this _____ day of _____ 2012.

HONORABLE DENISE PAGE
HOOD
UNITED STATES DISTRICT
JUDGE

Copies provided to:
Counsel of record

EXHIBIT I

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

THE SHANE GROUP, INC. *ET AL.*,

Plaintiffs, on behalf of themselves
and all others similarly situated,

vs.

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Defendant.

Civil Action No. 2:10-cv-14360-DPH-
MKM

Judge Denise Page Hood
Magistrate Judge Mona K. Majzoub

[PROPOSED] ORDER APPROVING SETTLEMENT

The Court has (1) reviewed and considered the terms and conditions of the proposed Settlement as set forth in the Settlement Agreement dated June 23, 2014; (2) held a Fairness Hearing after being satisfied that notice to the Settlement Class has been provided in accordance with the Court's Order Granting Preliminary Approval to Proposed Class Settlement entered on June __, 2014 (the "Preliminary Approval Order"); (3) taken into account any objections submitted prior to the Fairness Hearing in accordance with the Preliminary Approval Order, and the presentations and other proceedings at the Fairness Hearing; and (4) considered the Settlement in the context of all prior proceedings had in this litigation. Accordingly, the Court enters the following **FINDINGS and CONCLUSIONS**:

A. Capitalized terms used in this Order that are not otherwise defined herein shall have the meaning assigned to them in the Settlement Agreement.

B. The Court has subject matter jurisdiction over this Action.

C. The notice to Settlement Class Members consisted of postcard notices to millions of potential class members, as well as advertisements in newspapers and newspaper supplements, in *People* magazine, and on the Internet. The Settlement Administrator also created a website where Settlement Class Members could obtain the Settlement Agreement, the Long Form Notice, the Claim Forms, the list of Michigan General Acute Care Hospitals, and the list of Affected Combinations (as defined in Plaintiffs' motion for class certification). The Court finds that this notice (i) constitutes the best notice practicable under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, and of their right to object and to appear at the Fairness Hearing or to exclude themselves from the Settlement; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and (iv) fully complied with due process principles and Federal Rule of Civil Procedure 23.

D. By providing notice of the proposed Settlement to the relevant state and federal authorities within 10 days of the filing of the proposed Settlement with this Court, Defendant has complied with the requirements of 28 U.S.C. § 1715.

E. The Court held a Fairness Hearing to consider the fairness, reasonableness, and adequacy of the Settlement and has [BEEN ADVISED THAT NO OBJECTIONS TO THE SETTLEMENT HAVE BEEN FILED/CONSIDERED ALL SUCH OBJECTIONS].

F. The Settlement is the product of good faith, arm's length negotiations between the Plaintiffs and Class Counsel, on the one hand, and BCBSM and its counsel, on the other hand.

G. The Settlement, as provided for in the Settlement Agreement and exhibits, is in all respects fair, reasonable, adequate, and proper, and in the best interest of the Settlement Class. In reaching this conclusion, the Court considered a number of factors, including: (1) the likelihood of success on the merits weighed against the amount and form of the relief offered in the settlement; (2) the risks, expense, and delay of further litigation; (3) the judgment of experienced counsel who have competently evaluated the strength of their proofs; (4) the amount of discovery completed and the character of the evidence uncovered; (5) whether the settlement is fair to the unnamed class members; (6) objections raised by class members; (7) whether the settlement is the product of arm's length negotiations as opposed to collusive bargaining; and (8) whether the settlement is consistent with the public interest. See, e.g., In re Cardizem CD Antitrust Litig., 218 F.R.D. 508, 522 (E.D. Mich. 2003).

H. A list of those Settlement Class Members who have timely and validly requested exclusion from the Settlement and the Settlement Class, and who are therefore not bound by the Settlement, the provisions of the Settlement Agreement, this Order, or the Final Judgment to be entered by the Clerk of the Court hereon, has been submitted to the Court in the Declaration of the Settlement Administrator (attached as Exhibit A to Plaintiffs' Memorandum of Law in Support of Motion for Final Approval of Settlement, hereinafter "___ Decl."), filed in advance of the Fairness Hearing. All Settlement Class Members shall be subject to all of the provisions of the Settlement, the Settlement Agreement, this Order, and Final Judgment to be entered by the Clerk of the Court.

On the basis of the foregoing findings and conclusions, as well as the submissions and proceedings referred to above, **NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

Approval of Settlement

1. The Settlement and the Settlement Agreement, including the Plan of Allocation attached to the Settlement Agreement as Exhibit F, are hereby approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the requirements of due process and Federal Rule of Civil Procedure 23 have been satisfied. The parties are ordered and directed to comply with the terms and provisions of the Settlement Agreement.

2. The Settlement Class Members identified on the list submitted to the Court as having timely and properly requested exclusion from the Settlement and the Settlement Class are hereby excluded from the Settlement Class and shall not be entitled to any of the benefits afforded to the Settlement Class Members under the Settlement Agreement.

3. If this Order is reversed on appeal or the Settlement Agreement is rescinded or does not receive Final Approval for any reason, the certification of the Settlement Class and appointment of the Class Representatives shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

Release and Injunctions Against Released Claims

4. Plaintiffs and each of the other Settlement Class Members, jointly and severally, shall, and hereby do, fully release and discharge BCBSM and Released Parties from any and all claims, judgments, liens, losses, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, indemnities, actions, causes of action, and obligations of every kind and nature in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or accrued, arising out of or in any way

relating to Most Favored Nation Clauses, or any matter or event occurring up to the execution of this Agreement arising out of the dispute which is the subject of this Action, whether in contract, tort, local law, or violation of any state or federal statute, rule or regulation, including without limitation, claims under the Sherman Act, Clayton Act or any Michigan antitrust statute, from January 1, 2006, through the Execution Date (“Released Claims”). Released Claims include any unknown claims that Settlement Class Members do not know or suspect to exist in their favor, which if known by them, might have affected this Agreement with BCBSM and the release of Released Parties.

5. As used in Paragraph 4 herein, “Most Favored Nation Clauses” means all agreements and arrangements between BCBSM and general acute care hospitals in Michigan that (a) Plaintiffs have alleged or contended in this Action are most favored nation clauses, (b) are within the definition of a most favored nation clause contained in Section 3405a(4) of 1956 PA 218, or (c) have the same purpose or effect as the agreements and arrangements described in clauses (a) and (b) of this Paragraph.

6. The Release described in Paragraph 4 herein is not intended to, and shall not, release any claims for medical malpractice, insurance coverage, product liability, personal injury, or similar claims.

7. The Settlement Class Members are permanently enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from, any other lawsuit in any state, territorial or federal court, or any arbitration or administrative or regulatory or other proceeding in any jurisdiction, which asserts Released Claims. In addition, Settlement Class Members are enjoined from asserting as a defense, including as a set-off or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

Other Provisions

8. Neither the Settlement Agreement nor any provision therein, nor any negotiations, statements, submissions, or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of the Plaintiffs, any Settlement Class Member, BCBSM, or any other person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Action are or are not meritorious, and neither this Order nor the Settlement Agreement, nor any statements or submissions in connection therewith shall be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiffs, any Settlement Class Member, or any other person has suffered any damage; *provided*,

however, that the Settlement Agreement, this Order, and the Final Judgment to be entered thereon may be filed in any action by BCBSM or Settlement Class Members seeking to enforce the Settlement Agreement or the Final Judgment by injunctive or other relief, or to assert defenses including, but not limited to, *res judicata*, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settlement Agreement's terms shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings, as to Released Claims or other prohibitions set forth in this Order, that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

9. In the event the Settlement Agreement does not receive Final Approval or is rescinded in accordance with the terms and provisions of the Settlement Agreement, then this Order and the Final Judgment shall be rendered null and void and be vacated and all orders entered in connection therewith by this Court shall be rendered null and void.

10. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction for the purposes of implementing and enforcing the Agreement, and adjudicating any disputes that arise pursuant to the Agreement.

