

# **Exhibit A**

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*Attorneys for Plaintiffs Charles Des Roches, Sylvia Meyer, Gayle Tamler Greco and the Class*

[Additional Counsel Listed on Signature Page]

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

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

Plaintiffs,

v.

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

Defendants.

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

Hon. Lucy H. Koh

**STIPULATION OF SETTLEMENT**

1 This Stipulation of Settlement (the “Stipulation”), dated as of January 15, 2018, is made  
2 and entered into by and among Plaintiffs Charles Des Roches, Sylvia Meyer, and Gayle Tamler  
3 Greco (“Plaintiffs”), on behalf of themselves and the Class members, as defined below; and  
4 Defendants California Physicians’ Service d/b/a Blue Shield of California, Blue Shield of  
5 California Life & Health Insurance Company (together with California Physicians’ Service,  
6 “Blue Shield”), and Human Affairs International of California (“HAI,” and together with Blue  
7 Shield, “Defendants”) (with Plaintiffs and the Defendants collectively referred to herein as the  
8 “Parties”).

### 9 I. BACKGROUND OF THE LITIGATION

10 In this lawsuit (the “Action”), Plaintiffs claim, individually and on behalf of the Class, that  
11 Defendants violated the Employee Retirement Income Security Act of 1974 (“ERISA”), by  
12 developing, adopting, and applying a set of medical necessity criteria (the “Magellan Medical  
13 Necessity Criteria Guidelines” or “Guidelines” or “Challenged Guidelines”) that are more  
14 restrictive than generally accepted professional standards to deny Class members’ claims, and  
15 Plaintiffs claim that Class members’ ERISA plans provide, as one condition of coverage, that the  
16 services in question be consistent with generally accepted professional standards. In the operative  
17 complaint, Plaintiffs assert causes of action for: (i) breach of fiduciary duties under 29 U.S.C. §  
18 1132(a)(1)(B); (ii) improper denial of benefits under 29 U.S.C. § 1132(a)(1)(B); (iii) injunctive  
19 relief under 29 U.S.C. § 1132(a)(3)(A); and (iv) other injunctive relief under 29 U.S.C.  
20 § 1132(a)(3)(B).

21 Defendants deny the material allegations of the complaint and deny that Plaintiffs and  
22 Class members are entitled to any of the relief they seek. On or around March 6, 2017,  
23 Defendants ceased using the Challenged Guidelines for members of Blue Shield plans.

24 The Parties agreed to meet with a mediator in order to discuss a potential settlement of the  
25 Action. Both before and during those discussions, the Parties exchanged information about the  
26 size of the Class, the relief to which Class members may be entitled if Plaintiffs prevail at trial,  
27 the benefits provided in this Stipulation, and the Parties’ positions on the merits of Plaintiffs’  
28

1 claims. Those arm's-length discussions culminated in the settlement embodied in this Stipulation  
2 (the "Settlement").

3 **II. TERMS AND AGREEMENT OF SETTLEMENT**

4 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the  
5 Class members and Defendants, by and through their respective counsel, as follows:

6 **A. Definitions.**

7 1. As used in this Stipulation, the following terms have the meanings specified below:

8 1.1 "Affiliated Entities" means (i) any direct or indirect parents, subsidiaries, or  
9 affiliates of Defendants; (ii) any employees, agents, officers or directors of  
10 Defendants or their direct or indirect parents, subsidiaries, or affiliates (all natural  
11 persons in the definition of Affiliated Entities are collectively referred to as  
12 "Affiliated Individuals"); (iii) any corporations in which any such Affiliated  
13 Individual is a shareholder in excess of 5%, employee, officer or director; (iv) any  
14 partnerships or any other unincorporated forms of business, or limited liability  
15 companies, in which any Defendant, or direct or indirect parents, subsidiaries, or  
16 affiliates of Defendants, or Affiliated Individual owns an interest in excess of 5%;  
17 (v) any employee health benefits plans in which any Plaintiff or Class member  
18 participates or participated; (vi) any fiduciary, recordkeeper, claims administrator  
19 or plan administrator of such employee health benefits plans; (vii) any trusts of  
20 which any Affiliated Entity is a grantor, trustee or beneficiary; and (viii) any  
21 independent review organization that reviewed any claims for benefits or requests  
22 for coverage for Defendants for any Class member. "Affiliated Entities" also  
23 means any corporations, business entities, partnerships or other unincorporated  
24 forms of business, or limited liability companies, that are controlled directly or  
25 indirectly by Defendants or Affiliated Individuals, or that are directly or indirectly  
26 under "common control" with Defendants or Affiliated Individuals as that term is  
27 defined under ERISA Section 4001(a)(14)(B), 29 U.S.C. § 1301(a)(14)(B).  
28

1 1.2 “Challenged Guidelines” means those provisions of the Guidelines in effect from  
2 January 1, 2012 to March 5, 2017 that were or are titled as follows:

- 3 (i) Residential Treatment, Psychiatric, Adult and Geriatric;  
4 (ii) Residential Treatment, Psychiatric, Child and Adolescent;  
5 (iii) Residential Treatment, Substance Use Disorders, Rehabilitation, Adult  
6 and Geriatric;  
7 (iv) Residential Treatment, Substance Use Disorders, Rehabilitation, Child  
8 and Adolescent;  
9 (v) Intensive Outpatient Treatment, Psychiatric, Adult and Geriatric;  
10 (vi) Intensive Outpatient Treatment, Psychiatric, Child and Adolescent;  
11 (vii) Intensive Outpatient Treatment, Substance Use Disorders,  
12 Rehabilitation, Adult and Geriatric; and  
13 (viii) Intensive Outpatient Treatment, Substance Use Disorders,  
14 Rehabilitation, Child and Adolescent.

15 1.3 “Class” means the class certified in the Order Granting Motion for Class  
16 Certification, ECF No. 123 at 39 (entered June 15, 2017), defined as:

17 All participants or beneficiaries of a health benefit plan  
18 administered by either Blue Shield defendant and governed by  
19 ERISA whose request for coverage (whether pre-authorization,  
20 concurrent, post-service, or retrospective) was denied, in whole or  
21 in part, between January 1, 2012 and the present, based upon the  
22 Magellan Medical Necessity Criteria Guidelines for any of the  
23 following levels of care: (i) Residential Treatment, Psychiatric; (ii)  
24 Residential Treatment, Substance Use Disorders, Rehabilitation;  
25 (iii) Intensive Outpatient Treatment, Psychiatric; or (iv) Intensive  
26 Outpatient Treatment, Substance Use Disorders, Rehabilitation.  
27 Excluded from the Class are Defendants, their parents, subsidiaries,  
28 and affiliates, their directors and officers and members of their

1 immediate families; also excluded are any federal, state, or local  
2 governmental entities, any judicial officers presiding over this  
3 action and the members of their immediate families, and judicial  
4 staff.

5 1.4 “Class Claims Data” means a spreadsheet provided to Class Counsel and the  
6 Settlement Administrator by Defendants that lists, for each Class member denial,  
7 the following fields:<sup>1</sup> (a) name of Class member; (b) last known address of Class  
8 member; (c) the level of care requested; (d) the date of the denial; (e) the Billed  
9 Amount(s) of Denied Claims for Services Received (i.e., post-service claims), if  
10 any; (f) the Allowed Amount(s) for Services Received (i.e., post-service claims), if  
11 any, to the extent that amount is already calculated and exists in Defendants’  
12 records; (g) the number of Treatment Day(s), if any, in connection with the request  
13 that was denied. Where Defendants have no record of Services Received for a  
14 Class member, the spreadsheet shall indicate “0” for the items identified in  
15 subparagraphs (e)-(g).

16 1.5 “Class Counsel” means (a) Grant & Eisenhofer P.A.; (b) Zuckerman Spaeder LLP;  
17 and (c) Psych-Appeal, Inc. and their attorneys of record in the Action.

18 1.6 “Class List” means the list of names and last known mailing addresses of all Class  
19 members whom Defendants are reasonably able to identify as of twenty (20) days  
20 after the date on which the Preliminary Approval Order is entered by the Court.

21 1.7 “Effective Date,” or the date upon which the Settlement embodied in this  
22 Stipulation becomes effective, means the date on which the Order of Final  
23 Approval of Settlement, substantially in the form of Exhibit C to this Stipulation,  
24 becomes final as a matter of law (which the Parties hereby deem to be thirty-five  
25 (35) days after entry of the judgment if no appeal is filed). If an appeal is filed, the  
26 Effective Date shall be the date on which the final mandate is issued affirming the  
27 judgment.

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<sup>1</sup> Capitalized terms in this paragraph are defined in the Plan of Allocation.

1 1.8 “Incentive Amount” is twenty thousand dollars (\$20,000.00) per Plaintiff.

2 1.9 “Notice of Proposed Settlement” means the Notice of Proposed Settlement of  
3 Class Action and Fairness Hearing, substantially in the form attached hereto as  
4 Exhibit B.

5 1.10 “Opt-Out Class member” will mean any member of the Class who exercises his or  
6 her rights to opt out of the Settlement. An Opt-Out Class member, after exercising  
7 his or her opt-out rights, will no longer be considered a Class member, and will not  
8 be subject to the terms of the Settlement, including any release of claims.

9 1.11 “Person” means an individual, corporation, partnership, limited partnership,  
10 association, joint stock company, estate, legal representative, trust, unincorporated  
11 organization, and any other type of legal entity, and their spouses, heirs,  
12 successors, predecessors, representatives, or assigns.

13 1.12 “Plan of Allocation” means the Plan of Allocation to be proposed by Class  
14 Counsel and approved by the Court. The Plan of Allocation will be filed with the  
15 motion for preliminary approval of this Settlement and, when approved, will be  
16 provided to Class members as an attachment to the Notice of Proposed Settlement.

17 1.13 “Preliminary Approval Order” means the order to be entered by the Court,  
18 substantially in the form attached hereto as Exhibit A, inter alia, preliminarily  
19 approving the terms and conditions of this Stipulation, ordering Defendants to  
20 disclose the Class List to Class Counsel and the Settlement Administrator,  
21 scheduling a Fairness Hearing concerning the final approval of the Settlement, and  
22 directing that notice of the proposed Settlement and Fairness Hearing be provided  
23 to the Class.

24 1.14 “Released Claims” means any claims, rights, and liabilities of any nature,  
25 including but not limited to, actions, claims, demands, causes of action,  
26 obligations, damages, debts, charges, attorneys’ fees, costs, arbitrations,  
27 forfeitures, judgments, indebtedness, liens and losses of any kind, source or  
28 character, whether arising out of federal or state law, whether known or unknown,

1 whether asserted or unasserted, arising on or before the Effective Date, whether in  
2 contract, express or implied, tort, at law or in equity or arising under or by virtue  
3 of any statute or regulation, by reason of, or arising out of Defendants'  
4 development, adoption, and application of the Challenged Guidelines during the  
5 Class Period (including "Unknown Claims" as defined herein). For avoidance of  
6 doubt, "Released Claims" include all claims by the Class members relating to the  
7 coverage decisions and denials reflected in Class Claims Data and all claims  
8 arising out of the facts alleged in the operative complaint.

9 1.15 "Settlement Administrator" means the entity appointed by the Court to perform the  
10 Settlement administration duties described in this Stipulation. In the motion for  
11 preliminary approval, Plaintiffs and Class Counsel shall propose a Settlement  
12 Administrator.

13 1.16 "Settlement Amount" is seven million dollars (\$7,000,000) funded by Defendants  
14 and established, maintained, and held by the Settlement Administrator for  
15 purposes of making payments pursuant to and effectuating this Stipulation. The  
16 Parties agree that once the Settlement Amount is transferred to the Settlement  
17 Administrator it shall be considered a "Qualified Settlement Fund" under Section  
18 468B of the Internal Revenue Code of 1986, as amended and Treas. Reg. §1.468B-  
19 1, 26 C.F.R. § 1.468B-1, et seq., and will be administered by the Settlement  
20 Administrator as such. The Parties agree to cooperate with the Settlement  
21 Administrator and one another to the extent reasonably necessary to carry out the  
22 provisions of this section.

23 1.17 "Settlement Fund" means the portion of the Settlement Amount remaining after  
24 the deduction of any Court ordered payments for Class Counsel's costs and  
25 attorneys' fees, the Settlement Administrator's expenses and fees, and the  
26 Incentive Amount.

27 1.18 "Unknown Claims" means any and all Released Claims that any Plaintiff or Class  
28 member does not know or suspect to exist in his or her favor as of the Effective



1 Date and which, if known by him or her, might have affected his or her decision(s)  
2 with respect to the Settlement. With respect to any and all Released Claims, the  
3 Parties stipulate and agree that upon the Effective Date, Plaintiffs and Class  
4 members shall have waived any and all provisions, rights, and benefits conferred  
5 under California Civil Code section 1542 or by any law of any state of the United  
6 States, or principle of common law or otherwise, which is similar, comparable, or  
7 equivalent to California Civil Code section 1542, which provides:

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

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

16 **B. Operative Terms of Settlement.**

17 2.1 The Parties will work cooperatively in filing and submitting all appropriate  
18 motions and proposed orders with the Court in order to obtain preliminary and  
19 final approval of the Settlement, including a Plan of Allocation that provides for  
20 the calculation, allocation, and distribution of the Settlement Fund.

21 2.2 Plaintiffs will retain the Settlement Administrator appointed by the Court. The  
22 Settlement Administrator will sign Exhibit A to the Protective Order in this case.