Entry of Judgment

11. The Clerk of the Court is directed to enter the Final Judgment in the form attached to this Order dismissing this Action, and all claims asserted therein, with prejudice as to BCBSM.

SO ORDERED this _____ day of _____ 2014.

HONORABLE DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

THE SHANE GROUP, INC. *ET AL.*,

Plaintiffs, on behalf of themselves
and all others similarly situated,

vs.

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Defendant.

Civil Action No. 2:10-cv-14360-DPH-
MKM

Judge Denise Page Hood
Magistrate Judge Mona K. Majzoub

[Proposed] FINAL JUDGMENT

The Court has entered the Final Approval Order as to the parties' Settlement. Accordingly, Plaintiffs' and the Settlement Class's claims against Blue Cross Blue Shield of Michigan are hereby **DISMISSED WITH PREJUDICE**, and this Final Judgment shall issue consistent with Federal Rule of Civil Procedure 58.

SO ORDERED this _____ day of _____ 2014.

HONORABLE DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE SHANE GROUP, INC., BRADLEY)
A. VENEBERG, MICHIGAN REGIONAL)
COUNCIL OF CARPENTERS)
EMPLOYEE BENEFITS FUND,)
ABATEMENT WORKERS NATIONAL)
HEALTH AND WELFARE FUND,)
MONROE PLUMBERS & PIPEFITTER)
LOCAL 671 WELFARE FUND, and)
SCOTT STEELE,)

Plaintiffs,)

v.)

BLUE CROSS BLUE SHIELD OF)
MICHIGAN,)

Defendant.)

Case No. 2:10-cv-14360-DPH-MKM

DECLARATION OF SHANNON R. WHEATMAN, PH.D.

ON ADEQUACY OF NOTICE PLAN

I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

1. I am a Senior Vice President of Kinsella Media, LLC (“KM”), an advertising and notification firm in Washington, D.C. specializing in the design and implementation of class action and bankruptcy notification programs. My business address is 2120 L Street NW, Suite 860, Washington, D.C. 20037. My telephone number is (202) 686-4111.

2. This declaration will describe my experience in designing and implementing notices and notice plans, as well as my credentials to opine on the overall adequacy of the notice effort. It will also describe the notices (the “Notice” or “Notices”) proposed here for *The Shane Group v.*

Blue Cross Blue Shield of Michigan, including how they were developed and why I believe they will be effective.

RELEVANT EXPERIENCE

3. I have served as a qualified class action notice expert in many major class actions. State and federal courts have accepted my analyses and expert testimony on whether information is effectively communicated to people. My curriculum vitae is attached as **Exhibit 1**.

4. I have testified in court as an expert in *Scharfstein v. BP West Coast Products, LLC*, No. 1112-17046 (Cir. Ct. Ore.); *Spillman v. RPM Pizza, Inc.*, No. 10-349 (M.D. La.); *PRC Holdings LLC v. East Resources, Inc.*, No. 06-C-81 (Cir. Ct. W. Va.); *Guidry v. American Public Life Ins. Co.*, No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish); *Webb v. Liberty Mutual Ins. Co.*, No. CV-2007-418-3 (Cir. Ct. Ark); and *Beasley v. The Reliable Life Insurance Co.*, No. CV-2005-58-1 (Cir. Ct. Ark). I have been deposed as an expert in *Hale v. CNX Gas Company, LLC*, No. 10-CV-59 (W.D. Va.) and *Thomas v. A. Wilbert Sons, LLC*, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish).

5. I have been involved in some of the largest and most complex national notification programs in the country, including: *In re Toyota Motor Corp. Unintended Acceleration Mkt'g, Sales Practs. & Products Liability Litig.*, No. No. 8:10ML2151, (C.D. Cal.) (defective product case involving millions of consumers); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.) (involving millions of indirect purchasers); *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La.); *Kramer v. B2Mobile, LLC*, No. 10-cv-02722 (N.D. Cal.) (text messaging case involving tens of millions of consumers); *In re Enfamil LIPIL Mkt'g & Sales Pract. Litig.*, No. 11-MD-02222 (S.D. Fla.) (consumer fraud settlement involving millions of infant formula purchasers); *Fogel v. Farmers Group, Inc.*, No. BC300142 (Cal. Super. Ct., LA County) (\$455 million settlement involving tens of millions of insureds); *In re Katrina Canal Breaches Consolidated Litig.*, No.

05-4182 (E.D. La.) (settlement obtained for Hurricane Katrina and Rita survivors); *Lockwood v. Certegy Check Services, Inc.*, No. 8:07-CV-1434 (M.D. Fla.) (data theft settlement involving over 37 million consumers); *Grays Harbor Adventist Christian School v. Carrier Corp.*, No. 05-05437 (W.D. Wash.) (defective product settlement involving high efficiency furnaces); and many others.

6. Courts have admitted my expert testimony on quantitative and qualitative evaluations of the effectiveness of notice programs and several courts have commented favorably, on the record, regarding the effectiveness of notice plans I have done. Selected judicial comments are included in the attached curriculum vitae.

7. My qualifications include expertise in the form and content of notice. For example, while serving with the Federal Judicial Center (“FJC”), I played an integral part in the development of the illustrative, “model” forms of notice designed to satisfy the plain language requirements of Federal Rule of Civil Procedure 23(c)(2). This research formed the basis for my doctoral dissertation, *The Effects of Plain Language Drafting on Layperson’s Comprehension of Class Action Notices* (2001) (Ph.D. dissertation, University of Georgia). To assist judges and attorneys, both in state and federal courts, the FJC posted the notices at www.fjc.gov.

8. I have authored and co-authored articles on notice and due process. I believe notice and due process depend upon clear communication with the people affected. *See, e.g.*, Shannon R. Wheatman & Terri R. LeClercq, *Majority of Class Action Publication Notices Fail to Satisfy Rule 23 Requirements*, 30 REV. LITIG. 53 (2011); Katherine Kinsella & Shannon R. Wheatman, *Class Notice and Claims Administration*, in *The International Private Enforcement of Competition Law* 264–274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010); Todd B. Hilsee, Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The ethics behind due process in class action notice is more than just plain language: A desire to actually inform*, 18 GEO. J. LEGAL ETHICS 1359 (2005); Todd B. Hilsee, Gina M. Intrepido &

Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The "Desire-to-Inform" Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006).

NOTICE PLAN

9. KM was retained in this litigation to design the Notice Plan and implement the paid media portion, under the supervision of Class Counsel. The Settlement Administrator will implement the remainder of the Notice Plan, namely, individual notice and the case website, also under the supervision of Class Counsel.

10. Although each case is unique, the methods and tools used in developing the Notice Plan for this Settlement have been employed in many other court-approved notice plans.

11. In this case, the proposed Notice Plan was designed to reach the greatest practicable number of Settlement Class Members and ensure that they will be exposed to, see, review, and understand the Notice.

12. I have been involved in drafting the various forms of Notice described below. Each form is noticeable, clear, concise, and written in plain, easily understood language.

13. In developing the Notice Plan, KM determined in consultation with Class Counsel that the most practicable way to reach Settlement Class Members is through the use of direct notice, paid media, and an informational website.

14. As detailed below, in my opinion, the Notice Program represents the best notice practicable under the circumstances.

Individual Notice

15. In developing the Notice Program, KM determined that a list of Class Members could be

created, and it would be reasonable to implement an individual notification effort to reach them.

16. Based on information provided by Class Counsel, I understand that Plaintiffs have the following Settlement Class Member name and address information. Blue Cross Blue Shield of Michigan (“BCBSM”) produced names and addresses of its customers as part of the production of its claims database in this litigation. In addition, the claims data produced by Aetna in the litigation included names and addresses for its self-insured customers but not for their insured individuals. Health Alliance Plan (“HAP”) and Priority Health (“Priority”) also produced their claims databases in this litigation, but neither included full name and address information. In connection with the Settlement, Class Counsel requested that HAP and Priority supplement their data productions to provide the missing name and address information. Priority has agreed, but HAP has not. Class Counsel will make the same request to Aetna once the motion for Preliminary Approval has been filed. To date, Counsel has names and addresses for 2,394,079 BCBSM insured individuals; 1,134 BCBSM self-insured groups; 179 Aetna self-insured groups; and 99 commercial health insurers. In early July, Counsel expects to receive names and addresses for 604,488 Priority insured individuals and 99 Priority self-funded groups. Until the Settlement Administrator “de-duplicates” the lists across insurers, the number of Settlement Class Members to whom individual notice will be mailed is not known.

17. The Settlement Administrator will send Notice via mail to identified Settlement Class Members. Any additional individuals (or groups) that are identified by these insurers sufficiently ahead of the deadline for mailing individual notice will also be mailed a Notice.

18. Individual Notice consisting of a mailed Postcard Notice will provide Class Members with opportunities to see, read, and understand their rights, and act if they so choose.

19. Prior to mailing, the Settlement Administrator will check all addresses against the National Change of Address¹ database, which is maintained by the United States Postal Service (“USPS”). In order to ensure the most accurate mailings possible, the administrator will also certify addresses via the Coding Accuracy Support System, and verify them through Delivery Point Validation.²

20. For any Postcard Notices that are returned as non-deliverable, the Settlement Administrator will re-mail them to any address indicated by the USPS in the case of an expired automatic forwarding order. For Notices returned as non-deliverable, but for which a new address is not indicated by the USPS, the Settlement Administrator will further search through another vendor to obtain a more current address. If any such address is found, the Settlement Administrator will re-mail the Notice.

21. After determining that individual notification of Class Members was reasonable, KM determined that notification should consist of summary notices. Research has shown that a summary notice is more likely to be read by recipients than a longer form notice.

a. The FJC believes that summary notices should be mailed in many class action cases.

i. The Class Action Subcommittee of the Civil Rules Advisory Committee asked the FJC to draft model notices in plain language to support the then pending changes to Rule 23(c), which now requires notices to “concisely and clearly state

¹ The NCOA database contains records of all permanent changes of address submissions received by the USPS for the last four years.

² CASS is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems. Records that are properly coded are then sent through Delivery Point validation to verify the address is correct. If they are incorrect, DPV will report exactly what is wrong with the address.

in plain, easily understood language” the information a class member needs to know. The FJC conducted research to determine the best way to write class action notices to allow people to easily understand all of their rights and options.³

ii. While I was employed with the FJC we conducted four focus groups to gather feedback on our draft plain language notices. During the focus group process, we explored recipients' willingness to open and read a class action notice. Many focus group participants complained that it would take too much time out of their busy schedules to read a detailed notice, which in turn would cause them to skim the notice or throw it away.

iii. We went on to empirically test the overall effectiveness of the FJC's model securities notice. We collected responses from 229 volunteer participants who were members of 27 investment clubs across the country. Only 2% of participants reported that they would carefully read a long form notice; 59% would glance at it; 12% would file it away; and 27% would throw it away without reading it. However, 43% of participants reported they would carefully read a summary notice; 36% would glance at it; 6% would file it away; and 15% would throw it away.

iv. Given these findings, the FJC believes that when the case does not involve a serious health or emotional issue, mailing a summary notice will most likely increase the chances it will be read.

³ The research conducted by the FJC is discussed in Shannon R. Wheatman, *The Effects of Plain Language Drafting on Layperson's Comprehension of Class Action Notices* (2001) (unpublished Ph.D. dissertation, University of Georgia) (on file with the University of Georgia Library).

b. USPS research shows that many people scan their mail.⁴

i. The USPS conducts and publishes the results of an annual study (*Household Diary Study*) examining how mail recipients interact with different types of mail. The survey has three main purposes: (a) to measure the mail sent and received by U.S. households, (b) to provide a means to track household mail trends over time, and (c) to make comparisons of mail use between different types of households. The survey collects household information on attitudes toward mail and advertising.

ii. The study examines mail by type, including: correspondence, transactions, advertising, periodicals, packages, and unclassified mail. Advertising mail, which can take many forms – “letters, postcards, catalogs, and free samples” – is the category for promotional, advertising, or sales material. There is no category for legal notices.

iii. In 2012, 79% of recipients either “read” or “scanned” the advertising mail sent to their households. In order to decide to read or throw away advertising mail, the recipient must look at the envelope or mailer.

c. Based on the FJC and the USPS studies, Postcard Notice is the recommended form for direct notice in this case.

Paid Media

22. To supplement the Individual Notice, KM designed a paid media program to reach

⁴ U.S.P.S., *Household Diary Study: Mail Use & Attitudes in FY2012*, available at <http://about.usps.com/current-initiatives/studying-americans-mail-use.htm> (last visited June 6, 2014).

Settlement Class Members who do not receive a Postcard Notice via mail.

23. Given the broad range of demographics that encompass Settlement Class Members, KM selected Michigan adults 18 years of age or older (“Michigan Adults 18+”) as the primary target audience.

24. To effectively reach this class, KM recommends a broad-based notice program that utilizes magazine, local newspaper, newspaper supplement, and Internet advertising to meet due process standards and provide the best notice practicable under the circumstances.

25. The Publication Notice will appear in the following consumer magazine:

- a. A full-page ad (7” x 10”) in *People* – Michigan state edition with an estimated circulation of 131,600.

26. KM chose the specific newspapers listed below because they represent the highest circulating newspapers within seven selected Michigan DMAs.⁵ The Publication Notice will appear in the following newspapers:

- a. A one fourth-page ad (4.949” x 10.5”) in the daily edition of *Alpena News* with an estimated circulation of 7,616.
- b. A one fourth-page ad (5.387” x 10.5”) in the weekday edition of *Bay City Times* with an estimated circulation of 16,549.
- c. A one fourth-page ad (5.387” x 10.5”) in the Sunday edition of *Bay City Times* with an estimated circulation of 26,619.

⁵ A Designated Market Area ("DMA") is a group of counties that form an exclusive geographic area in which the home market television stations hold a dominant share of total hours viewed. DMA is a trademark of The Nielsen Company and is used for planning, buying, and evaluating media audiences across various markets. The DMAs that will be used in this case include: Detroit, Grand Rapids-Kalamazoo-Battle Creek, Flint-Saginaw-Bay City, Lansing, Traverse City-Cadillac, Marquette, and Alpena.

- d. A one fourth-page ad (5.75" x 11") in the daily edition of *Detroit Free Press* with an estimated circulation of 219,032.
- e. A one fourth-page ad (5.75" x 11") in the daily edition of *Detroit News* with an estimated circulation of 118,325.
- f. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Flint Journal* with an estimated circulation of 39,900.
- g. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Flint Journal* with an estimated circulation of 54,181.
- h. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Grand Rapids Press* with an estimated circulation of 62,973.
- i. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Grand Rapids Press* with an estimated circulation of 135,592.
- j. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Jackson Citizen Patriot* with an estimated circulation of 16,874.
- k. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Jackson Citizen Patriot* with an estimated circulation of 22,689.
- l. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Kalamazoo Gazette* with an estimated circulation of 26,968.
- m. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Kalamazoo Gazette* with an estimated circulation of 43,309.
- n. A one fourth-page ad (4.918" x 10.5") in the weekday edition of *Lansing State Journal* with an estimated circulation of 37,965.

- o. A one fourth-page ad (4.918" x 10.5") in the Sunday edition of *Lansing State Journal* with an estimated circulation of 52,398.
- p. A one fourth-page ad (4.95" x 10.5") in the weekday edition of *Marquette Mining Journal* with an estimated circulation of 10,268.
- q. A one fourth-page ad (4.95" x 10.5") in the Sunday edition of *Marquette Mining Journal* with an estimated circulation of 12,345.
- r. A one fourth-page ad (5.387" x 10.5") in the weekday edition of *Saginaw News* with an estimated circulation of 19,880.
- s. A one fourth-page ad (5.387" x 10.5") in the Sunday edition of *Saginaw News* with an estimated circulation of 29,879.
- t. A one fourth-page ad (5.44" x 10.5") in the weekday edition of *Traverse City Record-Eagle* with an estimated circulation of 17,383.
- u. A one fourth-page ad (5.44" x 10.5") in the Sunday edition of *Traverse City Record-Eagle* with an estimated circulation of 22,585.