23 2.3 Within thirty (30) days after the Preliminary Approval Order is entered by the  
24 Court, and subject to Court approval as provided in 45 C.F.R. § 164.512(e)(1)(i),  
25 Defendants will provide Class Counsel and the Settlement Administrator with the  
26 Class List for the purpose of effectuating notice of the Settlement. The Class List  
27 shall be designated “Highly Confidential – Attorney’s Eyes Only” pursuant to the  
28 Protective Order entered in the Action (ECF No. 48). Before receiving the Class

1 List, the Settlement Administrator shall execute a business associate agreement  
2 (“BAA”) with Defendants to ensure compliance with the Administrative  
3 Simplification Provisions of the Health Insurance Portability and Accountability  
4 Act of 1996, as amended (“HIPAA”) and the accompanying Privacy, Security,  
5 Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164, as  
6 modified by the HIPAA Omnibus Rule (collectively, the “HIPAA Regulations”) as  
7 well as the applicable provisions of the Health Information Technology for  
8 Economic and Clinical Health Act (“HITECH”), along with the general precepts  
9 of individual privacy, data security, and the availability and integrity of  
10 individually identifiable health information, as may be applicable.

11 2.4 Within sixty (60) days after the Preliminary Approval Order is entered by the  
12 Court, Class Counsel will direct the Settlement Administrator, pursuant to this  
13 Stipulation and the Preliminary Approval Order, to cause the individuals listed on  
14 the Class List to be notified either (i) by mailing the Notice of Proposed Settlement  
15 by first-class U.S. mail to each Person’s last known address, or (ii) by providing  
16 the Notice of Proposed Settlement using another method that satisfies Rule 23. To  
17 the extent a Notice of Proposed Settlement sent by U.S. mail is returned because  
18 the addressee is no longer found at the address to which the notice was sent (or for  
19 any other reason), Class Counsel will use reasonable best efforts to obtain correct  
20 current addresses and thereafter re-mail the Notice of Proposed Settlement by first-  
21 class U.S. mail.

22 2.5 At such time as Class Counsel causes the individuals listed on the Class List to be  
23 mailed the Notice of Proposed Settlement via U.S. mail or to receive the Notice of  
24 Proposed Settlement by another acceptable method under Rule 23 as required  
25 under Paragraph 2.4, the Notice of Proposed Settlement to the Class will provide  
26 notice of and thirty-five (35) days to object to the disclosure of Class Claims Data  
27 to Class Counsel and the Settlement Administrator that reflects patient information  
28 regarding diagnosis, treatment, or referral for treatment, including such

1 information for a substance use disorder created by a program subject to the  
2 confidentiality restrictions set forth in 42 CFR Part 2 and protected health  
3 information subject to privacy protections under 45 CFR Parts 160-164. The  
4 disclosure of such information to Class Counsel and the Settlement Administrator  
5 is the most effective way of obtaining the information and the public interest in the  
6 disclosure outweighs the potential injury to the patient, the physician-patient  
7 relationship and the treatment services. The disclosure will be limited to those  
8 parts of the patient's record that are essential to fulfill the objective of the Court's  
9 order and disclosure will be limited to those persons whose need for information is  
10 the basis for the order. The Notice of Proposed Settlement will also summarize the  
11 Plan of Allocation.

12 2.6 For a Class member to be excluded from the Class and become an Opt-Out Class  
13 member, the Class member must request exclusion by sending to the Settlement  
14 Administrator at the address described in the Notice a statement identifying the  
15 Opt-Out Class member by name and residential address and declaring that the Opt-  
16 Out Class member wishes to exclude him- or herself from the Class, which must  
17 be received by the Settlement Administrator no later than sixty (60) days after the  
18 date on which the Notice is mailed or otherwise provided. In the event that an  
19 Opt-Out Class member submits a timely and valid request for exclusion, that Opt-  
20 Out Class member shall be excluded from the Class, shall not be a Class member,  
21 and shall not be entitled to participate in the Settlement.

22 2.7 For a Class member to object to the disclosure of their Class Claims Data to Class  
23 Counsel and the Settlement Administrator, the Class member must contact the  
24 Settlement Administrator as provided in the Notice, no later than thirty-five (35)  
25 days after the date on which the Notice is mailed or otherwise provided. The  
26 objection to disclosure must specify that the Class member wishes to withhold  
27 Class Claims Data, including but not limited to information protected by 42 C.F.R.  
28 Part 2, from disclosure to Class Counsel and the Settlement Administrator. As

1 discussed in Paragraph 3, forty (40) days after the Notice of Proposed Settlement  
2 is mailed or otherwise provided, the parties will jointly request an order  
3 authorizing Defendants to provide the Class Claims Data to Class Counsel and the  
4 Settlement Administrator for any individual who has not objected to such  
5 disclosure. Defendants will provide the Class Claims Data for any Class member  
6 who has not objected to the disclosure within five (5) days of the Court's entry of  
7 the requested order.

8 2.8 Any Class member who objects to the disclosure of their Class Claims Data to  
9 Class Counsel and the Settlement Administrator in the manner prescribed in the  
10 preceding paragraph, but does not also submit a timely and valid request for  
11 exclusion from the Class, shall be a Class member and shall be entitled to  
12 participate in the Settlement under the Plan of Allocation.

13 2.9 In the event that 5% or more of the Class members validly opt out, or Class  
14 members whose total share of the Settlement Amount exceeds 3% of the  
15 Settlement Amount, Defendants may, in their sole and absolute discretion,  
16 terminate this Stipulation by delivering a notice of termination to Class Counsel  
17 within fifteen (15) court days of the final calculation of opt-outs received by the  
18 Settlement Administrator. For purposes of this provision, a Class member's share  
19 of the Settlement Amount will be determined using the Allowed Amount(s) for  
20 Services Received corresponding to the Class member in the Class Claims  
21 Data. For those Class members who do not have a claim in the Class Claims Data,  
22 their share of the Settlement Amount for purposes of this provision will be  
23 calculated by multiplying Defendants' average length of stay for the relevant level  
24 of care as produced to Plaintiffs in the Action, times the rate agreed to by Plaintiffs  
25 and Defendants based on Defendants' claims and reimbursement data for the level  
26 of care for the year in which the denial occurred.

27 2.10 Except as necessary to implement the terms of the Settlement and any Court  
28 orders, Class Counsel and the Settlement Administrator will keep confidential all

1 personally identifiable information of members of the Class and comply with  
2 Paragraph 2 (HIPAA and Privacy Protections) of the Protective Order entered in  
3 this Action (ECF No. 48), which includes information that can be used on its own  
4 or combined with other information to identify, contact, or locate an individual, or  
5 to identify an individual in context, and any subsequent order entered by the Court  
6 with respect to Class Claims Data.

7 2.11 Within twenty (20) days after the date of the Preliminary Approval Order,  
8 Defendants will pay \$150,000 of the Settlement Amount (the “Initial Amount”)  
9 into an account controlled by the Settlement Administrator. The Parties will  
10 cooperate to execute an appropriate escrow agreement for the Initial Amount  
11 account within fifteen (15) days of execution of the Stipulation. Should  
12 Defendants exercise their termination rights under Paragraph 2.9, the Initial  
13 Amount shall be returned within ten (10) court days, less amounts already incurred  
14 by the Settlement Administrator in connection with administering this Stipulation,  
15 including notice costs. The Initial Amount reflects an estimate of notice-related  
16 costs. Any portion of the Initial Amount that is not used will be made available for  
17 distribution to the Class. Conversely, if notice-related expenses exceed the  
18 estimated amount, those additional costs will be subtracted from the Settlement  
19 Amount.

20 2.12 Within thirty (30) days after the Effective Date, Defendants will pay the  
21 Settlement Amount, less the amount of the Initial Payment, into an account  
22 administered by the Settlement Administrator.

23 2.13 The Settlement Amount, after reduction for administrative costs, will first be used  
24 to pay Class Counsel’s costs and expenses. Class Counsel will be paid a Court-  
25 approved portion of the remaining Settlement Amount as their attorneys’ fees  
26 within two (2) days of Defendants making the payment described in Paragraph  
27 2.12.  
28

- 1           2.14   The Settlement Amount minus anticipated administrative costs beyond the Initial  
2           Amount, Class Counsel's costs, expenses, and fees, and Incentive Amounts, shall  
3           constitute the Settlement Fund. The Settlement Fund will be distributed to the  
4           Class in accordance with the Plan of Allocation.
- 5           2.15   Defendants shall have no liability or responsibility for any payments, fees, or costs  
6           under the Settlement aside from the Settlement Amount. Under no circumstances  
7           shall Defendants be required to pay any amounts in furtherance of this Stipulation  
8           and its administration other than the payment of the Settlement Amount.
- 9           2.16   Class Counsel will direct the Settlement Administrator to, inter alia, administer the  
10          Settlement and make payments to the Class members pursuant to this Stipulation,  
11          the Plan of Allocation, the Preliminary Approval Order, and the Order of Final  
12          Approval of Settlement. Defendants shall play no role in, and will have no  
13          liability for, the administration of the Settlement or in determining the sufficiency  
14          of claims or the amount of claims under the Settlement.
- 15          2.17   Any remaining expenses, beyond the Initial Amount and those deducted pursuant  
16          to Paragraphs 2.11 and 2.14, related to the administration of the Settlement and  
17          fees of the Settlement Administrator are to be paid from the Settlement Fund prior  
18          to distribution of any monies to Class members.
- 19          2.18   The Settlement Administrator will maintain a complete and accurate record of all  
20          payments made to Class members, which shall be subject to examination by Class  
21          Counsel and Defendants' counsel on reasonable notice.
- 22          2.19   Defendants agree not to challenge any claims for payments from the Settlement  
23          Fund to Class members, or any determinations made by the Settlement  
24          Administrator.
- 25          2.20   Except as provided in Paragraph 2.11, under no circumstances shall any portion of  
26          the Settlement Fund revert to any Defendant.
- 27          2.21   No Class member shall have any claim against Class Counsel, the Settlement  
28          Administrator, Defendants' counsel, or Defendants or their Affiliated Entities

1 based upon any distribution made substantially in accordance with this Stipulation,  
2 the Plan of Allocation, or further orders of the Court.

3 2.22 In addition to the payment of the Settlement Amount, Defendants: (a) agree that  
4 they will not resume use of the Challenged Guidelines for members of Blue Shield  
5 health benefit plans; and (b) agree to issue a bulletin to all Defendants' personnel  
6 conducting medical necessity reviews for members of Blue Shield health benefit  
7 plans, or any other Persons conducting medical necessity reviews on Defendants'  
8 behalf for Blue Shield health benefit plans, stating that the Class challenged the  
9 appropriateness of the Challenged Guidelines in making medical necessity  
10 determinations; that the case has been settled; and that the previous denial of Class  
11 members' coverage requests shall not be relied upon to support any future denial  
12 of coverage requests on the basis of lack of medical necessity. Such bulletin shall  
13 be made available to any Class member upon request. Defendants shall provide a  
14 draft of the bulletin specified in subparagraph (b) to Class Counsel for review  
15 within fifteen (15) days of the Effective Date, and Defendants shall issue the  
16 bulletin no later than thirty (30) days after the Effective Date. Defendants contend  
17 that their current and past practices are not to rely upon a previous denial of a  
18 coverage request to support any subsequent denial of a coverage request on the  
19 basis of lack of medical necessity, and this Settlement term and the bulletin  
20 described herein shall not constitute an admission that Defendants have ever relied  
21 on a previous denial of a member's coverage request to support a denial of a  
22 subsequent coverage request on the basis of lack of medical necessity.

23 2.23 Upon the Effective Date, Plaintiffs and all Class members, and their respective  
24 current and former employees, attorneys, heirs, executors, administrators, agents,  
25 legal representatives, conservators, professional corporations, partnerships,  
26 assigns, successors, and with respect to minors, parents and guardians, will fully,  
27 finally, and forever release, relinquish, and discharge all of the Defendants and  
28

1           their Affiliated Entities from, and shall forever be enjoined from prosecution of  
2           Defendants and their Affiliated Entities for, any and all Released Claims.

3           2.24   Plaintiffs and Class Counsel shall not publicly disparage or defame Defendants or  
4           Defendant HAI's Affiliated Entities with respect to the Released Claims; nor shall  
5           Plaintiffs or Class Counsel publicly disparage or defame Defendants' counsel for  
6           their conduct in the Action; nor shall Plaintiffs or Class Counsel encourage any  
7           other Person to do so. Defendants, their managing agents and Defendants' counsel  
8           shall not publicly disparage or defame Plaintiffs or Class members with respect to  
9           the Released Claims; nor shall Defendants, their managing agents or Defendants'  
10          counsel publicly disparage or defame Class Counsel for their conduct in the  
11          Action. Neither Plaintiffs nor Class Counsel may suggest or imply that the  
12          Settlement reflects an admission of liability or wrongdoing by Defendants. This  
13          provision shall not be interpreted to prevent Plaintiffs and Class Counsel from  
14          discussing the Settlement with Class members. Moreover, the Parties agree that  
15          Class Counsel may post a link to the Settlement website on their firm websites  
16          identifying the Action by the case caption, and publish a press release that is  
17          jointly approved by Plaintiffs and Defendants. Other than the link to the  
18          settlement website and jointly approved press release, neither the Plaintiffs nor  
19          Class Counsel shall publish any public communication (including blog posts or  
20          articles) regarding the Settlement. In addition, neither the Parties nor their counsel  
21          shall communicate with the press or media regarding the Settlement other than to  
22          state in response to inquiries that they are pleased the matter has been resolved.  
23          Statements of Plaintiffs or Class Counsel to Persons other than the press or media  
24          that describe the allegations in a manner consistent with the Background section of  
25          this Stipulation or the press release, which will be publicly available, shall not  
26          constitute disparagement in violation of this paragraph. Nor shall this provision be  
27          read, in any way, to preclude or hinder Class Counsel or counsel for Defendants  
28          from representing clients in future matters related to the subject matter of this



1 Action, including by making allegations or statements in court filings relating to  
2 the subject matter of this Action.

3 2.25 Any change in law arising after the date of this filing will not be relied upon by  
4 any party as a basis for refusing to carry out the terms of this Stipulation.

5 2.26 Attached as Exhibit D to this Stipulation are forms of notice under the Class  
6 Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notices”). The Parties  
7 agree, subject to the Court’s approval, that Defendants shall mail the CAFA  
8 Notices within twenty (20) days after the motion for preliminary approval is filed  
9 with the Court, and that upon mailing of the CAFA Notices, Defendants will have  
10 complied with the notice requirements of CAFA.