27. The Publication Notice will appear in the following newspaper supplements:

- a. An M-page ad (6.25" x 9") in *Parade-Michigan* state edition with an estimated circulation of 960,938.
- b. An M-page ad (6.25" x 9") in *USA Weekend-Michigan* state edition with an estimated circulation of 540,835.

28. KM recommends incorporating Internet advertising into the Notice Plan to provide Settlement Class Members with additional notice opportunities beyond the print placements. National Internet advertising will be included to reach those who moved out of state. Internet

advertising delivers an immediate message and allows the viewer of an advertisement to instantly click through to the Settlement website for further information.

29. Internet advertising will include the following placements:

- a. Banner advertisements measuring 728 x 90, 300 x 250, and 160 x 600 pixels will appear, on a rotating basis, on websites that are part of the *Xaxis*⁶ network.
- b. Impressions will be delivered both nationally and to Michigan-specific IP addresses.

Effectiveness of Notice Plan

30. The *reach*⁷ and *frequency*⁸ of the Notice Plan was measured against the target audience to evaluate the strength and efficiency of the paid media (magazine, local newspaper, newspaper supplement, and Internet advertising). The Notice Plan will deliver an estimated reach of 80.0% with an average frequency of 2.2 times against Michigan Adults 18+.

Other

31. The Settlement Administrator will establish a website to enable Settlement Class Members to get information on the Settlement, including the Long Form Notice and the Settlement Agreement.

32. The Settlement Administrator will establish a toll-free phone number to allow Settlement Class Members to call and request that a Notice be mailed to them or listen to answers to frequently asked questions.

⁶ *Xaxis* is a network that represents over 5,000 websites.

⁷ Reach is the estimated number of different people exposed to a specific vehicle or combination of vehicles. It can be expressed as whole number or percentage of the total population.

⁸ Frequency is the estimated average number of opportunities an audience member has to see the notice.

33. The Settlement Administrator will establish a post office box to allow Settlement Class Members to contact Class Counsel by mail with any specific requests or questions.

NOTICE FORM AND CONTENT

34. Attached to the Settlement Agreement as **Exhibits B, C, and D** are copies of the Postcard Notice, Publication Notice, and Long Form Notice.

35. The Notices effectively communicate information about the Settlement.

36. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in “plain, easily understood language.” KM applies the plain language requirement in drafting notices in federal and state class actions. The firm maintains a strong commitment to adhering to the plain language requirement, while drawing on its experience and expertise to draft notices that effectively convey the necessary information to Class Members.

37. The Summary Notices (Postcard and Publication Notices) are designed to capture the Class Member’s attention with clear, concise, plain language. They direct readers to the Settlement website or toll-free number for more information. The plain language text provides important information regarding the subject of the litigation, the Settlement Class definition, and the legal rights available to Settlement Class Members. No important or required information is missing or omitted. In fact, these Notices state all required information without omitting significant facts that Settlement Class Members need to understand their rights.

38. The Long Form Notice will be available at the website, by calling the toll-free number, or by mailing or emailing a request to the Settlement Administrator. The Long Form Notice provides substantial information, including all specific instructions Settlement Class Members need to follow to properly exercise their rights, and background on the issues in the case. It is designed to encourage readership and understanding, in a well-organized and reader-friendly format.

CONCLUSION

39. It is my opinion that the reach of the target audience, number of exposure opportunities to the notice information, and content of the Notices are adequate and reasonable under the circumstances. It is consistent with the standards employed by KM in notification programs designed to reach class members. The Notice Plan, as designed, is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. this 23th day of June 2014.

A handwritten signature in cursive script, appearing to read "Shannon R. Wheatman", written in black ink. The signature is fluid and extends to the right with a long, sweeping underline.

Shannon R. Wheatman

EXHIBIT 1



Shannon R. Wheatman, Ph.D.

Senior Vice President
Kinsella Media, LLC
2120 L Street NW, Suite 860
Washington, DC 20037
2010 – Present

Dr. Wheatman specializes in designing, developing, analyzing, and implementing large-scale legal notification plans. She is a court-recognized expert who provides testimony on the best notice practicable. Dr. Wheatman began her class action career in 2000 at the Federal Judicial Center where she was instrumental in the development of model notices to satisfy the plain language amendment to Rule 23. Her plain language expertise was advanced by her education, including her doctoral dissertation on plain language drafting of class action notice and her master's thesis on comprehension of jury instructions. Dr. Wheatman has been involved in over 300 class actions. Her selected case experience includes:

Antitrust

Allen v. Dairy Farmers of America, Inc., No. 5:09-CV-00230-CR (D. Vt.).

Blessing v. Sirius XM Radio Inc., No. 09-CV-10035 HB (S.D.N.Y.).

Brookshire Bros. v. Chiquita, No. 05-CIV-21962 (S.D. Fla.).

Cipro Cases I and II, Nos. 4154 and 4220 (Super. Ct. Cal.).

In re: Dynamic Random Memory (DRAM) Antitrust Litig., MDL No. 1486 (N.D. Cal.).

In re Flonase Antitrust Litigation, No. 08-CV-3301 (E.D. Pa.).

In re: Metoprolol Succinate End-Payor Antitrust Litig., No. 06-cv-71 (D. De.).

In re: Online DVD Rental Antitrust Litig., MDL No. 2029 (N.D. Cal.).

In re TFT-LCD (Flat Panel) Antitrust Litig., MDL No. 1827 (N.D. Cal.).

Sweetwater Valley Farm, Inc. v. Dean Foods, No. 2:07-CV-208 (E.D. Tenn.).

Consumer and Product Liability

Beringer v. Certegy Check Servs., Inc., No. 8:07-cv-1434-T-23TGW (M.D. Fla.) (data breach).

CSS Inc. v. FiberNet, L.L.C., No. 07-C-401 (Cir. Ct. W. Va.) (telecommunications).

Donovan v. Philip Morris USA, Inc., No. 06-12234 NG (D. Mass.) (medical monitoring).

FIA Card Services, N.A. v. Camastro, No. 09-C-233 (Cir. Ct. W. Va.) (credit card arbitration).

Glazer v. Whirlpool Corp., No. 1:08-WP-65001 (N.D. Ohio)(defective product).

Grays Harbor v. Carrier Corp., No. 05-CIV-21962 (W.D. Wash.) (defective product).

In Re: Checking Account Overdraft Litig., MDL No. 2036 (S.D. Fla.) (JP Morgan, U.S. Bank, BOA settlements; overdraft fees).

In Re: Enfamil LIPIL Mktg. & Sales Practs. Litig., No. 11-MD-02222 (S.D. Fla.) (false advertising).

In re: M3Power Razor System Marketing & Sales Practs. Litig., MDL 1704 (D. Mass.) (false advertising).

In re Netflix Privacy Litig., No. 5:11-cv-00379 (N.D. Cal.) (privacy).

In re: Pharmaceutical Industry Average Wholesale Price Litig., MDL No. 1456 (D. Mass.) (pharmaceutical).

In re: SCBA Liquidation, Inc., f/k/a Second Chance Body Armor, Inc., No. 04-12515 (Bankr. W.D. Mich.) (defective product).

In re Vioxx Products Liability Litig., No. 05-md-01657 (E.D. La) (pharmaceutical).

In re: Toyota Motor Corp. Unintended Acceleration Mktg, Sales Practs, & Prods Litig., No. 8:10ML2151 (C.D. Cal.) (unintended acceleration).

In Re: Wachovia Corp. "Pick-a-Payment" Mortgage Mktg & Sales Practs. Litig., No. M:09-CV-2015 (N.D. Cal.) (negative amortization).