11 2.27 Under Title 28 of the California Code of Regulations, Section 1300.73.21(b), the  
12 parties agree as follows: **Nothing in this arbitration decision (or settlement**  
13 **agreement) prohibits or restricts the enrollee from discussing or reporting the**  
14 **underlying facts, results, terms and conditions of this decision (or settlement**  
15 **agreement) to the Department of Managed Health Care.**

16 **C. The Preliminary Approval Order.**

17 3. After execution of this Stipulation, the Parties shall request the Court to enter the  
18 Preliminary Approval Order, substantially in the form of Exhibit A to this Stipulation,  
19 providing for, inter alia, preliminary approval of, notice of, and hearing on the proposed  
20 Settlement (“Fairness Hearing”). Forty (40) days after the date on which the Notice is  
21 mailed or otherwise provided, the Parties shall further jointly request the Court to enter an  
22 order under 42 C.F.R. Part 2 and 45 C.F.R. §164.512(e) ordering that the Class Claims  
23 Data be produced to Class Counsel and the Settlement Administrator for all Class  
24 members who did not object to the disclosure of their Class Claims Data, as set forth in  
25 Section 2.7. The Fairness Hearing shall occur at a date and time designated by the Court.  
26 The Preliminary Approval Order shall, inter alia, specifically include provisions that:

27 3.1 Preliminarily approve the Settlement as set forth in this Stipulation, subject to  
28 further hearing and determination under Rule 23(e);

1           3.2    Approve the written Notice of Proposed Settlement substantially in the form of  
2                   Exhibit B hereto;

3           3.3    Appoint the Settlement Administrator;

4           3.4    Direct Class Counsel to issue the Notice of Proposed Settlement to the Class  
5                   members via mail or another method of notice that satisfies Rule 23;

6           3.5    Find that the method of providing the Notice of Proposed Settlement pursuant to  
7                   this Stipulation is appropriate, and that the Notice of Proposed Settlement fully  
8                   satisfies the requirements of due process and the Federal Rules of Civil Procedure;

9           3.6    Schedule the Fairness Hearing to be held by the Court to determine whether the  
10                  Stipulation and Plan of Allocation should be finally approved as fair, reasonable,  
11                  and adequate, and whether an Order finally approving the Stipulation and the Plan  
12                  of Allocation should be entered;

13          3.7    Provide that no objection to the Stipulation shall be heard and no papers submitted  
14                  in support of said objection shall be received and considered by the Court at the  
15                  Fairness Hearing unless the objection and reasons therefor, along with copies of  
16                  any supporting papers, are filed with the Clerk of the Court and served on the  
17                  Parties to this Stipulation within sixty (60) days of the mailing or providing of the  
18                  Notice of Proposed Settlement;

19          3.8    Provide that the Fairness Hearing may be continued from time to time by Order of  
20                  the Court if necessary, and without further notice to the Class; and

21          3.9    Approve the form of CAFA Notices, which the Court determines comply with the  
22                  requirements of CAFA and which, upon mailing, will discharge Defendants'  
23                  obligations pursuant to CAFA.

24    **D. Order of Final Approval of Settlement.**

25          4.    Upon approval by the Court of the Settlement embodied in this Stipulation, an Order of  
26                  Final Approval of Settlement shall be entered by the Court, substantially in the form of  
27                  Exhibit C hereto, which shall, inter alia:

28           4.1    Finally approve the Settlement set forth in this Stipulation;

1 4.2 Adjudge that the Settlement is fair, reasonable, and adequate to the Class;

2 4.3 Dismiss the Action against Defendants with prejudice;

3 4.4 Adjudge that Plaintiffs and all Class members shall be deemed conclusively to  
4 have released any and all Released Claims against Defendants and their Affiliated  
5 Entities;

6 4.5 Bar and permanently enjoin Plaintiffs and all Class members from prosecuting any  
7 and all Released Claims against Defendants and their Affiliated Entities;

8 4.6 Include an order on Plaintiffs' and Class Counsel's requests for an award of  
9 attorneys' fees, costs, expenses, and payment of the Incentive Amount to each of  
10 the named Plaintiffs from the Settlement Amount (it being the intention of the  
11 Parties that the final judgment document include the award of attorneys' fees,  
12 costs, expenses, and the incentive payment to the named Plaintiffs);

13 4.7 Reserve exclusive jurisdiction, without affecting the finality of the Order of Final  
14 Approval of Settlement entered, with regard to:

15 (a) Implementation of this Stipulation and the Order of Final Approval of  
16 Settlement;

17 (b) Disposition of the Settlement Fund; and

18 (c) Enforcement and administration of this Stipulation and the Order of Final  
19 Approval of Settlement, including the release provisions thereof;

20 4.8 Find that notice to the appropriate state and federal officials has been provided as  
21 required by CAFA and that Defendants have satisfied their obligations pursuant to  
22 28 U.S.C. § 1715.

23 **E. Effect of Disapproval, Cancellation, or Termination.**

24 5.1 If the conditions of Settlement set forth in this Stipulation are not satisfied, if the  
25 Court does not enter the Order of Final Approval of Settlement provided for in this  
26 Stipulation, if the Court enters the Order of Final Approval of Settlement and  
27 appellate review is sought and on such review such Order is materially modified or  
28 reversed, and/or if one or more of the material terms of the Stipulation is not

1 approved or the Order of Final Approval of Settlement with respect to one or more  
2 of such terms is materially modified or reversed, then the Stipulation shall be  
3 canceled and terminated unless the Parties can agree within forty-five (45) days (or  
4 by agreement of the Parties to another specified time period) of such event to  
5 amend this Stipulation in such a manner as to resolve such issue.

6 5.2 If the Effective Date does not occur, or if this Stipulation is otherwise terminated  
7 and canceled pursuant to its terms, the Parties shall be deemed to have reverted to  
8 their respective statuses as of the date and time immediately prior to the execution  
9 of this Stipulation.

10 5.3 No ruling by the Court denying in whole or in part the requests by Plaintiffs and  
11 Class Counsel for an award of attorneys' fees, costs, expenses, and an Incentive  
12 Amount to the named Plaintiffs will be grounds for cancellation or termination of  
13 the Settlement or the Stipulation, notwithstanding any language in this Stipulation  
14 to the contrary.

15 **F. Miscellaneous Provisions.**

16 6.1 Plaintiffs and Defendants represent and warrant that they have been represented  
17 by, and have consulted with, the counsel of their choice regarding the provisions,  
18 obligations, rights, risks, and legal effects of this Stipulation and have been given  
19 the opportunity to review independently this Stipulation with such legal counsel  
20 and agree to the particular language of the provisions herein.

21 6.2 The Parties hereto agree to cooperate to the extent necessary to effectuate all terms  
22 and conditions of this Stipulation and the Plan of Allocation.

23 6.3 Plaintiffs and Class Counsel agree that they will use the Class List and Class  
24 Claims Data information for Settlement purposes only, i.e., effectuating,  
25 supporting, and carrying out the terms of the Settlement and will comply with the  
26 Protective Order entered in this Action (ECF No. 48), including Paragraph 2  
27 (HIPAA and Privacy Protections), and any subsequent order entered by the Court  
28 with respect to Class Claims Data.

- 1           6.4    The Parties and their counsel shall not engage in any conduct intended or designed  
2                    to have the Settlement not approved, or otherwise attempt to (a) influence  
3                    members of the Class to opt out of the Settlement, or (b) solicit members of the  
4                    Class to pursue what would otherwise be a Released Claim outside of the Action.
- 5           6.5    All exhibits attached hereto are hereby incorporated by reference as though fully  
6                    set forth herein.
- 7           6.6    This Stipulation may be amended or modified only by written instrument signed  
8                    by authorized representatives of all Parties or their successors in interest.
- 9           6.7    This Stipulation and the exhibits attached hereto constitute the entire agreement  
10                   between Class members, Class Counsel, Defendants, and Defendants' counsel.  
11                   This Stipulation supersedes any prior agreements or understandings, whether  
12                   written or oral, between and among the Parties regarding this Action or this  
13                   Stipulation. This paragraph does not apply to separate agreements related to the  
14                   Action or this Stipulation between or among the Defendants only.
- 15          6.8    Each Party represents that (i) such Party has full legal right, power and authority to  
16                   enter into and perform this Stipulation, subject to Court approval; (ii) the execution  
17                   and delivery of this Stipulation by such Party and the consummation by such Party  
18                   of the transactions contemplated by this Stipulation have been duly authorized by  
19                   such Party; (iii) this Stipulation constitutes a valid, binding and enforceable  
20                   agreement; and (iv) no consent or approval of any Person or entity is necessary for  
21                   such Party to enter into this Stipulation.
- 22          6.9    This Stipulation shall be binding upon, and inure to the benefit of, the successors  
23                   and assigns of the Parties hereto.
- 24          6.10   All of the terms of this Stipulation shall be governed by and interpreted according  
25                   to the laws of the State of California, without reference to its conflict of law  
26                   provisions, except to the extent the federal law of the United States requires that  
27                   federal law governs, in which case federal law as construed by the Ninth Circuit  
28                   Court of Appeals shall control.

- 1           6.11    The Parties acknowledge and agree that the Court will retain jurisdiction over the  
2                    Parties, the Action, and the Settlement for purposes of enforcing the terms of this  
3                    Stipulation and the Order of Final Approval of Settlement.
- 4           6.12    To the extent that any of the exhibits to this Stipulation are inconsistent with any  
5                    of the terms of this Stipulation, there shall be a presumption that any such  
6                    inconsistencies are resolved in favor of the terms of the Stipulation.
- 7           6.13    Except as expressly provided for in this Stipulation, each Party will bear its own  
8                    costs and fees.
- 9           6.14    All agreements made and orders entered during the course of the Action relating to  
10                   the confidentiality of information will survive the performance and/or termination  
11                   of this Stipulation.
- 12          6.15    Neither this Stipulation nor any document referred to herein nor any action taken  
13                   to carry out this Stipulation is or may be construed as either a finding by the Court  
14                   or an admission by Defendants of any fault, wrongdoing, or liability whatsoever.  
15                   There has been no final determination by any court as to the merits of the claims  
16                   asserted by the Class, including any Opt-Out Class members, against Defendants.
- 17          6.16    The headings used herein are only for ease of reference, and do not modify the  
18                   terms set forth in the numbered paragraphs of this Stipulation.
- 19          6.17    This Stipulation may be executed in one or more counterparts. All executed  
20                   counterparts, taken together, shall constitute a single, enforceable instrument.

21                   IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed  
22                   by their duly authorized attorneys, as of the day and year first set forth above.

24   DATED: January 15, 2018

25                   /s/ Daniel L. Berger  
26                   Daniel L. Berger (admitted *pro hac vice*)  
27                   Kyle J. McGee (admitted *pro hac vice*)  
28                   Rebecca A. Musarra (Cal. Bar No. 291250)  
                  Jing-Li Yu (admitted *pro hac vice*)  
                  GRANT & EISENHOFER P.A.  
                  485 Lexington Avenue  
                  New York, New York 10017  
                  Tel: (646) 722-8500  
                  Fax: (646) 722-8501

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*Attorneys for Plaintiffs and the Class*

DATED: January 15, 2018

  
\_\_\_\_\_  
Plaintiff Charles Des Roches

DATED: January 15, 2018

s/ Sylvia Meyer  
\_\_\_\_\_  
Plaintiff Sylvia Meyer

DATED: January 15, 2018

s/ Gayle Tamler Greco  
\_\_\_\_\_  
Plaintiff Gayle Tamler Greco



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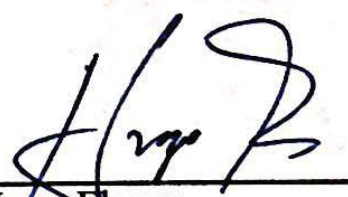
DATED: January 15, 2018

/s/ Joseph E. Laska  
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*Attorneys for Defendants  
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Shield of California and  
Blue Shield of California Life & Health  
Insurance Company*

DATED: January 15, 2018

  
Hugo Norez  
Vice President, Provider Network  
Management, Care1st & Specialty Networks  
*For Defendants*  
*California Physicians' Service dba Blue Shield  
of California and  
Blue Shield of California Life & Health  
Insurance Company*





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Exhibit Summary

- Exhibit A [Proposed] Order Preliminarily Approving Settlement and Approving Notice of Proposed Settlement and Fairness Hearing
- Exhibit B Notice of Proposed Settlement of Class Action and Fairness Hearing
- Exhibit C [Proposed] Order of Final Approval of Settlement and Dismissal of Action with Prejudice
- Exhibit D Class Action Fairness Act of 2005 Notices

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**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the filing of this document has been obtained from the other signatories.

Dated: January 15, 2018

/s/ Kyle McGee  
Kyle McGee

## **Exhibit A**

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

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

Plaintiffs,

v.

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

Defendants.

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

Hon. Lucy H. Koh

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

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

WHEREAS, Plaintiffs have filed an unopposed motion for an order that, *inter alia*, (1) preliminarily approves the Settlement on the terms set forth in the Stipulation; (2) appoints the Settlement Administrator; (3) directs the Settlement Administrator to notify the members of the

1 Class per the approved form of notice; (4) establishes deadlines for members of the Class to opt  
2 out of or object to the Settlement and/or to object to disclosure of information protected by 42  
3 C.F.R. Part 2; and (5) schedules a hearing to determine whether the Settlement should be finally  
4 approved as fair, reasonable and adequate, and whether an order finally approving the Stipulation  
5 should be entered;

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

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

15 NOW, THEREFORE, IT IS ORDERED THAT:

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

18 2. The Class includes all persons who meet the following definition, as provided in  
19 the Court’s Order Granting Motion for Class Certification dated June 15, 2017 (ECF No 123 at  
20 39):

21 All participants or beneficiaries of a health benefit plan administered by either Blue  
22 Shield defendant and governed by ERISA whose request for coverage (whether pre-  
23 authorization, concurrent, post-service, or retrospective) was denied, in whole or in  
24 part, between January 1, 2012 and the present, based upon the Magellan Medical  
25 Necessity Criteria Guidelines for any of the following levels of care: (i) Residential  
26 Treatment, Psychiatric; (ii) Residential Treatment, Substance Use Disorders,  
27 Rehabilitation; (iii) Intensive Outpatient Treatment, Psychiatric; or (iv) Intensive

1           Outpatient Treatment, Substance Use Disorders, Rehabilitation. Excluded from the  
2           Class are Defendants, their parents, subsidiaries, and affiliates, their directors and  
3           officers and members of their immediate families; also excluded are any federal,  
4           state, or local governmental entities, any judicial officers presiding over this action  
5           and the members of their immediate families, and judicial staff.

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

13          4.       The Court approves the form of Notice of Proposed Class Action Settlement and  
14          Fairness Hearing ("Notice"), attached to the Stipulation as Exhibit B. The Court directs that  
15          notice shall be given to the Class as follows: (i) the mailing of the Notice directly to members of  
16          the Class; (ii) a Settlement website containing the Notice information and relevant pleadings  
17          about the case, including the Motion for Preliminary Approval; and (iii) a telephone hotline by  
18          which members of the Class can obtain information about the Settlement. The Court finds that  
19          these notice procedures established by the Stipulation are appropriate and are reasonably  
20          calculated to apprise the members of the Class of the pendency of the Action and the proposed  
21          Settlement, afford any member of the Class an opportunity to present any objections to the  
22          Settlement or to opt out of the Settlement and/or object to disclosure of information protected  
23          under 42 C.F.R. Part 2, and comply in all respects with the Federal Rules of Civil Procedure and  
24          all of the requirements of due process.

25          5.       The Court approves the form of the CAFA Notices, attached to the Stipulation as  
26          Exhibit D. The Court further finds and orders that upon mailing of the CAFA Notices, Defendants  
27          will have complied with the notice requirements of CAFA.

1           6.       The Court finds that Class Counsel and the Settlement Administrator will need  
2 personally identifiable information from all Class members, including their names and last-known  
3 mailing addresses, to give notice to the Class members, as well as the underlying insurance claims  
4 data for each Class member (the Class Claims Data, as defined in the Stipulation) to compute and  
5 verify the amount to which each Class member is entitled under the Plan of Allocation. The  
6 Court further finds that, apart from Defendants' provision of such information to Class Counsel  
7 and the Settlement Administrator, there are no other available or effective methods for obtaining  
8 the information to verify a Class member's claims and amounts payable under the Plan of  
9 Allocation, and the public interest in verifying these claims and amounts outweighs potential  
10 injury to the Class member, physician-patient relationship, and treatment services. Therefore, the  
11 Court authorizes the release to Class Counsel and the Settlement Administrator of the names and  
12 last-known mailing addresses of any Class members for the limited purposes of providing notice  
13 to Class members and an opportunity to object under 42 C.F.R. § 2.64 to disclosure of data  
14 relating to the member's request for coverage for substance use treatment to Class Counsel and  
15 the Settlement Administrator. Class members will have adequate notice and an opportunity to  
16 object, pursuant to 42 C.F.R. § 2.64, to disclosure of data relating to the member's request for  
17 coverage for substance use treatment to Class Counsel and the Settlement Administrator. If any  
18 such Class member objects, the member's data relating to his or her request for coverage for  
19 treatment will not be disclosed to Class Counsel and the Settlement Administrator, but he or she  
20 will remain in the Class (unless such objection is accompanied by a valid opt-out request). The  
21 Class List and Class Claims Data will only be disclosed to Class Counsel and the Settlement  
22 Administrator, to protect the patient, the physician-patient relationship, and the treatment  
23 services.

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



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

5           9.       Within forty (40) days after the date on which the Notice is mailed or otherwise  
6 provided, the parties shall jointly move this Court for an Order authorizing Defendants to disclose  
7 the Class Claims Data (except with respect to any Class member objecting to disclosure of such  
8 information, as described below) to Class Counsel and the Settlement Administrator pursuant to  
9 42 C.F.R. § 2.64.

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

20          11.       Within five (5) days of the Court Order granting the parties' joint motion seeking  
21 authorization to disclose Class Claims Data pursuant to 42 C.F.R. § 2.64, Defendants shall  
22 produce the Class Claims Data (except with respect to any Class member objecting to disclosure  
23 of such information) to Class Counsel and the Settlement Administrator.

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

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

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

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

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

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

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

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

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

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

26 20. Pending the final determination of whether the Settlement should be approved, all  
27 proceedings and discovery in the Action are stayed, except as specifically provided for in this  
28

1 Order. If the Effective Date does not occur, or if the Stipulation is otherwise terminated and  
 2 canceled pursuant to its terms, the Parties shall be deemed to have reverted to their respective  
 3 statuses as of the date and time immediately prior to the execution of the Stipulation.

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

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

22  
23 SO ORDERED.

24  
25 Dated: \_\_\_\_\_, 2018

26 \_\_\_\_\_  
 27 Honorable Lucy H. Koh  
 28 United States District Judge  
 Northern District of California

ORDER PRELIMINARILY APPROVING  
 SETTLEMENT  
 CASE NO. 5:16-CV-2848 (LHK)

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

Hon. Lucy H. Koh

LEGAL NOTICE BY ORDER OF  
THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

**If you sought health insurance coverage or benefits from  
BLUE SHIELD OF CALIFORNIA or BLUE SHIELD OF  
CALIFORNIA LIFE AND HEALTH INSURANCE COMPANY for  
RESIDENTIAL TREATMENT OR INTENSIVE OUTPATIENT  
TREATMENT for PSYCHIATRIC OR SUBSTANCE USE  
DISORDERS**

**on or after January 1, 2012 through March 5, 2017, you could get a  
payment from the proposed settlement of a class action lawsuit.**

READ THIS NOTICE CAREFULLY.

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

- **There is a proposed settlement (“Settlement”) with California Physicians’ Service d/b/a Blue Shield of California, Blue Shield of California Life & Health Insurance Co. (together, “Blue Shield”), and Human Affairs International of California (“HAI,” and together with Blue Shield, “Defendants”) in a class action lawsuit, *Des Roches, et al. v. California Physicians’ Service, et al.*, Case No. 16-cv-2848-LHK (N.D. Cal.).**

QUESTIONS? CALL 1-888-XXX-XXXX TOLL FREE, OR VISIT **SETTLEMENT ADMINISTRATION WEBSITE**

- The Settlement will resolve a lawsuit over whether Defendants violated their obligations to members of health plans that Blue Shield administers under the Employee Retirement Income Security Act of 1974 (“ERISA”) (“Blue Shield ERISA members”) by developing, adopting, and applying a set of medical necessity criteria (the “Magellan Medical Necessity Criteria Guidelines,” “MNCGs,” “Guidelines,” or “Challenged Guidelines”) that Plaintiffs allege were more restrictive than generally accepted professional standards, which were used to determine whether coverage requests for treatment at the Residential or Intensive Outpatient levels of care for psychiatric or substance use disorders were medically necessary.
- Defendants deny all of the Plaintiffs’ claims, but have agreed to the Settlement to resolve the class action case.
- The Settlement provides two main types of relief to the Class:
  - (1) Defendants, who stopped using the Challenged Guidelines for Blue Shield ERISA members during the pendency of the lawsuit, will not return to using the Challenged Guidelines for Blue Shield ERISA members and will issue a bulletin to personnel conducting medical necessity reviews for members of Blue Shield health benefit plans, confirming that denials of Class members’ coverage requests using the Challenged Guidelines should not be relied upon in future coverage request denials based on medical necessity; and
  - (2) after payment of the costs of providing notice and administering the Settlement, and any attorneys’ fees, litigation expenses, and Plaintiff incentive amounts authorized by the Court, monetary payments to Class members according to a Plan of Allocation, which is summarized on pages 7-9, below, and attached to this Notice as Exhibit A.
- **THIS SETTLEMENT APPLIES ONLY TO PEOPLE WHO SOUGHT INSURANCE COVERAGE FOR TREATMENT OF PSYCHIATRIC OR SUBSTANCE USE DISORDERS AT THE RESIDENTIAL OR INTENSIVE OUTPATIENT LEVELS OF CARE, AND WHOSE CLAIMS WERE DENIED ON THE GROUND THAT THE CLAIMS WERE NOT MEDICALLY NECESSARY UNDER THE CHALLENGED GUIDELINES.**
- **THE SETTLEMENT DOES NOT APPLY TO PEOPLE WHO SOUGHT COVERAGE FOR TREATMENT FOR EATING DISORDERS OR TREATMENT FOR SEXUAL OFFENDERS.**
- If you sought insurance coverage for treatment of substance use disorders (at either the residential or intensive outpatient levels of care), you may enjoy enhanced privacy protections under federal law (42 C.F.R. Part 2). At this time, information sufficient to identify you as a person undergoing substance use disorder treatment has **not** been provided to Class Counsel or the Settlement Administrator. However, in order to compute an individualized monetary recovery to which you may be entitled under the Plan of Allocation, such information is necessary. The specific information needed is referred to as “Class Claims Data” in the Settlement. If you have no objection to the disclosure of such information to Class Counsel and the Settlement Administrator, you need not take any action. **However, any member of the class, including any member who sought insurance coverage for treatment of substance use disorders, can object to disclosure of data relating to your request for**

**coverage for treatment to Class Counsel and the Settlement Administrator by notifying the Settlement Administrator no later than [redacted].** Contact information for the Settlement Administrator and instructions appear below in Question 10, entitled “How Do I Object to the Settlement or Object to Disclosure of Data Relating to my Request for Coverage, Including for Substance Use Treatment, to Class Counsel and the Settlement Administrator?”

- All persons objecting to such disclosure will remain a member of the Class and will be entitled to a standard share of the Settlement Fund (discussed below) rather than an individualized assessment, consistent with the terms of the Plan of Allocation.
- Under the Settlement, Class members will release any individual legal claims they may have against Defendants arising out of Defendants’ development, adoption, and application of the Challenged Guidelines and Defendants’ decisions concerning coverage of the treatment of psychiatric or substance use disorders at the Residential or Intensive Outpatient levels of care that were made on medical necessity grounds under the Challenged Guidelines.
- Class Counsel has prosecuted this lawsuit on a wholly contingent basis since its inception in May 2016. Class Counsel will apply to the Court for an award of attorneys’ fees and reimbursement of litigation costs. Class Counsel will also apply for reimbursement of litigation costs paid or incurred in connection with the prosecution and resolution of the lawsuit not to exceed \$850,000, as well as payment of notice and administration costs not to exceed \$150,000, and an incentive amount acknowledging the named Plaintiffs’ service in pursuing this lawsuit not to exceed \$20,000 per class representative. Class Counsel will seek an award of attorneys’ fees in an amount not to exceed one-third (33.3%) of the Defendants’ lump sum payment of \$7 million (the “Settlement Amount”) remaining after deduction of litigation costs, notice and administration costs, and any named Plaintiff incentive amount. Any fees, expenses, and incentive amounts authorized by the Court will be paid from the Settlement Amount.
- Plaintiffs and the Class are being represented by Daniel L. Berger, Esq. of Grant & Eisenhofer P.A., Jason S. Cowart, Esq. of Zuckerman Spaeder LLP, and Meiram Bendat, Esq. of Psych-Appeal, Inc., who are Court-appointed Class Counsel.
- Your rights and options—and the deadlines to exercise them—are explained in this Notice. **If you are a member of the Class and the Settlement is approved, your legal rights will be affected whether you act or do not act. Read this Notice carefully and in its entirety to see what your options are in connection with the Settlement.**
- If you have questions about the Settlement, go to [settlement site URL], call 1-888-xxx-xxxx, or email mail@[settlement site URL]. You can also write to Des Roches Settlement Administrator, c/o Angeion Group, [administrator address], or contact Mr. Berger at Grant & Eisenhofer P.A., 485 Lexington Ave., New York, New York 10017, (646) 722-8500, or Mr. Cowart at Zuckerman Spaeder LLP, 485 Madison Ave., New York, New York 10022, (212) 704-9600.

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS FOR THE SETTLEMENT**

**QUESTIONS? CALL 1-888-XXX-XXXX TOLL FREE, OR VISIT [SETTLEMENT ADMINISTRATION WEBSITE]**



<p><b>REMAIN A MEMBER OF THE CLASS</b></p>	<p>To remain a Class member for the Settlement, you do not need to do anything. You automatically will be included in the Class and your portion of the Settlement Fund will be calculated based on Defendants’ records. If you believe that those records understate the Allowed Amount for Services Received or Treatment Day(s)<sup>1</sup> for treatment for psychiatric or substance use disorders at the Residential or Intensive Outpatient levels for which you were denied coverage, you may submit additional documentation, which may affect the amount of money you are eligible to receive. Information about how to submit additional documentation is provided in response to Question 5 below.</p> <p>If you remain in the Class, you will give up your right to sue Defendants for claims arising out of the subject matter of the lawsuit.</p>
<p><b>OBJECT TO DISCLOSURE OF DATA RELATING TO YOUR REQUEST FOR COVERAGE INCLUDING FOR SUBSTANCE USE TREATMENT UNDER 42 C.F.R. PART 2</b></p>	<p>You may object to the disclosure of data relating to your request for coverage, including for substance use treatment, under 42 C.F.R. Part 2 to Class Counsel and the Settlement Administrator by <b>notifying the Settlement Administrator</b>. The procedures for how to object are discussed below in response to Question 10. <b>Your objection must be submitted electronically or postmarked no later than [REDACTED]</b>.</p> <p>If you object to the disclosure of data relating to your request for coverage, you will remain a member of the Class. You will be entitled to a standard share of the Settlement Fund rather than an individualized assessment, consistent with the terms of the Plan of Allocation.</p>
<p><b>EXCLUDE YOURSELF FROM THE CLASS</b></p>	<p>You may request exclusion from the Class (also known as “opting out”) by notifying the Settlement Administrator of your request to be excluded from the Class. The procedures for how to opt out are discussed below in response to Question 8. <b>The request(s) for exclusion must be submitted electronically or postmarked no later than [REDACTED]</b>.</p> <p>If you exclude yourself from the Settlement, you will not release your claims against Defendants, and you will not be bound by any judgments or orders of the Court as to the Settlement, but neither will you be eligible for payment from the Settlement, nor will you be able to object to the Settlement.</p>

<sup>1</sup> The definitions of Allowed Amount for Services Received and Treatment Day(s) are contained in the Plan of Allocation.