Keilholtz v. Lennox Hearth Prods., No. 08-CV-00836 (N.D. Cal.) (defective product).

Kramer v. B2Mobile, LLC, No. 10-cv-02722 (N.D. Cal.) (TCPA).

Lee v. Carter Reed Co., L.L.C., No. UNN-L-39690-04 (N.J. Super. Ct.) (false advertising).

Palace v. DaimlerChrysler, No. 01-CH-13168 (Cir. Ct. Ill.) (defective product).

Rowe v. UniCare Life & Health Ins. Co., No. 09-cv-02286 (N.D. Ill.) (data breach).

Spillman v. Domino's Pizza, No. 10-349 (M.D. La.) (robo-call).

Trammell v. Barbara's Bakery, Inc., No. 3:12-cv-02664 (N.D. Cal.) (false advertising).

Wolph v. Acer, No. 09-cv-01314 (N.D. Cal.) (false advertising).



Environmental/Property

Allen v. Monsanto Co., No. 041465 and *Carter v. Monsanto Co.*, No. 00-C-300 (Cir. Ct. W. Va.) (dioxin release).

Angel v. U.S. Tire Recovery, No. 06-C-855 (Cir. Ct. W.Va.) (tire fire).

Ed Broome Inc. v. XTO Energy, Inc., No. 1:09-CV-147 (N.D. W. Va.) (oil & gas rights).

Cather v. Seneca-Upshur Petroleum Inc., No. 1:09-cv-00139 (N.D. W. Va.) (oil & gas rights).

In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010, MDL No. 2179 (E.D. La.) (BP oil spill).

In Re Katrina Canal Breaches Litig., No. 05-4182 (E.D. La.) (Hurricanes Katrina and Rita).

Jones v. Dominion Transmission Inc., No. 2:06-cv-00671 (S.D. W. Va.) (oil & gas rights).

Thomas v. A. Wilbert Sons, LLC, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish) (vinyl chloride water contamination).

Government

Countrywide Mortgage Settlement, Department of Justice.

Iovate Settlement, Federal Trade Commission.

Cobell v. Salazar, No. 1:96cv01285 (D. D.C.), Depts. of Interior and Treasury.

National Mortgage Settlement, Attorneys General.

Walgreens Settlement, Federal Trade Commission.

Insurance

Beasley v. Hartford Ins. Co. of the Midwest, No. CV-2005-58-1 (Cir. Ct. Ark.) (homeowners insurance).

Bond v. Am. Family Ins. Co., No. CV06-01249 (D. Ariz) (property insurance).

Burgess v. Farmers Ins. Co., No. 2001-292 (Dist. Ct. Okla.) (homeowners insurance).

Campbell v. First Am. Title Ins. Co., No. 2:08-cv-311-GZS (D. Me.) (title insurance).

DesPortes v. ERJ Ins. Co., No. SU2004CV-3564 (Ga. Super. Ct.) (credit premium insurance).

Fogel v. Farmers Group, Inc., No. BC300142 (Super. Ct. Cal.) (management exchange fees).

Guidry v. Am. Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct.) (cancer insurance).

Gunderson v. F.A. Richard & Associates, Inc., No. 2004-2417-D. (14th Jud. D. Ct. La.) (PPO).

Johnson v. Progressive Casualty Ins., Co., No. CV-2003-513 (Cir. Ct. Ark.) (automobile insurance).

McFadden v. Progressive Preferred, No. 09CV002886 (Ct. C.P. Ohio) (UM/UIM).



Orrill v. Louisiana Citizens Fair Plan, No. 05-11720 (Civ. Dist. Ct., Orleans Parish) (Hurricane Katrina property insurance).

Purdy v. MGA Ins. Co., No. D412-CV-2012-298 (4th Jud. Ct. N. Mex.) (UM/UIM).

Press v. Louisiana Citizens Fair Plan Prop. Ins. Co., No. 06-5530 (Civ. Dist. Ct., Orleans Parish) (Hurricane Katrina property insurance).

Shaffer v. Continental Casualty Co., No. 06-2235 (C.D. Cal.) (long term care insurance).

Sherrill v. Progressive Northwestern Ins. Co., No. DV-03-220 (18th D. Ct. Mont.) (automotive premiums).

Soto v. Progressive Mountain Ins. Co., No. 2002CV47 (Dist. Ct. Mont.) (personal injury insurance).

Webb v. Liberty Mutual Ins. Co., No. CV-2007-418-3 (Cir. Ct. Ark) (bodily injury claims).

Securities

In re Municipal Derivatives Antitrust Litig., MDL No. 1950 (S.D.N.Y.).

In re Mutual Funds Investment Litig., MDL No. 1586 (Allianz Sub-Track, D. Md.).

Canada

Donnelly v. United Technologies Corp., No. 06-CV-320045 CP (Ont. S.C.J.) (defective product).

Wener v. United Technologies Corp., 2008 QCCS 6605 (Québec) (defective product).

Dolmage v. Province of Ontario, No. CV-09-376927CP00 (Ont. S.C.J.) (personal injury).

Clarke v. Province of Ontario, No. CV-10-411911 (Ont. S.C.J.) (personal injury).

Bechard v. Province of Ontario, No. CV-10-417343 (Ont. S.C.J.) (personal injury).

Hall v. Gillette Canada Co., No. 47521CP (Ont. S.C.J.) (false advertising).

Articles and Presentations

Shannon R. Wheatman, Webinar Speaker, *Crafting Class Settlement Notice Programs: Due Process, Reach, Claims Rates, and More*, Strafford Publications (Feb. 2014).

Shannon R. Wheatman, *Cutting Through the Clutter: Eight Tips for Creatively Engaging Class Members and Increasing Response*, CLASS ACTION LITIGATION REPORT, 15 CLASS 88 (Jan. 24, 2014).

Shannon Wheatman & Michelle Ghiselli, *Privacy Policies: How To Communicate Effectively with Consumers*, International Association of Privacy Professionals (2014).



Shannon R. Wheatman, Speaker, *Report on Model Jury Instructions in Civil Antitrust Cases, Presentation*, American Antitrust Institute's 7th Annual Private Antitrust Enforcement Conference, Washington, DC (Dec. 2013).

Shannon R. Wheatman, Speaker, Class Action Notice, Reach & Administration, CLE INTERNATIONAL'S 9TH ANNUAL CLASS ACTION CONFERENCE, Washington, DC (Oct. 2013).

Shannon R. Wheatman, *Ensuring Procedural Fairness Through Effective Notice*, in NATIONAL CONFERENCE ON CLASS ACTIONS: RECENT DEVELOPMENTS IN QUÉBEC, IN CANADA AND IN THE UNITED STATES 83-99 (Yvon Blais ed., 2013).

Shannon R. Wheatman, Speaker, *Class Action Developments and Settlements*, 18th Annual Consumer Financial Services Institute, New York, New York (Apr. 2013).

Shannon R. Wheatman, Speaker, *Recent Trends in Class Actions in the United States*, National Conference on Class Actions: Recent Developments in Québec, in Canada and in the United States, Montreal, Canada (Mar. 2013).

Shannon R. Wheatman, Speaker, *Report on Model Jury Instructions in Civil Antitrust Cases, Presentation*, American Antitrust Institute's 6th Annual Private Antitrust Enforcement Conference, Washington, DC (Dec. 2012).

Shannon R. Wheatman & Katherine M. Kinsella, *International Class Action Notice*, in WORLD CLASS ACTION: A GUIDE TO GROUP AND REPRESENTATIVE ACTIONS AROUND THE GLOBE 673-686 (Paul Karlsgodt ed., 2012).

Katherine Kinsella & Shannon Wheatman, *Class Notice and Claims Administration*, in PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED STATES: A HANDBOOK 338-348 (Albert A. Foer & Randy M. Stutz eds., 2012).

Shannon R. Wheatman, Webinar Speaker, *Class Action Notice Requirements: Challenges for Plaintiffs and Defendants*, Strafford Publications (July 2012).