<b>OBJECT TO THE SETTLEMENT</b>	<p>To object to or comment on the Settlement, you must send a copy of the appropriate papers via mail to the Court, Class Counsel, and counsel for Defendants. Their addresses are listed below. <b>Your written objection must be postmarked no later than [REDACTED].</b></p> <p>If you object to the Settlement, you will remain a member of the Class.</p>
<b>GO TO A HEARING</b>	<p>The Court will hold a Fairness Hearing on [REDACTED], at the Robert F. Peckham Federal Building &amp; United States Courthouse, Courtroom 8 – 4th Floor, 280 South 1st Street, San Jose, California 95113, to consider whether the Settlement is fair, reasonable, and adequate. The Court may also consider the motion for Class Counsel’s attorneys’ fees, costs, and expenses, and for an incentive amount for the class representatives.</p> <p>If you want to speak at the Fairness Hearing, you must let the Court and the Parties know by [REDACTED], and provide the Court and the Parties with a letter stating that you intend to appear at the hearing. You cannot speak at the hearing if you opt out of the Settlement.</p>

## BASIC INFORMATION

### 1. WHAT IS THIS LAWSUIT ABOUT?

This lawsuit is about whether Blue Shield and HAI, in violation of ERISA and the plans that Blue Shield administers, developed, implemented, and applied overly restrictive medical necessity criteria guidelines, leading to denials of claims or requests for coverage of treatment that otherwise may have been approved. Plaintiffs allege that Defendants developed, adopted, and applied Guidelines for coverage of treatment for psychiatric and substance use disorders at the Residential and Intensive Outpatient levels of care that are more restrictive than generally accepted professional standards. Plaintiffs claim that Class members’ ERISA plans provide, as one condition of coverage, that the services in question be consistent with generally accepted professional standards.

Defendants deny all of Plaintiffs’ allegations of wrongdoing and contend that they have fully complied with the law.

### 2. WHAT IS A CLASS ACTION AND WHO IS INVOLVED?

In a class action lawsuit, a “class representative” sues on behalf of herself and other people who have similar claims. Together, the class representative, or representatives, and the others with similar claims are called a “class” or “class members.” The Court-appointed class representatives

**QUESTIONS? CALL 1-888-XXX-XXXX TOLL FREE, OR VISIT [SETTLEMENT ADMINISTRATION WEBSITE]**

in this case are Charles Des Roches, Sylvia Meyer, and Gayle Tamler Greco, whose children were denied coverage and benefits by Defendants for treatment of psychiatric or substance use disorders at the Residential or Intensive Outpatient levels of care on the ground that they did not meet medical necessity under the Challenged Guidelines, and whose appeals of HAI's initial denial decisions were rejected by Blue Shield.

## WHO IS IN THE SETTLEMENT

### 3. WHO IS A CLASS MEMBER?

The following Class was certified by the Court on June 15, 2017 (ECF No. 123 at 39):

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

The period of time covered by this definition is the "Class Period." Because Defendants stopped using the Challenged Guidelines for Blue Shield members on or about on March 5, 2017, any coverage denials issued after that date are not covered by the definition of the Class.

Excluded from the Class are the federal judge who has presided over the case and individuals who timely and validly request exclusion ("opt out") from the Class.

Defendants' records indicate that you sought coverage for treatment of psychiatric or substance use disorder at the Residential or Intensive Outpatient levels of care under a health plan administered by Blue Shield under ERISA and that HAI or Blue Shield denied your request in whole or in part on the basis of lack of medical necessity. Therefore, you are a member of the Class unless you opt out.

If you are not sure whether you are a member of the Class, you can write to the lawyers in this case at the addresses listed in Question 10.

### 4. DID THE COURT DECIDE WHO IS RIGHT?

No, the parties entered into the Settlement before the lawsuit reached a trial or court decision, so if the Court approves the Settlement there will not be a trial or decision about which side was right.

## WHAT THE SETTLEMENT PROVIDES

### 5. WHAT DOES THE SETTLEMENT DO?

The Settlement has three major parts: (1) an agreement by Defendants not to use the Challenged Guidelines going forward for Blue Shield ERISA members and to issue a bulletin to all personnel conducting medical necessity reviews for members of Blue Shield health benefit plans confirming that denials of Class members' coverage requests using the Challenged Guidelines should not be relied upon in future coverage request denials based on medical necessity; (2) payments to Class members; and (3) a release by Class members of any legal claims arising out of Defendants' development, adoption, and application of the Challenged Guidelines and Defendants' decisions concerning coverage of treatment of psychiatric or substance use disorders at the Residential or Intensive Outpatient levels of care that were made on medical necessity grounds under the Challenged Guidelines.

#### **(1) Defendants' Agreements to Refrain from Using the Challenged Guidelines and to Issue a Bulletin**

Under the Settlement, Defendants agree that they shall not apply the Challenged Guidelines to coverage decisions going forward for Blue Shield ERISA members. Defendants also agree that they shall issue a bulletin to all personnel conducting medical necessity reviews for members of Blue Shield health benefit plans confirming that denials of Class members' coverage requests using the Challenged Guidelines should not be relied upon in future coverage request denials based on medical necessity.

#### **(2) Payments to Class Members**

Under the Settlement, Defendants will also make a lump sum payment of \$7 million (as referenced above, the "Settlement Amount"). This Settlement Amount, less settlement administration costs, attorneys' fees and expenses, and any class representative incentive amount, will make up the "Settlement Fund." A Settlement Administrator will oversee the distribution of payments from the Settlement Fund to Class members. The allocation of the Settlement Fund to Class members (the "Plan of Allocation") in its entirety is attached as Exhibit A.

Generally speaking, the Plan of Allocation will provide for the following payments to Class members:

- Each Class member with a Treatment Amount<sup>2</sup> will receive his or her Total Treatment Amount from the Settlement Fund. In the event that the Class's Total Treatment Amount exceeds 75% of the Settlement Fund, each Class member with a

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<sup>2</sup> Treatment Amount is defined in the Plan of Allocation, and that definition will control. However, it generally means the greater of (a) the amount that Defendants' records reflect would have been used to calculate the benefit payments if a post-service claim had been approved, or (b) an amount calculated by multiplying the Class member's Treatment Day(s) or Revised Treatment Day(s) number by the rate agreed to by Plaintiffs and Defendants based on Defendants' claims and reimbursement data for the level of care for the year in which the denial occurred.

Treatment Amount will receive his Pro Rata Share of 75% of the Settlement Fund. The Plan of Allocation discusses in greater detail how a Class member's Pro Rata Share would be calculated.

- After each Class member with a Treatment Amount receives a payment, as discussed in the preceding bullet, the remaining portion of the Settlement Fund will be distributed to the Class with every Class member receiving an equal share of the remaining 25% (or more) of the Settlement Fund.

Each Class member will receive, at a minimum, an equal share of 25% of the Settlement Fund. Class members with a Treatment Amount, as discussed above, will receive more (*i.e.*, payment of the Class member's Total Treatment Amount plus the minimum amount). These calculations, however, are subject to a number of unknown variables. For example, the opportunity of Class members to submit documentation could increase both the number of Class members with a Treatment Amount, and the amount of the Class's Total Treatment Amount. In fact, individuals with a Treatment Amount might receive less than their Treatment Amount (*i.e.*, the Class Member's Pro Rata Share), if the Treatment Amount increased substantially from the amount reflected in Defendants' data.

**How to Submit Additional Documentation:** Each Class member may call the Settlement Administrator at [number] to request information reflected in the Class Claims Data about the Class member. A Class member may then submit additional documentation, if he or she desires to do so, related to each denial. The form of documentation that a Class member must submit, if he or she desires to do so, is not limited to any particular category, but must reflect: (a) the date(s) of the treatment; (b) the number of Treatment Days;<sup>3</sup> and (c) the level of care at which the treatment was received. Exemplary forms of documentation include invoices or bills from the provider who provided the treatment; explanation of benefit documentation from Defendants; and medical records, such as treatment notes from the provider. However, documentation such as a letter created by a Class member or other similar documentation created for purposes of submission in connection with this Settlement will not be accepted as valid documentation. The new documentation will be used, as explained in the Plan of Allocation, in certain circumstances,<sup>4</sup> to calculate the Class member's Treatment Amount and, in turn, the Class member's distribution. By submitting any such additional documentation, you agree to be contacted by the Settlement Administrator and Class Counsel to discuss the documentation submitted.

If you choose to submit documentation, you have until forty-five (45) days following the Court's order authorizing disclosure of Class Claims Data to Class Counsel and the Settlement Administrator to submit that evidence to the Settlement Administrator. Documentation should be

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<sup>3</sup> The definition of Treatment Day(s) is contained in the Plan of Allocation, and that definition will control. However, it generally means the days of treatment a Class member received, following a denial, at the level of care for which coverage was denied. The treatment must be connected to the denial, so there is a temporal component that requires the treatment to have been received within fourteen (14) days of the denial.

<sup>4</sup> For example, the new documentation would not be used if it results in a lower Treatment Amount than the Treatment Amount based on information already contained in the Class Claims Data.

sent to the Settlement Administrator at: [fill in with claims administrator info]. You can also transmit an electronic copy of the documentation to the Settlement Administrator. Please contact the Settlement Administrator at the following address to arrange for secure transmittal: mail@[email address].

NOTE: To allow efficient, cost-effective administration of the Settlement and thereby maximize the distribution to Class members, all evidence that a Class member wants considered must be submitted together, at the same time, in a single communication or parcel.

### **(3) Release of Claims Against Defendants**

If you choose to remain in the Class, you, your current and former employees, attorneys, heirs, executors, administrators, agents, legal representatives, conservators, professional corporations, partnerships, assigns, successors, and with respect to minors, parents and guardians, will fully, finally, and forever release, relinquish, and discharge all of the Defendants and their Affiliated Entities from, and shall forever be enjoined from prosecution of Defendants and their Affiliated Entities for, any and all Released Claims.

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

## **IF YOU DO NOTHING**

### **6. WHAT HAPPENS IF I DO NOTHING?**

If you do nothing, you will be included in the Class. Information about your claims for coverage for Residential or Intensive Outpatient treatment of psychiatric or substance use disorders, including information identifying you as a recipient of substance use disorder treatment, will be supplied by Defendants to Class Counsel and the Settlement Administrator to facilitate implementation of the Plan of Allocation, and you will get a payment according to the Plan of Allocation. And you will be bound by the Settlement if it is finally approved by the Court. If you do nothing, you will not be able to sue Defendants (or other released entities) on your own for the Released Claims as described in the part of Question 5 titled “Release of Claims Against Defendants.”

If you do not wish Defendants to disclose data relating to your request for coverage, including coverage for substance use treatment, to Class Counsel and the Settlement Administrator, you must notify the Settlement Administrator no later than [redacted]. Contact information for the Settlement Administrator and a description of how to notify the Settlement Administrator appears in the table in Question 10 titled “How Do I Object to the Settlement or Object to Disclosure of

**QUESTIONS? CALL 1-888-XXX-XXXX TOLL FREE, OR VISIT [SETTLEMENT ADMINISTRATION WEBSITE]**



Data Relating to my Request for Coverage, Including for Substance Use Treatment, to Class Counsel and the Settlement Administrator?”

If you want to pursue any claim related to the issues in this case on your own and at your own expense, you should opt out of the Settlement.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 7. WHY WOULD I ASK TO BE EXCLUDED (OPT OUT)?

You should ask to be excluded if you want to keep your right to pursue your own individual lawsuit against Defendants (or other released entities) arising out of the subject matter of the lawsuit. If you choose to opt out, you will not receive any payment from the Settlement Fund, but you also will not be bound by the Settlement, including the release.

### 8. HOW DO I OPT OUT OF THE CLASS?

To exclude yourself from the Class, you must send to the Settlement Administrator a statement identifying yourself by name and residential address, and declaring, “I request that I be excluded from the Class in *Des Roches v. California Physicians’ Service*, No. 16-cv-2848-LHK (N.D. Cal).” You may submit this statement to the Settlement Administrator electronically or by U.S. mail at the following addresses:

Email: mail@[settlement site domain].com

U.S. mail: Des Roches Settlement Opt Out, c/o Angeion Group [settlement administrator address]

**REQUESTS FOR EXCLUSION THAT ARE NOT POSTMARKED ON OR BEFORE [REDACTED], OR ARE NOT SUBMITTED ELECTRONICALLY ON OR BEFORE 11:59 PM PACIFIC TIME ON [REDACTED], WILL NOT BE HONORED.**

### 9. IF I DO NOT EXCLUDE MYSELF, CAN I SUE FOR THE SAME THING LATER?

No. If the Court approves the Settlement and you do not opt-out by the deadline, you will be subject to the release of claims described in Question 5 above, and will lose your right to separately sue Defendants for relief arising from the Released Claims. You will receive a monetary payment from the Settlement only if you do not exclude yourself.

After the opt-out deadline, Class members will be preliminarily enjoined from asserting Released Claims.

## OBJECTING TO THE SETTLEMENT

### 10. HOW DO I OBJECT TO THE SETTLEMENT OR OBJECT TO DISCLOSURE OF DATA RELATING TO MY REQUEST FOR COVERAGE, INCLUDING FOR SUBSTANCE USE TREATMENT, TO CLASS COUNSEL AND THE SETTLEMENT ADMINISTRATOR?

QUESTIONS? CALL 1-888-XXX-XXXX TOLL FREE, OR VISIT [SETTLEMENT ADMINISTRATION WEBSITE]



You can object to the Settlement, the proposed Plan of Allocation, the attorneys’ fees and expenses requested, or the class representative incentive amount. Submitting an objection gives you the chance to tell the Court why you think the Court should not approve any of these things, but will not exclude you from the Settlement. To object, you must send a statement identifying yourself by name and residential address, and setting forth all bases for objection and providing all documentation in support of the objection, to these four different groups identified below (i.e., the Court, Blue Shield Counsel, Class Counsel, and HAI Counsel) no later than [REDACTED]:

<b>Court</b>	<b>Class Counsel</b>
Clerk of the Court United States District Court for the Northern District of California Robert F. Peckham Federal Building & United States Courthouse 280 South 1st Street Room 2112 San Jose, CA 95113	Daniel L. Berger Grant & Eisenhofer P.A. 485 Lexington Avenue New York, New York 10017  Jason S. Cowart Zuckerman Spaeder LLP 485 Madison Avenue New York, New York 10022  Meiram Bendat Psych-Appeal, Inc. 8560 Sunset Boulevard Suite 500 West Hollywood, CA 90069
<b>Blue Shield Counsel</b>	<b>HAI Counsel</b>
Joseph E. Laska Manatt, Phelps & Phillips, LLP One Embarcadero Center 30th Floor San Francisco, CA 94111	Jennifer S. Romano Crowell & Moring LLP 515 South Flower St., 40th Floor Los Angeles, CA 90071-2201

**OBJECTIONS THAT ARE NOT POSTMARKED ON OR BEFORE [REDACTED] WILL NOT BE HONORED.**

If you wish to object to the disclosure by Defendants of data relating to your request for coverage, including for substance use treatment, to Class Counsel and the Settlement Administrator, you must notify the Settlement Administrator of this objection no later than [REDACTED]. You may submit this statement to the Settlement Administrator electronically or by U.S. mail at the following addresses:

Email: mail@[settlement site domain].com

U.S. mail: Des Roches Class Claims Data Objection, c/o Angeion Group [settlement administrator address]

**OBJECTIONS THAT ARE NOT POSTMARKED ON OR BEFORE [REDACTED], OR ARE NOT SUBMITTED ELECTRONICALLY ON OR BEFORE 11:59 PM PACIFIC TIME ON [REDACTED], WILL NOT BE HONORED.**

QUESTIONS? CALL 1-888-XXX-XXXX TOLL FREE, OR VISIT [SETTLEMENT ADMINISTRATION WEBSITE]

## THE LAWYERS REPRESENTING YOU

### 11. DO I HAVE A LAWYER IN THE CASE?

Yes, unless you exclude yourself from the Class. The Court decided that Grant & Eisenhofer, P.A., Zuckerman Spaeder LLP, and Psych Appeal, Inc. are qualified to represent the members of the Class. Together, the lawyers are called “Class Counsel.”

### 12. WILL THE LAWYERS AND CLASS REPRESENTATIVES BE PAID, AND IF SO HOW?

Class Counsel will ask the Court to approve payment of attorneys’ fees and litigation costs from the Settlement Amount. This payment will compensate Class Counsel for their work investigating the facts, litigating the case, and negotiating the Settlement. The Court must approve the amount of fees and costs awarded to Class Counsel. Class Counsel will file a motion requesting attorneys’ fees and litigation costs no later than [REDACTED], so you will have time to review that motion prior to deciding whether you want to object or opt-out.

The amount that the class representatives (who brought the lawsuit and who served as the named Plaintiffs) receive for their coverage requests that were denied will be determined by the same Plan of Allocation used for all Class members. In addition, Class Counsel will ask the Court for an “incentive amount” of up to \$20,000 for each class representative to acknowledge their service in coming forward to prosecute their claims. That motion will be filed no later than [REDACTED]. Any such incentive amount must be approved by the Court.

Class Counsel intends to seek reimbursement of litigation costs not to exceed \$850,000, and to seek an award of attorneys’ fees not to exceed one-third of the Settlement Amount remaining after deduction of litigation costs, notice and administration costs, and any class representative incentive amount.

Class Counsel’s motion for attorneys’ fees and costs, and an incentive amount to the class representatives, will be available on the website [settlement site], or you can call the Settlement Administrator to obtain these materials.

### 13. HOW IS THE COST OF PROVIDING NOTICE TO CLASS MEMBERS PAID FOR?

The costs of providing notice about the Settlement to Class members will come out of the Settlement Amount.

## THE FAIRNESS HEARING

### 14. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Fairness Hearing on [REDACTED], at \_\_\_\_\_, at the Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, Courtroom 8 – 4<sup>th</sup> Floor, San Jose, CA 95113. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The judge in the

QUESTIONS? CALL 1-888-XXX-XXXX TOLL FREE, OR VISIT [SETTLEMENT ADMINISTRATION WEBSITE]

case, Judge Lucy H. Koh, will listen to people who have asked in advance to speak at the hearing. The Court may also decide how much Class Counsel may receive in attorneys' fees and expenses. The Court will also decide how much the class representatives should receive as an incentive amount. After the hearing, the Court will decide whether to approve the Settlement. It is not known how long these decisions will take.

The Court can change the date of the hearing without further notice, so please check the docket for the case if you want to appear to make sure that the date and time have not changed. You may also confirm the date, time, and location of the Fairness Hearing with Class Counsel.

#### 15. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. If you retain your own lawyer, your lawyer can attend on your behalf.

#### 16. MAY I SPEAK AT THE HEARING?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Des Roches v. California Physicians' Service*, No. 16-cv-2848-LHK (N.D. Cal.)." Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than [redacted], and must be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 10. You cannot speak at the hearing if you opted out of the Settlement.

### GETTING MORE INFORMATION

#### 17. ARE THERE MORE DETAILS ABOUT THIS LAWSUIT?

Yes. Additional information regarding the lawsuit and the Settlement is also available at [settlement site]. The information includes the complaint filed in the case; the Settlement Agreement and its attachments; the Opt-Out Form and Objection Form; the Plan of Allocation; and the motion for preliminary approval of the Settlement, along with the exhibits to the motion. In addition, the motion for attorneys' fees and expenses will be posted to the website after it is filed on or before [redacted].

#### 18. HOW CAN I LEARN MORE?

If you have additional questions about the Settlement or the case, you can go to [settlement site], call 1-888-xxx-xxxx, or email mail@[settlement site url]. You can also write to the Des Roches Notice Administrator, c/o Angeion Group, [settlement administrator address].

## **Exhibit A**

## **PLAN OF ALLOCATION**

*Des Roches, et al. v. California Physicians' Service d/b/a Blue Shield of California, et al.*, No. 5:16-cv-2848-LHK

**Objective:** The goal of this Plan of Allocation is to distribute the Settlement Fund in a way that prioritizes reimbursement for those Class members who actually received treatment at a Relevant Level of Care for which coverage was sought and denied, while also ensuring that all Class members receive equal compensation for their pre-authorization and concurrent review claims that were denied.

### A. Definitions

1. Class Definition: "All participants or beneficiaries of a health benefit plan administered by either Blue Shield defendant and governed by ERISA whose request for coverage (whether pre-authorization, concurrent, post-service, or retrospective) was denied, in whole or in part, between January 1, 2012 and the present, based upon the Magellan Medical Necessity Criteria Guidelines for any of the following levels of care: (i) Residential Treatment, Psychiatric; (ii) Residential Treatment, Substance Use Disorder Rehabilitation; (iii) Intensive Outpatient Treatment, Psychiatric; or (iv) Intensive Outpatient Treatment, Substance Use Disorders, Rehabilitation. Excluded from the Class are Defendants, their parents, subsidiaries, and affiliates, their directors and officers and members of their immediate families; also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action and the members of their immediate families, and judicial staff."
2. "Class List" means the list of names and last-known mailing addresses of all Class members whom Defendants are reasonably able to identify as of twenty (20) days after the date on which the Preliminary Approval Order is entered by the Court.
3. "Class Period" means January 1, 2012 to March 5, 2017.
4. "Class Claims Data" means a spreadsheet provided to the Settlement Administrator and Class Counsel by Defendants that, to the extent Defendants possess the information,<sup>1</sup> lists, for each Class member denial, the following fields:
  - a. name of Class member
  - b. last-known address of Class member
  - c. the level of care requested
  - d. the date of the denial

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<sup>1</sup> Defendants may not have information for all Class members regarding A(4)(b)-(g); for those Class members the fields for the missing information will be left blank. In the event Defendants cannot provide a last-known address of a Class member, Defendants will work cooperatively with the Settlement Administrator and/or Class Counsel to attempt to provide information by which notice may be provided to the Class member.

- e. the Billed Amount(s) of Denied Claims for Services Received (i.e., post-service claims), if any<sup>2</sup>
  - f. the Allowed Amount(s) for Services Received (i.e., post-service claims), if any<sup>3</sup>
  - g. the Treatment Day(s), if any, in connection with the request that was denied<sup>4</sup>
5. A Class member's "Allowed Amount(s) for Services Received" means, for each Class member with respect to each denial of coverage for services received (i.e., post-service claims) at a Relevant Level of Care during the Class Period, the amount that the Class Claims Data indicates that Defendants would have used to calculate benefit payments if the claim(s) had been approved; however, in most cases, the Allowed Amount is greater than the amount that would have been paid by Defendants under the health benefit plan for the services. The sum of these amounts for a particular Class member is referred to herein as that Class member's "Total Allowed Amount for Services Received." The sum of all Class members' Total Allowed Amount for Services Received is referred to herein as the "Class's Total Allowed Amount for Services Received."
6. A Class member's "Billed Amount(s) of Denied Claims for Services Received" means, for each Class member with respect to each denial of coverage for services received (i.e., post-service claims) at a Relevant Level of Care during the Class Period, the amount that the Class Claims Data indicates as the billed charge submitted by the Class member and/or provider for such service. The sum of these amounts for a particular Class member is referred to herein as that Class member's "Total Billed Amount of Denied Claims for Services Received." The sum of all Class members' Total Billed Amount for Denied Claims for Services Received is referred to herein as the "Class's Total Billed Amount of Denied Claims for Services Received."
7. "Pre-Distribution Procedure" means the procedures to be followed by the Settlement Administrator in advance of calculating distribution amounts from the Settlement Fund. Because 42 C.F.R. Part 2 may apply to some Class members, there are specific procedures that will be followed before Defendants share certain information with the Settlement Administrator and/or Class Counsel.

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<sup>2</sup> This information will only be available for individuals who submitted post-service claims or for whom data exists and is reasonably accessible, as discussed in footnote 5. For all other Class members, this field will have a zero.

<sup>3</sup> This information will only be available for individuals who submitted post-service claims or for whom data exists and is reasonably accessible, as discussed in footnote 5. For all other Class members, this field will have a zero.

<sup>4</sup> This information will only be available for individuals who submitted post-service claims or for whom data exists and is reasonably accessible, as discussed in footnote 5. For all other Class members, this field will have a zero. Class members who believe they should have a greater number of Treatment Day(s) than reflected in the Class Claims Data will have an opportunity to submit information, pursuant to procedures described in the Notice of Settlement and Paragraph C(3).

8. “Relevant Level of Care” means (i) Residential Treatment, Psychiatric; (ii) Residential Treatment, Substance Use Disorder Rehabilitation; (iii) Intensive Outpatient Treatment, Psychiatric; or (iv) Intensive Outpatient Treatment, Substance Use Disorders, Rehabilitation.
9. “Settlement Administrator” means the court-approved Settlement Administrator. Plaintiffs have sought approval from the Court for Angeion Group to serve as the Settlement Administrator.
10. “Settlement Amount” means \$7,000,000.
11. “Settlement Fund” means the Settlement Amount after the deduction of Class Counsel’s litigation costs and expenses, attorneys’ fees, notice and administration expenses, and any incentive award to the named Plaintiffs.
12. “Treatment Day(s)” shall mean the number of days for which a Class member received treatment at a Relevant Level of Care and either (a) a claim for such treatment was subject to a post-service clinical denial by Defendants or (b) such treatment was commenced within fourteen (14) days of a pre-authorization or concurrent review denial by Defendants at that same level of care. For a day to be counted as a Treatment Day, it either must be: (a) reflected on the Class Claims Data for the individual (i.e., it was submitted and denied as a post-service claim); or (b) reflected in information a Class member submits. If an individual voluntarily stopped treatment at the level of care, there is a break in treatment, or the individual was treated at a lower level of care than the one for which he or she requested coverage, the subsequent days of treatment will not count as Treatment Days. The purpose of allowing a Class member to submit information is to capture Treatment Days that may not be reflected in Defendants’ data.<sup>5</sup>

#### B. Notice

1. Defendants will provide the Class List.
2. The Settlement Administrator will provide notice to each Class member in accordance with the Court’s Preliminary Approval Order, and in the form approved by the Court.
3. The notice will inform Class members that: (a) they have the ability to prevent Defendants from sharing with the Settlement Administrator and Class Counsel certain personal information about them in the Class Claims Data; and (b) consistent with federal law (42 C.F.R. Part 2), they have thirty-five (35) days to inform the Settlement Administrator of their desire to exercise this right.

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<sup>5</sup> Defendants’ data could be inaccurate or incomplete for several reasons, including, but not limited to, that the Class member never submitted request for coverage for all Treatment Days, or that Defendants’ internal data is not reasonably accessible or may not be retrieved despite best efforts.