Shannon R. Wheatman, Webinar Speaker, *How to Craft Plain Language Privacy Notices*, Int'l Assoc. of Privacy Professionals (Oct. 2011).

Shannon R. Wheatman, Speaker, *Improving Take-Up Rates in Class Actions*, The Canadian Institute's 12th Annual National Forum on Class Actions, Ontario, Canada (Sept. 2011).



Shannon R. Wheatman & Terri R. LeClercq, *Majority of Publication Class Action Notices Fail to Satisfy Rule 23 Requirements*, 30 REV. LITIG. 53 (2011).

Shannon R. Wheatman & Terri R. LeClercq, *Majority of Publication Class Action Notices Fail to Satisfy Rule 23 Requirements*, CLASS ACTION LITIGATION REPORT, 12 CLASS 560, (June 24, 2011).

Katherine Kinsella & Shannon Wheatman, *Class Notice and Claims Administration*, in THE INTERNATIONAL PRIVATE ENFORCEMENT OF COMPETITION LAW 264–274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010).

Shannon R. Wheatman, Speaker, *Majority of Publication Class Action Notices Fail to Satisfy Plain Language Requirements*, Clarity International Conference, Lisbon, Portugal (Oct. 2010).

Shannon R. Wheatman, Webinar Speaker, *Class Action Notification With Electronic Media: Emerging Legal Issues*, Stratford Publications (Sept. 2010).

Shannon R. Wheatman & Thomas E. Willging, *Does Attorney Choice of Forum in Class Action Litigation Really Make a Difference?* 17 CLASS ACTIONS & DERIVATIVES SUITS 1 (2007).

Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The “Desire-to-Inform” Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006).

Thomas E. Willging & Shannon R. Wheatman, *Attorney Choice of Forum in Class Action Litigation: What Difference Does it Make?* NOTRE DAME L. REV., 81 (2), 101, 161 (2006).

Todd B. Hilsee, Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The ethics behind due process in class action notice is more than just plain language: A desire to actually inform*. GEO. J. LEGAL ETHICS, 18 (4), 1359-1382 (2005).

Thomas E. Willging & Shannon R. Wheatman, *An Empirical Examination of Attorneys’ Choice of Forum in Class Action Litigation*. FEDERAL JUDICIAL CENTER (2005).

Elizabeth C. Wiggins & Shannon R. Wheatman, *So what’s a concerned psychologist to do? Translating the research on interrogations, confessions, and entrapment into policy*, in INTERROGATIONS, CONFESSIONS AND ENTRAPMENT 265–280 (G. Daniel Lassiter ed., 2004).

Thomas E. Willging & Shannon R. Wheatman, *Attorneys’ Experiences and Perceptions of Class Action Litigation in Federal and State Courts. A Report to the Advisory Committee on Civil Rules Regarding a*



Case Based Survey. FEDERAL JUDICIAL CENTER (2003).

Shannon R. Wheatman, *Survey of Bankruptcy Judges on Effectiveness of Case-Weights*. FEDERAL JUDICIAL CENTER (2003).

Elizabeth C. Wiggins & Shannon R. Wheatman, *Judicial Evaluation of Bankruptcy Judges*. FEDERAL JUDICIAL CENTER (2003).

Robert Niemic, Thomas Willging, & Shannon Wheatman, *Effects of Amchem/Ortiz on Filing of Federal Class Actions: Report to the Advisory Committee on Civil Rules*. FEDERAL JUDICIAL CENTER (2002).

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Elizabeth C. Wiggins & Shannon R. Wheatman, *Implementation of Selected Amendments to Federal Rule of Civil Procedure 26 by United States Bankruptcy Courts*. FEDERAL JUDICIAL CENTER (2001).

Shannon R. Wheatman & David R. Shaffer, *On finding for defendants who plead insanity: The crucial impact of dispositional instructions and opportunity to deliberate*. LAW & HUM. BEH., 25(2), 165, 181(2001).

Shannon R. Wheatman, *Distance Learning in the Courts*. FEDERAL JUDICIAL CENTER (2000).

David R. Shaffer & Shannon R. Wheatman, *Does personality influence the effectiveness of judicial instructions?* PSYCHOL. PUB. POL'Y & L., 6, 655, 676 (2000).

Court Testimony

Scharfstein v. BP West Coast Products, LLC, No. 1112-17046 (Cir. Ct. Ore.).

Spillman v. Domino's Pizza, No. 10-349 (M.D. La.)

PRC Holdings LLC v. East Resources, Inc., No. 06-C-81 (Cir. Ct. W. Va.).

Guidry v. American Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish).

Webb v. Liberty Mutual Ins. Co., No. CV-2007-418-3 (Cir. Ct. Ark).

Beasley v. The Reliable Life Insurance Co., No. CV-2005-58-1 (Cir. Ct. Ark).

Depositions

Hale v. CNX Gas Company, LLC, No. 10-CV-59 (W.D. Va.).



Thomas v. A. Wilbert Sons, LLC, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish).

Judicial Comments

Trammell v. Barbara's Bakery, Inc., No. 3:12-cv-02664 (N.D. Cal.)

“The Class Notice, the Summary Settlement Notice, the website, the toll-free telephone number, all other notices in the Settlement Agreement, the Declaration of the Notice Administrator, and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement, and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. §1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center’s illustrative class action notices.” – Hon. Charles R. Breyer (2013).

Spillman v. Dominos Pizza, LLC., No. 10-349 (M.D. La.)

“At the fairness hearing notice expert Wheatman gave extensive testimony about the design and drafting of the notice plan and its implementation, the primary goal of which was to satisfy due process under the applicable legal standards...Wheatman, who has extensive experience developing plain-language jury instructions, class action notices and rules of procedure, testified that the notice was composed at a ninth grade reading level because many adults read below a high school level.” – Hon. Stephen C. Riedlinger (2013).

In Re: Metoprolol Succinate End-Payor Antitrust Litig., No. 06-cv-71 (D. Del.)

“In accordance with the Preliminary Approval Order, notice of the proposed Settlement and Plan of Allocation has been provided to the Class in the manner directed by the Court. See Wheatman Dec. Such notice to members of the Class is hereby determined to be fully in compliance with requirements of Fed. R. Civ. P. 23(e) and due process of law and is found to be the best notice practicable under the circumstances and to constitute due and sufficient notice to all persons and entities entitled thereto.” – Hon. Mary Pat Thyng (2013).

PRC Holdings, LLC v. East Resources, Inc., No. 06-C-81(E) (W.Va. Cir. Ct., Roane County).

“Notice was uniquely effective in this action because East's records of their leases allowed the Claims Administrator to provide individual notice by mail to most Class Members.” - Hon. Thomas C. Evans,



III (2012).

Kramer v. B2Mobile, LLC, No. 10-cv-02722 (N.D. Cal.).

“The Court approved Notice Plan to the Settlement Classes . . . was the best notice practicable under the circumstances, including comprehensive nationwide newspaper and magazine publication, website publication, and extensive online advertising. The Notice Plan has been successfully implemented and satisfies the requirements of Federal Rule of Civil Procedure 23 and Due Process.” - Hon. Claudia A. Wilken (2012).

Cather v. Seneca-Upshur Petroleum, Inc., No. 1:09-CV-00139 (N.D. W. Va.).

“The Court finds that Class Members have been accorded the best notice as is practical under the circumstances, and have had the opportunity to receive and/or access information relating to this Settlement by reading the comprehensive written notice mailed to them . . . or by reading the published Notice in the local newspapers . . . The Court further finds that the Notice provided to the members of the Settlement Class had been effective and has afforded such class members a reasonable opportunity to be heard at the Final Fairness Hearing and to opt-out of the subject settlement should anyone so desire.” – Hon. Irene M. Keeley (2012).

In re: Checking Account Overdraft Fee Litig., No. 1:09-md-2036-JLK (S.D. Fla.) (JP Morgan Settlement)

“The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was “reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15). This Settlement with Chase was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so.” - Hon. James Lawrence King (2012).