### C. Pre-Distribution Procedure

1. After the expiration of the deadline for objections to sharing of Class Claims Data, Defendants will do the following:
  - For Class members on the Class List who stated they did not want information shared, Defendants will provide no additional information. The Class List's information about these Class members will be used to make a payment calculation pursuant to Paragraph D(5).
  - For all other Class members on the Class List, Defendants will provide Class Claims Data to the Settlement Administrator and Class Counsel within five (5) days of the Court's entry of the order authorizing Defendants to provide the Class Claims Data.
2. As set forth in the notice, after Defendants provide the Class Claims Data to the Settlement Administrator and Class Counsel, Class members may contact the Settlement Administrator to request, in the manner described in the notice, the information reflected in the Class Claims Data and to ask related questions.
3. Class members may submit additional information to demonstrate that the Class Claims Data is inaccurate or incomplete no later than forty-five (45) days after the Court issues an order authorizing the disclosure of Class Claims Data to Class Counsel and the Settlement Administrator. After that date, the Settlement Administrator and/or Class Counsel will, for individuals who submitted information, proceed as follows:
  - When individuals submit new information, the focus will be on the Treatment Day(s) and when they were received. A new calculation of the Class member's Allowed Amount(s) for Services Received will not be done. Therefore, the information submitted must be documentation that reflects: (a) the date of the treatment; (b) the number of Treatment Days; and (c) the level of care at which the treatment was received. The form of documentation is not limited to any particular category. Exemplary forms of documentation include: invoices or bills from the provider who provided the treatment; explanation of benefit documentation from Defendants; and medical records, such as treatment notes from the provider. However, documentation such as a letter created by a Class member or other similar documentation created for purposes of submission in connection with this Settlement will not be accepted as valid documentation.
  - Next, the information submitted will be compared to the Class Claims Data to determine whether the information received reflects treatment received at the level of care requested within 14 days of Defendants' denial of coverage. By way of example, if a Class member submitted a request for coverage for Residential Treatment for substance use on August 1, 2012 and was denied coverage, and then the Class member, despite the denial, received Residential

Treatment for substance use on August 15, 2012, any day of treatment starting on August 15, 2012 and continuing at the same level of care will count as a Treatment Day. If the individual started receiving treatment on August 16, 2012 (i.e., 15 days after the denial), neither that day nor any of the following days would count as a Treatment Day. For purposes of clarity, the goal is to capture instances where the Class member was denied coverage and sought treatment anyway, but those treatment days that are related to the denial are for some reason not reflected in the Class Claims Data.

- Next, the Class member's Treatment Day(s), based on information that he or she provided, will be compared to the data related to the same denial reflected on the Class Claims Data. If the Class member's information results in a higher number of Treatment Day(s), that number will be used. That number is referred to as a Class member's "Revised Treatment Day(s)." For example, if a Class member was denied coverage for Residential Treatment for substance use and the Class Claims Data shows one Treatment Day, but the individual submits information that shows that he or she actually received seven days of treatment, the Class member will receive a Revised Treatment Day(s) number of seven. Conversely, if the Class Claims Data shows that an individual received ten days of Residential Treatment for substance use, and the Class member submits data that shows that he or she received six days of Residential Treatment for substance use, the Class member would not receive a Revised Treatment Day(s) number.
- Next, the Settlement Administrator and/or Class Counsel will create a spreadsheet that will be referred to as the "Treatment Days Received Spreadsheet." The starting point will be the Class Claims Data. For individuals who did not submit information, nothing will be changed. For individuals who received a Revised Treatment Day(s) number, that number will be inserted into a column with that heading. Then, the corresponding number, in the Treatment Days from the Class Claims Data, will be removed from the Treatment Days Received Spreadsheet.
- The spreadsheet will be sorted by the Class members' names.
- The Settlement Administrator will then follow the procedure set forth in Paragraph D.
- The Settlement Administrator will treat the Class List and Class Claims Data consistent with the protections under HIPAA and 42 C.F.R. Part 2 and the terms of the Business Associate Agreement executed as part of this engagement.

D. Each Class member will receive payments as follows:

1. For each denial, a Class member – who has an Allowed Amount(s) for Services Received, and/or Treatment Day(s) and/or Revised Treatment Day(s) figure for that

denial – will receive a “Treatment Amount.” The Treatment Amount will be defined in the following manners: (a) If a Class member’s denial has an Allowed Amount(s) for Services Received number and a Treatment Day(s) number, the Treatment Amount will be the Allowed Amount(s) for Services Received; (b) If a Class member’s denial has an Allowed Amount(s) for Services Received number and a Revised Treatment Day(s) number, then the Treatment Amount will be the greater of the Allowed Amount(s) for Services Received, or the Revised Treatment Day(s) multiplied by the per diem value of the Allowed Amount(s) for Services Received using the Treatment Day(s) number from the Class Claims Data for that denial;<sup>6</sup> and (c) If the Class member’s denial has no Allowed Amount(s) for Services Received, then the Treatment Amount will be the either the Treatment Day(s) or the Revised Treatment Day(s) number, if either exist, multiplied by the rate agreed to by Plaintiffs and Defendants based on Defendants’ claims and reimbursement data for the level of care for the year in which the denial occurred.<sup>7</sup>

- Based on Defendants’ data, a large portion of the Class will not have a Treatment Amount. The Plan of Allocation addresses this by allowing Class members to ask the Settlement Administrator for the information about the Class member reflected in the Class Claims Data (Paragraph C(2)), submit additional information (Paragraph C(3)), and receive a Treatment Amount based on either the Class Claims Data or the new information submitted, whichever results in a higher calculation.
2. The Treatment Amount calculation described in Paragraph D(1) will be done for *each denial* for which a Class member has a Treatment Day(s) number and/or a Revised Treatment Day(s) number, and/or an Allowed Amount(s) for Services Received number.
  3. The Class members’ Paragraph D(1) Treatment Amount(s) will then be added together to come up with a “Total Treatment Amount.” The sum of the Treatment Amounts for all Class members with Treatment Amounts will be the “Class’s Total Treatment Amount.”
  4. Each Class member with a Total Treatment Amount will receive his or her Total Treatment Amount from the Settlement Fund, unless the Class’s Total Treatment Amount exceeds 75% of the Settlement Fund. In the event that the Class’s Total Treatment Amount exceeds 75% of the Settlement Fund, each Class member with a Treatment Amount will receive his Pro Rata Share of 75% of the Settlement Fund, pursuant to the procedures discussed in Paragraph E.

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<sup>6</sup> The per diem value of the Allowed Amount(s) for Services Received will be calculated by dividing the Allowed Amount(s) for Services Received for the denial by the Treatment Day(s) number for the denial.

<sup>7</sup> The rate agreed to by Plaintiffs and Defendants based on Defendants’ claims and reimbursement data has been designated as “highly confidential” pursuant to the Protective Order. That information will not be made public. Nor will it be shared with Class members. To the extent the data is used, it will be used by the Settlement Administrator and Class Counsel, when necessary in limited circumstances, for the calculations discussed above.

5. After each Class member with a Treatment Amount receives a payment calculation in accordance with Paragraph D(4), the remaining portion of the Settlement Fund will be distributed to the Class with every Class member receiving an equal share. In other words, at a minimum, each Class member will receive an equal share of 25% of the Settlement Fund.
6. The Settlement distribution to each Class member with a Treatment Amount will be calculated by adding the amount the Class member will receive pursuant to Paragraph D(4) and the amount that the Class member will receive pursuant to Paragraph D(5).
7. The Settlement distribution to each Class member without a Treatment Amount will be the payment calculated pursuant to Paragraph D(5).
8. As discussed above, the objective of either paying individuals with Treatment Amounts their full Treatment Amounts or, at least paying those individuals their Pro Rata Share of 75% of the Settlement Fund, is to attempt to ensure that individuals who received and were billed for treatment are awarded compensation commensurate with what they likely would have received had their claim been approved by Defendants (i.e., their Allowed Amount(s) for Services Received).

E. Determination of Pro Rata Payments from the Services-Received Portion of the Settlement Fund

1. Calculate the Class's Total Treatment Amount. If the sum is greater than 75% of the Settlement Fund, then proceed to Paragraphs E(2)-(4) to calculate the Class member's Pro Rata Share.
2. Divide that Class member's Total Treatment Amount by the Class's Total Treatment Amount (the "Pro Rata Percentage").
3. Multiply the Settlement Fund by 75% to arrive at the "Treatment Amount Distribution Fund."
4. Multiply the Pro Rata Percentage by the Treatment Amount Distribution Fund to arrive at the Class member's "Pro Rata Share."

F. Payment

1. The Settlement Administrator shall issue a check (a "Settlement Check") to each Class member based on the methodology above.
2. Each Settlement Check issued pursuant to this Settlement shall be void if not negotiated within one hundred and twenty (120) calendar days after its date of issue ("Void Date"), and shall contain a legend to such effect. Settlement Checks that are not negotiated by the Void Date shall not be reissued unless otherwise directed by Class Counsel or ordered by the Court.

3. All payments that are unclaimed by Class members, including all returned Settlement Checks, all undeliverable Settlement Checks, and all Settlement Checks not cashed by the Void Date shall revert to the Settlement Fund.
- G. The Settlement Administrator may exercise reasonable judgment to resolve questions concerning the allocation of the Settlement Fund. The Settlement Administrator must consult with Class Counsel concerning this Plan of Allocation to address such questions as they arise.

## **Exhibit C**

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

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

Plaintiffs,

v.

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

Defendants.

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

Hon. Lucy H. Koh

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

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

Currently pending is an application for final approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and of the Plan of Allocation; also pending is Class



1 Counsel’s application for attorneys’ fees and reimbursement of expenses and for an incentive  
2 award to the class representatives (the “Fee Application”).

3 In connection with the Settlement and the applications currently before the Court, the  
4 Court makes the following findings:

5 A. On [REDACTED], 2018, the Court entered an Order Preliminarily Approving  
6 Settlement and Approving Notice of Proposed Settlement and Fairness Hearing (the “Preliminary  
7 Approval Order”), appointing a Settlement Administrator, and directing that notice be given to the  
8 members of the Class of the proposed Settlement and Fairness Hearing.

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

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

27 D. Pursuant to the Notice, [REDACTED] members of the Class chose to exclude  
28 themselves from the Settlement, and [REDACTED] objection(s) to the Settlement was/were filed

1 with the Court and/or made at the Fairness Hearing.

2 E. On \_\_\_\_\_, 2018, the Settlement Administrator filed with the Court proof  
3 of mailing of the Notice to all members of the Class.

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

6 G. In accordance with the Notice, a Fairness Hearing was held on \_\_\_\_\_,  
7 2018.

8 The Court, having entered the Preliminary Approval Order, having heard argument in  
9 support of the Settlement, the Plan of Allocation, and the Fee Application, having reviewed all of  
10 the evidence, objections, and other submissions presented with respect to the Settlement and  
11 related matters, and the record of all proceedings in this case, and having made the foregoing  
12 findings,

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

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

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

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

20 All participants or beneficiaries of a health benefit plan administered by either Blue Shield  
21 defendant and governed by ERISA whose request for coverage (whether pre-authorization,  
22 concurrent, post-service, or retrospective) was denied, in whole or in part, between January  
23 1, 2012 and the present, based upon the Magellan Medical Necessity Criteria Guidelines  
24 for any of the following levels of care: (i) Residential Treatment, Psychiatric; (ii)  
25 Residential Treatment, Substance Use Disorders, Rehabilitation; (iii) Intensive Outpatient  
26 Treatment, Psychiatric; or (iv) Intensive Outpatient Treatment, Substance Use Disorders,  
27 Rehabilitation. Excluded from the Class are Defendants, their parents, subsidiaries, and  
28 affiliates, their directors and officers and members of their immediate families; also

1 excluded are any federal, state, or local governmental entities, any judicial officers  
2 presiding over this action and the members of their immediate families, and judicial staff.

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

10 5. Members of the Class were given the opportunity to exclude themselves from the  
11 Class, and [REDACTED] individuals did so in a timely fashion. These individuals are identified on the  
12 papers filed with the Court on [REDACTED], ECF No. \_\_.

13 6. [REDACTED] other individuals submitted exclusion requests that were either untimely  
14 or not adequately completed, as reflected on the papers filed with the Court on [REDACTED],  
15 201\_\_, ECF No. \_\_. These individuals are not excluded from the Class. They are Class members  
16 and are bound by the terms of the Stipulation and this Final Order and Judgment.

17 7. Defendants have satisfied the requirements of CAFA.

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

26 9. The terms of the Stipulation, including all exhibits to the Stipulation and to this  
27 Final Order and Judgment, shall be forever binding on the Class.  
28

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

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

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

13           13.     Releases:

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

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

24           “Released Claims” means any claims, rights, and liabilities of any nature,  
25 including but not limited to, actions, claims, demands, causes of action,  
26 obligations, damages, debts, charges, attorneys’ fees, costs, arbitrations,  
27 forfeitures, judgments, indebtedness, liens and losses of any kind, source or  
28 character, whether arising out of federal or state law, whether known or

1 unknown, whether asserted or unasserted, arising on or before the Effective  
2 Date, whether in contract, express or implied, tort, at law or in equity or  
3 arising under or by virtue of any statute or regulation, by reason of, or  
4 arising out of Defendants' development, adoption, and application of the  
5 Challenged Guidelines during the Class Period (including "Unknown  
6 Claims" as defined herein). For avoidance of doubt, "Released Claims"  
7 include all claims by the Class members relating to the coverage decisions  
8 and denials reflected in Class Claims Data and all claims arising out of the  
9 facts alleged in the operative complaint.

10 C. Class members fully, finally, and forever release, relinquish, and discharge  
11 Defendants from, and shall forever be enjoined from prosecution of Defendants for, any  
12 and all "Unknown Claims," which the Stipulation defines as:

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

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

27 The Parties and Class members by operation of law shall be deemed to have  
28 acknowledged that the inclusion of "Unknown Claims" in the definition of

1 Released Claims was separately bargained for and was a key element of the  
2 Stipulation.

3 D. As set forth in the Stipulation, “Affiliated Entities” means (i) any direct or  
4 indirect parents, subsidiaries, or affiliates of Defendants; (ii) any employees, agents,  
5 officers or directors of Defendants or their direct or indirect parents, subsidiaries, or  
6 affiliates (all natural persons in the definition of Affiliated Entities are collectively referred  
7 to as “Affiliated Individuals”); (iii) any corporations in which any such Affiliated  
8 Individual is a shareholder in excess of 5%, employee, officer or director; (iv) any  
9 partnerships or any other unincorporated forms of business, or limited liability companies,  
10 in which any Defendant, or direct or indirect parents, subsidiaries, or affiliates of  
11 Defendants, or Affiliated Individual owns an interest in excess of 5%; (v) any employee  
12 health benefits plans in which any Plaintiff or Class member participates or participated;  
13 (vi) any fiduciary, recordkeeper, claims administrator or plan administrator of such  
14 employee health benefits plans; (vii) any trusts of which any Affiliated Entity is a grantor,  
15 trustee or beneficiary; and (viii) any independent review organization that reviewed any  
16 claims for benefits or requests for coverage for Defendants for any Class member.  
17 “Affiliated Entities” also means any corporations, business entities, partnerships or other  
18 unincorporated forms of business, or limited liability companies, that are controlled  
19 directly or indirectly by Defendants or Affiliated Individuals, or that are directly or  
20 indirectly under “common control” with Defendants or Affiliated Individuals as that term  
21 is defined under ERISA Section 4001(a)(14)(B), 29 U.S.C. § 1301(a)(14)(B).

22 E. Class members are barred and permanently enjoined from prosecuting any  
23 and all Released Claims.

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

26 14. Without affecting the finality of this Final Order and Judgment in any way, this  
27 Court will retain exclusive continuing jurisdiction over all Parties and Class members with regard  
28 to implementation of the Stipulation, disposition of the Settlement Amount, and enforcement and

1 administration of the Stipulation, including the release provisions thereof. The Court may order  
2 any appropriate legal or equitable remedy necessary to enforce the terms of this Judgment and/or  
3 the Settlement.

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

6 16. This is a final and appealable judgment.

7 SO ORDERED.

8 Dated: \_\_\_\_\_, 201\_\_.

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



## **Exhibit D**

1 MANATT, PHELPS & PHILLIPS, LLP  
GREGORY N. PIMSTONE (Bar No. 150203)  
2 Email: gpimstone@manatt.com  
11355 West Olympic Boulevard  
3 Los Angeles, CA 90064-1614  
Telephone: (310) 312-4000  
4 Facsimile: (310) 312-4224

5 MANATT, PHELPS & PHILLIPS, LLP  
JOSEPH E. LASKA (Bar No. 221055)  
6 Email: jlaska@manatt.com  
CARRI BECKER MAAS (Bar No. 245816)  
7 Email: cmaas@manatt.com  
One Embarcadero Center, 30th Floor  
8 San Francisco, CA 94111  
Telephone: (415) 291-7400  
9 Facsimile: (415) 291-7474

10 Attorneys for Defendants  
California Physicians' Service dba Blue Shield of California  
11 and Blue Shield of California Life & Health Insurance  
Company

12 [Additional counsel listed on next page]

13  
14 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

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

20 Plaintiffs,

21 vs.

22 CALIFORNIA PHYSICIANS' SERVICE  
d/b/a BLUE SHIELD OF CALIFORNIA;  
23 BLUE SHIELD OF CALIFORNIA LIFE &  
HEALTH INSURANCE COMPANY;  
24 HUMAN AFFAIRS INTERNATIONAL OF  
CALIFORNIA; and MAGELLAN HEALTH  
25 SERVICES OF CALIFORNIA, INC.-  
EMPLOYER SERVICES,

26 Defendants.  
27  
28

Case No. 16-cv-02848-LHK

Hon. Lucy H. Koh

**NOTICE OF PROPOSED CLASS ACTION  
SETTLEMENT UNDER 28 U.S.C. § 1715**

1 JENNIFER S. ROMANO (SBN 195953)  
jromano@crowell.com  
2 CROWELL & MORING LLP  
515 South Flower Street, 40th Floor  
3 Los Angeles, California 90071  
Telephone: (213) 622-4750  
4 Facsimile: (213) 622-2690

5 THOMAS F. KOEGEL (SBN 125852)  
tkoegel@crowell.com  
6 KRISTIN J. MADIGAN (SBN 233436)  
kmadigan@crowell.com  
7 CROWELL & MORING LLP  
3 Embarcadero Center, 26th Floor  
8 San Francisco, California 94111  
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9 Facsimile: (415) 986-2827

10 CHRISTOPHER FLYNN (admitted pro hac vice)  
cflynn@crowell.com  
11 APRIL N. ROSS (admitted pro hac vice)  
aross@crowell.com  
12 CROWELL & MORING LLP  
1001 Pennsylvania Avenue, N.W.  
13 Washington, D.C. 20004-2595  
Telephone: (202) 624-2500  
14 Facsimile: (202) 628-5116

15 Attorneys for Defendant  
Human Affairs International of California  
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1 PLEASE BE ADVISED of a proposed class action settlement involving Plaintiffs Charles  
 2 Des Roches, Sylvia Meyer, and Gayle Tamler Greco (“Plaintiffs”), on the one hand, and  
 3 California Physicians’ Service dba Blue Shield of California, Blue Shield of California Life &  
 4 Health Ins. Co., and Human Affairs International of California (“Defendants”), on the other hand.  
 5 As explained further below, Plaintiffs and Defendants (collectively, the “Parties”) have entered  
 6 into a settlement to resolve the class action claims asserted in *Des Roches, et al. v. California*  
 7 *Physicians’ Service dba Blue Shield of California, et al.*, No. 16-cv-02848-LHK (N.D. Cal.), and  
 8 Defendants are submitting this Notice under the requirements of the Class Action Fairness Act of  
 9 2005 (“CAFA”). *See* 28 U.S.C. § 1715.

10 **Compliance with 28 U.S.C. § 1715(b)**

11 28 U.S.C. Section 1715(b) lists eight items that must be provided to the appropriate state  
 12 and federal officials in connection with any proposed class action settlement. Each of these items  
 13 is addressed below.

- 14 1. **28 U.S.C. § 1715(b)(1): Complaint.** Copies of the Complaint and First Amended  
 15 Complaint are attached here as **Exhibits 1 and 2**.
- 16 2. **28 U.S.C. § 1715(b)(2): Notice of Any Scheduled Judicial Hearing.** Plaintiffs’  
 17 unopposed motion for preliminary approval of class action settlement is set to be  
 18 heard by the Court on \_\_\_\_\_ at \_\_\_\_\_ a.m. in Courtroom 8 of the above-entitled  
 19 court, located at 280 South 1st Street, San Jose, CA 95113.
- 20 3. **28 U.S.C. § 1715(b)(3): Proposed Notification to Class Members.** The  
 21 proposed notice to be provided to class members is attached as Exhibit B to the  
 22 Settlement Agreement, which is attached here as **Exhibit 3**.
- 23 4. **28 U.S.C. § 1715(b)(4): Proposed Class Action Settlement.** A copy of the  
 24 Settlement Agreement is attached here as **Exhibit 3**.
- 25 5. **28 U.S.C. § 1715(b)(5): Settlement or Other Agreement Between Defendants’**  
 26 **Counsel and Class Counsel.** Other than the Settlement Agreement attached here  
 27 as **Exhibit 3**, there are no other settlements or other agreements between class  
 28 counsel and counsel for Defendants.

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6. **28 U.S.C. § 1715(b)(6): Final Judgment.** There has been no final judgment or notice of dismissal.

7. **28 U.S.C. § 1715(b)(7)(A): Identification or Reasonable Estimate of Class Members By State.** Based upon the information available to Defendants, there are approximately 1,373 class members, and to the best of Defendants’ knowledge those class members reside in the state of California. It is not feasible for Defendants to provide the class members’ names due to federal and state law protecting Defendants’ members’ privacy rights. Defendants estimate that the proportionate share of the claims of California class members is 100%.

8. **28 U.S.C. § 1715(b)(8): Judicial Opinions Related to the Settlement.** A motion for preliminary approval of the settlement was filed on January 15, 2018, with a hearing on the motion scheduled for [REDACTED]. As of the mailing of this notice, no Order has been issued on the motion.

**Timeliness of this Notice**

Under 28 U.S.C. Section 1715(b), Defendants must serve this notice “not later than 10 days after a proposed settlement of a class action is filed in court.” 28 U.S.C. § 1715(b). Defendants have complied with this deadline because the proposed settlement was filed in court on January 15, 2018, and this notice is being provided on January 25, 2018.

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Please contact us if you require any additional materials or need any further information.

Dated: January 25, 2018

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ **DRAFT** \_\_\_\_\_

Joseph E. Laska  
Attorneys for Defendants  
CALIFORNIA PHYSICIANS' SERVICE dba  
BLUE SHIELD OF CALIFORNIA AND BLUE  
SHIELD OF CALIFORNIA LIFE & HEALTH  
INSURANCE COMPANY

Dated: January 25, 2018

CROWELL & MORING, LLP

By: /s/ **DRAFT** \_\_\_\_\_

Jennifer Romano  
Attorneys for Defendants  
HUMAN AFFAIRS INTERNATIONAL OF  
CALIFORNIA

## **EXHIBIT B**



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

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

Plaintiffs,

v.

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

Defendants.

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

Hon. Lucy H. Koh

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

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

WHEREAS, Plaintiffs have filed an unopposed motion for an order that, *inter alia*, (1) preliminarily approves the Settlement on the terms set forth in the Stipulation; (2) appoints the Settlement Administrator; (3) directs the Settlement Administrator to notify the members of the

1 Class per the approved form of notice; (4) establishes deadlines for members of the Class to opt  
2 out of or object to the Settlement and/or to object to disclosure of information protected by 42  
3 C.F.R. Part 2; and (5) schedules a hearing to determine whether the Settlement should be finally  
4 approved as fair, reasonable and adequate, and whether an order finally approving the Stipulation  
5 should be entered;

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

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

15 NOW, THEREFORE, IT IS ORDERED THAT:

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

18 2. The Class includes all persons who meet the following definition, as provided in  
19 the Court’s Order Granting Motion for Class Certification dated June 15, 2017 (ECF No 123 at  
20 39):

21 All participants or beneficiaries of a health benefit plan administered by either Blue  
22 Shield defendant and governed by ERISA whose request for coverage (whether pre-  
23 authorization, concurrent, post-service, or retrospective) was denied, in whole or in  
24 part, between January 1, 2012 and the present, based upon the Magellan Medical  
25 Necessity Criteria Guidelines for any of the following levels of care: (i) Residential  
26 Treatment, Psychiatric; (ii) Residential Treatment, Substance Use Disorders,  
27 Rehabilitation; (iii) Intensive Outpatient Treatment, Psychiatric; or (iv) Intensive



1           6.       The Court finds that Class Counsel and the Settlement Administrator will need  
2 personally identifiable information from all Class members, including their names and last-known  
3 mailing addresses, to give notice to the Class members, as well as the underlying insurance claims  
4 data for each Class member (the Class Claims Data, as defined in the Stipulation) to compute and  
5 verify the amount to which each Class member is entitled under the Plan of Allocation. The  
6 Court further finds that, apart from Defendants' provision of such information to Class Counsel  
7 and the Settlement Administrator, there are no other available or effective methods for obtaining  
8 the information to verify a Class member's claims and amounts payable under the Plan of  
9 Allocation, and the public interest in verifying these claims and amounts outweighs potential  
10 injury to the Class member, physician-patient relationship, and treatment services. Therefore, the  
11 Court authorizes the release to Class Counsel and the Settlement Administrator of the names and  
12 last-known mailing addresses of any Class members for the limited purposes of providing notice  
13 to Class members and an opportunity to object under 42 C.F.R. § 2.64 to disclosure of data  
14 relating to the member's request for coverage for substance use treatment to Class Counsel and  
15 the Settlement Administrator. Class members will have adequate notice and an opportunity to  
16 object, pursuant to 42 C.F.R. § 2.64, to disclosure of data relating to the member's request for  
17 coverage for substance use treatment to Class Counsel and the Settlement Administrator. If any  
18 such Class member objects, the member's data relating to his or her request for coverage for  
19 treatment will not be disclosed to Class Counsel and the Settlement Administrator, but he or she  
20 will remain in the Class (unless such objection is accompanied by a valid opt-out request). The  
21 Class List and Class Claims Data will only be disclosed to Class Counsel and the Settlement  
22 Administrator, to protect the patient, the physician-patient relationship, and the treatment  
23 services.

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

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

5           9.       Within forty (40) days after the date on which the Notice is mailed or otherwise  
6 provided, the parties shall jointly move this Court for an Order authorizing Defendants to disclose  
7 the Class Claims Data (except with respect to any Class member objecting to disclosure of such  
8 information, as described below) to Class Counsel and the Settlement Administrator pursuant to  
9 42 C.F.R. § 2.64.

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

20          11.       Within five (5) days of the Court Order granting the parties' joint motion seeking  
21 authorization to disclose Class Claims Data pursuant to 42 C.F.R. § 2.64, Defendants shall  
22 produce the Class Claims Data (except with respect to any Class member objecting to disclosure  
23 of such information) to Class Counsel and the Settlement Administrator.

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

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

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

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

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

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

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

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

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

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

26 20. Pending the final determination of whether the Settlement should be approved, all  
27 proceedings and discovery in the Action are stayed, except as specifically provided for in this  
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1 Order. If the Effective Date does not occur, or if the Stipulation is otherwise terminated and  
 2 canceled pursuant to its terms, the Parties shall be deemed to have reverted to their respective  
 3 statuses as of the date and time immediately prior to the execution of the Stipulation.

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

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

22  
23 SO ORDERED.

24  
25 Dated: \_\_\_\_\_, 2018

26 \_\_\_\_\_  
 27 Honorable Lucy H. Koh  
 28 United States District Judge  
 Northern District of California

ORDER PRELIMINARILY APPROVING  
 SETTLEMENT  
 CASE NO. 5:16-CV-2848 (LHK)