In re Netflix Privacy Litig., No. 5:11-cv-00379 (N.D. Cal.)

“The Notice Plan and the intent of the forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B through E to the Wheatman Declaration are approved pursuant to subsections (c)(2)(B) and (ed) of Federal Rule of Civil Procedure 23.” - Hon. Edward J. Davila (2012)

Purdy v. MGA Ins. Co., No. D412-CV-2012-298 (N.M. 4th Jud. Dist. Ct.)

“Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process . . . [T]he Notice also contained a clear and concise Claim Form, and a described a clear deadline and procedure for filing of Claims. Notice was directly mailed to all Class Members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the



Class Members. The Court finds that such notice constitutes the best notice practicable.” – Hon. Eugenio Mathis (2012).

Blessing v. Sirius XM Radio Inc., No 09-CV-10035 HB (S.D.N.Y.).

“The Court finds that the distribution of the Notice and the publication of the Publication Notice . . . constituted the best notice reasonably practicable under the circumstances . . . was reasonably calculated . . . constituted due, adequate, and sufficient notice to all Class members who could be identified with reasonable efforts; and . . . satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, R 23.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, and all other applicable law and rules.” - Honorable Harold Baer, Jr. (2011).

Fogel v. Farmers Group, Inc., No. BC300142 (Super. Ct. Cal.).

“The Court further finds and confirms that the Individual Notice (including the Proof of Claim), the Summary Notice, the reminder postcard, and the notice methodology: (a) constituted the best practicable notice . . . ; (b) constituted noticed that was reasonably calculated under the circumstances to apprise potential Class Members . . . ; (c) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice, and (d) met all applicable requirements of California law” - Hon. Laura Evans (2011).

In Re: Enfamil LIPIL Mktg. & Sales Practs. Litig., No. 11-MD-02222 (S.D. Fla.)

“The Court finds that the Class Notice provided to Class Members, in the form and manner of distribution described above, constitutes the best notice practicable under the circumstances, and fully satisfies the requirements of Federal Rules of Civil Procedure, Rule 23, the requirements of due process, and any other applicable law. The declarations filed with the Court demonstrate that the Parties have fully complied with the Court's Preliminary Approval Order (as amended by Order dated April 1, 2011) and that the best notice practicable under the circumstances was in fact given to Class Members.” - Hon. James I. Cohn (2011).

Keilholtz v. Lennox Hearth Prods., No. 08-CV-00836 (N.D. Cal.)

“Notice has been provided to the Settlement Class of the pendency of the Actions, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that said notice and the related Notice Plan provided for the best notice practicable under the circumstances to all Persons entitled to such notice and fully satisfied the requirements of Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure and the requirements of due process.” - Hon. Claudia Wilken (2011).



Rowe v. UniCare Life and Health Ins. Co., No. 09-CV-02286 (N.D.Ill.)

“The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.” – Hon. William J. Hibbler (2011).

Thomas v. A. Wilbert & Sons, LLC, 55,127 (La. 18th Jud. Dist. Ct., Iberville Parish).

“[N]otices complied with all requirements of the federal and state constitutions, including the due process clauses, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Thomas Subclass.” – Hon. Jerome M. Winsberg (2011).

In re: M3Power Razor System Mktg. & Sales Pract. Litig., MDL 1704 (D. Mass).

“The form, content, and method of dissemination of the notice given to the Settlement Class was adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Amended Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.” - Hon. Douglas P. Woodlock (2011).

Soto v. Progressive Mountain Ins. Co., No. 2002CV47 (Dist. Ct. Colo.).

“Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process . . . Finally, the Notice also contained a clear and concise Claim Form, and described a clear deadline and procedure for filing of claims. . . . Notice reached a large majority of the Class Members. The Court finds that such notice constitutes the best notice practicable.” - Hon. J. Steven Patrick (2010).

Press v. Louisiana Citizens Fair Plan Prop. Ins. Co., No. 06-5530 (Civ. Dist. Ct., Orleans Parish).

“This notice methodology . . . constitutes reasonable and best practicable notice . . . constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and . . . meets the requirements of the United States Constitution, Louisiana law, the Federal Rules of Civil Procedure and any other applicable rules of the Court . . .” - Hon. Sidney H. Cates, IV (2010).

In Re Katrina Canal Breaches, No. 05-4182 (E.D. La.).

“The notice here was crafted by Shannon Wheatman, Ph.D., whose affidavit was received as evidence . . . The entire notice was drafted in plain, comprehensible language . . . The Court finds this notice



adequately reached the potential class.” - Hon. Stanwood R. DuVal, Jr. (2009).

Jones v. Dominion Transmission Inc., No. 2:06-cv-00671 (S.D. W. Va.)

“The Parties’ notice expert Shannon R. Wheatman, Ph.D. . . testified that in this case . . . that the mailed notices reached approximately 95.4 percent of the potential class . . . I HOLD that personal jurisdiction exists over the Class Members because notice was reasonable and afforded the Settlement Class an opportunity to be heard and to opt out.” - Hon. Joseph R. Goodwin (2009).

Guidry v. American Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct.).

“The facts show that the notice plan . . . as adequate to design and implementation . . . Dr. Shannon R. Wheatman, a notice expert, also testified at the fairness hearing as to the sufficiency of the notice plan. Dr. Wheatman testified that the notice form, content, and dissemination was adequate and reasonable, and was the best notice practicable.” - Hon. G. Michael Canaday (2008).

Webb v. Liberty Mutual Ins. Co., (March 3, 2008) No. CV-2007-418-3 (Cir. Ct. Ark).

“Ms. Wheatman’s presentation today was very concise and straight to the point . . . that’s the way the notices were . . . So, I appreciate that . . . Having admitted and reviewed the Affidavit of Shannon Wheatman and her testimony concerning the success of the notice campaign, including the fact that written notice reached 92.5% of the potential Class members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Class members who had an earlier opportunity to request exclusion but failed to do so . . . The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members.” - Hon. Kirk D. Johnson (2008).

Sherrill v. Progressive Northwestern Ins. Co., No. DV-03-220 (18th D. Ct. Mont.).

“Dr. Wheatman’s affidavit was very informative, and very educational, and very complete and thorough about the process that was undertaken here. . . So I have reviewed all of these documents and the affidavit of Dr. Wheatman and based upon the information that is provided . . . and the significant number of persons who are contacted here, 90 percent, the Court will issue the order.” - Hon. Mike Salvagni (2008).

Shaffer v. Continental Casualty Co., No. 06-2235 (C.D. Cal.).

“The Class Notice and the notice methodology implemented pursuant to the Settlement Agreement, as described in part in the Declarations of . . . Shannon Wheatman . . . constituted the best practicable notice. . . was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law.” - Hon. Philip S. Gutierrez (2008).



Gray's Harbor v. Carrier Corp., No. 05-05437 (W.D. Wash.).

“The Court finds that this notice was the best notice practicable under the circumstances, that it provided due and adequate notice of the proceedings and of the matters set forth therein, and that it fully satisfied all applicable requirements of law and due process.” - Hon. Ronald B. Leighton (2008).

Beringer v. Certegy Check Servs., Inc., No. 8.07-cv-1434-T-23TGW (M.D. Fla.).

“The proposed form of notice and plan for publishing are reasonable and designed to advise members of the Settlement class of their rights . . . A nationally recognized notice specialist, Hilsoft Notifications, has developed the comprehensive Notice Plan. Here, Notice is reasonably calculated to reach the maximum number of potential Settlement Class Members and, thus, qualifies as the best notice practicable. The Notice Plan here is designed to reach the maximum number of Class Members, and it is Plaintiffs’ goal to reach at least 80% of the Class—an extraordinary result in consumer class action litigation.” - Hon. Steven D. Merryday (2008).

Palace v. DaimlerChrysler Corp., No. 01-CH-13168 (Cir. Ct. Ill.).

“The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed Settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such notice, and said notice fully satisfied the requirements of due process . . .” - Hon. Mary Anne Mason (2008).

Johnson v. Progressive Casualty Ins., Co., No. CV-2003-513 (Cir. Ct. Ark.).

“Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated . . . Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable . . . The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process.” - Hon. Carol Crafton Anthony (2007).

Beasley v. The Reliable Life Insurance Co., No. CV-2005-58-1 (Cir. Ct. Ark.).

“[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process . . . So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter.” - Hon. Joe Griffin (2007).



Education and Experience

Education

Ph.D., Social Psychology, 2001; The University of Georgia, Athens, GA

Dissertation Title: *The effects of plain language drafting on layperson's comprehension of class action notices.*

M.S., Social Psychology, 1999; The University of Georgia, Athens, GA

Thesis Title: *Effects of verdict choice, dispositional instructions, opportunity to deliberate, and locus of control on juror decisions in an insanity case.*

M.L.S., Legal Studies, 1996; The University of Nebraska-Lincoln, Lincoln, NE

B.A., Psychology, 1993; Millersville University of Pennsylvania, Millersville, PA

Honor's Thesis Title: *The effects of inadmissible evidence and judicial admonishment in individual versus group decisions in a mock jury simulation.*

Related Experience

Hilsoft Notifications

Souderton, PA

2004-2009

Dr. Wheatman was the Vice President (2006-2009) and Notice Director (2004-2009) at Hilsoft Notifications, a legal notification firm.

Federal Judicial Center

Washington, DC

2000-2004

Dr. Wheatman was a Research Associate at the Federal Judicial Center. The Federal Judicial Center is the education and research agency for the Federal Courts. The Research Division performs empirical and explanatory research on federal judicial processes and court management. Dr. Wheatman worked with the Civil Rules Advisory Committee on a number of class action studies and with the Bankruptcy Administration Committee on judicial evaluations.



Supplementary Background

Dr. Wheatman has a strong statistical background, having completed nine graduate level courses as well as teaching undergraduate statistics at the University of Georgia. She is also a member of several plain language organizations, including the Center for Plain Language, Clarity, and Scribes.



EXHIBIT 3



OVERVIEW & NOTABLE MATTERS

Class Action & Mass Tort Solutions

Epiq Systems, Inc. is a publicly traded global company (NASDAQ: EPIQ) that offers technology solutions and services for legal notification, claims administration, controlled disbursement of funds, electronic discovery, and document review. Epiq Class Actions & Mass Tort Solutions (“Epiq”), a division of Epiq Systems, brings the value of over 40 years of experience in notice and administration in class action cases relating to antitrust violations, healthcare, product & casualty insurance, product liability, employment, financial services, lending practices, consumer, securities fraud, and wage & hour/ERISA class action cases.

Epiq is headquartered in a 98,000 square foot operations facility in Beaverton, Oregon including a multimillion dollar mail and print center, in-house call center (quickly scalable up to 600 trained call center agents), and more than 1,000 employees, including experienced executives, attorneys, project managers, multi-lingual call center agents, data analysts, and software developers; and hundreds of experienced on-site contract personnel. Details about any aspect of the services we offer or processes we utilize are available upon request.

Notable matters Epiq has worked on recently include:

BP DEEPWATER HORIZON

On May 2, 2012, Hilsoft Notifications was appointed by the United States District Court for the Eastern District of Louisiana as the notice administrator for two settlements related to the Deepwater Horizon oil spill in the Gulf of Mexico. One settlement relates to economic damages and the other to medical claims. Combined, the settlements have been valued at \$7.8 billion.

British Petroleum (BP) needed a notice program that would be commensurate in size and scope with the historical importance of the settlements. In late May and early June 2012, settlement notices were mailed and emailed to known class members. Starting in late May and running through mid-July, notices appeared nationally and locally in more than 2,000 print publications. Approximately 10,000 television and radio spots aired across 26 media markets stretching from Houston to Miami. In addition to English, notices appeared in Spanish and Vietnamese. It is estimated that more than 95% of all adults living in the Gulf Area will be exposed to the notice more than 11 times. Nationally, more than 83% of all adults in the United States will have an opportunity to see the notice. In total, the notice effort is one of the largest ever undertaken in a class action settlement.

SEC V. AMERICAN INTERNATIONAL GROUP, INC.

In this securities case, Epiq mailed more than 2.1 million notices, received more than half a million claims and processed millions of lines of securities transaction data, determined losses using complex algorithms relating to 419 different securities, and disbursed more than \$840 million to injured investors. Epiq created the complex software code used to calculate the recognized loss across the different types of securities and then each investor’s pro rata share of the recovery. It is the largest SEC Fair Fund to date.

HP INKJET & LASERJET PRINTERS

With two settlements, Hewlett-Packard settled five lawsuits involving similar allegations related to printer specifications, ink and paper usage. Epiq processed incoming claims, handled notice fulfillment, and provided claimant contact services via a dedicated settlement website and toll-free phone line. Additionally, 127,000 of the 10 million member class filed claims online.

MICROSOFT STATE ANTITRUST SETTLEMENTS

The plaintiffs alleged that Microsoft engaged in anticompetitive conduct to maintain a monopoly and, as a result, consumers who licensed select software overpaid. Sixteen states entered into settlements that involved consumer and cy pres components. The combined settlement funds totaled \$746 million. In all, 6,563,848 notices were mailed and 105,831 claims were received.

PRECISION V. PWT ('FREIGHT FORWARDERS')

This lawsuit includes allegations that freight forwarders conspired to inflate prices for the services by, among other things, creating suggested-pricing letters that were sent to customers. Epiq has standardized and deduplicated records from over 3,000 files including 12 million customer transaction records from 35 different defendants.

INTERNATIONAL AIR TRANSPORTATION SURCHARGE ANTITRUST LITIGATION

This matter concerned fuel surcharges paid by passengers of both British Airways, PLC and Virgin Atlantic Airways, Ltd. The lawsuit contained allegations that the airlines unlawfully conspired to fix prices of fuels surcharges imposed on "long-haul" passenger fares. The administration involved the processing of 13.38 million transactions and issuance of refunds of up to \$59 million to members of the U.S. settlement class and £73.5 million to members of the U.K. settlement class, for a combined total of about \$175 million. Epiq mailed approximately 3.5 million direct notices and emailed almost 5 million direct notices. As of August 2012, 305,895 claims have been processed, 230,009 claims have been paid, and 1,089,273 tickets refunded.

IN RE PUERTO RICAN CABOTAGE ANTITRUST LITIGATION

This antitrust litigation involved four shippers engaged in shipping goods from the mainland United States to Puerto Rico, a trade lane governed by the Jones Act. Epiq provided notice to 63,494 class members, successfully integrating the customer shipping data from four defendants. Claimants were entitled to choose from two relief options, a cash payment or a rate freeze on future shipments. Epiq successfully distributed \$35,318,096.39 to class members in accordance with the terms of the parties' agreement. Moreover, the settlement website received 940,892 webpage views.

IN RE COUNTRYWIDE FINANCIAL CORP. CUSTOMER DATA SECURITY BREACH LITIGATION

The Countrywide Data Breach matter, with a class size of 17.2 million, remains the largest data breach class action settlement to date. Epiq provided direct notice to more than 10 million class members and fielded more than 400,000 phone calls. Epiq produced the first of its kind video instructing claimants on how to fill out the claim form.

NTIA DTV CONVERTER BOX COUPON PROGRAM

The DTV Program involved 110 million eligible U.S. households and financial system of records for the federal government to account for \$1.83 billion fund with three separate funding streams and approval criteria. The entire DTV Program was designed, tested and launched in fewer than 120 days.

IN RE CHECKING ACCOUNT OVERDRAFT LITIGATION (MDL 2036)

Epiq Class Action has been selected for the notice and administration on more overdraft matters than any other claims provider.

EXXON VALDEZ OIL SPILL

In an extended-lifespan program beginning in 1994, Epiq disbursed \$653 million over 18 years, providing 370 separate distributions pursuant to 52 different distribution plans.