

HON. RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

K.M., by and through his parents and  
guardians, L.M. and E.M., individually, on  
behalf of GARRIGAN LYMAN GROUP  
HEALTH BENEFIT PLAN, and B.S., by and  
through his parents and guardians, E.S. and  
R.S., individually, on behalf of THE  
WESTERN CLEARING CORPORATION  
HEALTH BENEFIT PLAN, on behalf of  
similarly situated individuals and plans, and  
DISABILITY RIGHTS WASHINGTON,

Plaintiffs,

v.

REGENCE BLUESHIELD; and  
CAMBIA HEALTH SOLUTIONS, INC.,  
f/k/a THE REGENCE GROUP,

Defendants.

NO. C13-1214-RAJ

MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENT  
AGREEMENT

NOTED FOR CONSIDERATION:  
**October 24, 2014**

## I. INTRODUCTION

After years of litigation – including a successful trip to the Washington State Supreme Court<sup>1</sup> – and months of protracted (and at times contentious) negotiations, the plaintiffs have reached a global agreement with Regence BlueShield that will ensure access to neurodevelopmental (speech, occupational and physical) therapies (NDT) and Applied Behavior Analysis (ABA) for tens of thousands of Washington insureds.<sup>2</sup> Like the pending agreement in *R.H. v. Premera*, Cause No. C13-97RAJ, this proposed Settlement Agreement – now buttressed by the Washington State Supreme Court – fundamentally changes the insurance landscape for all Regence’s Washington insureds with developmental disabilities and autism. *See Appendix 1, “Agreement to Settle Claims,”* attached hereto (“Settlement Agreement”).

The proposed Settlement Agreement would resolve not only this case, but two others as well: *O.S.T. v. Regence BlueShield*, No. 11-2-34187-9 SEA, King Cty. Sup. Ct., J. Erlick; and *J.T. v. Regence BlueShield*, No. C12-00090RAJ. Under the proposed Agreement, broad prospective relief is applied across the board to all of Regence’s insured policies, ERISA and non-ERISA. In addition, Regence will pay \$6,000,000 into a settlement fund to reimburse class members, in addition to paying fees, costs, incentive awards and costs of administration.

If approved, the Agreement would expand and align Regence’s coverage obligations with the two other large carriers in Washington (*Premera* and Group

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<sup>1</sup> On October 9, 2014, the Washington State Supreme Court unanimously ruled in favor of plaintiffs and the class in *O.S.T. v. Regence*, the companion state court case to this litigation. Spoonemore Decl., *Exh. A*, pp. 1-2 (“[N]eurodevelopmental therapies may constitute ‘mental health services’ if the therapies are medically necessary to treat a mental disorder identified in the [DSM]. Therefore, the blanket exclusions of neurodevelopmental therapies in the plaintiffs’ health contracts are void and unenforceable.”).

<sup>2</sup> Regence BlueShield is the largest insurer in the State of Washington, annually covering over three million lives on its insured ERISA-governed plans alone. Dkt. No. 9-6, p. 223 (*Exh. S* to Hamburger Decl.).

1 Health), resulting in a historic, market-wide expansion of access to medically necessary  
 2 therapies in Washington State for individuals with developmental disabilities. *See Z.D.*  
 3 *v. Group Health*, 2012 U.S. Dist. LEXIS 76503, \*28-45 (W.D. Wa., June 1, 2012); *R.H. v.*  
 4 *Premiera Blue Cross*, 2014 U.S. Dist. LEXIS 108503, \*5-10 (W.D. Wa., Aug. 6, 2014). *See*  
 5 *also* Spoonemore Decl., *Exh. B* (*Seattle Times* noting need for this market shift).

6 Specifically, as in *R.H. v. Premiera*, the proposed Agreement here provides  
 7 coverage for medically necessary speech, occupational and physical therapies and  
 8 Applied Behavior Analysis therapy to treat mental health conditions. *App. 1*, ¶ 6.1  
 9 (“NDT Coverage Modifications and Agreements”), ¶ 6.2 (“ABA Coverage  
 10 Modifications and Agreements”). Among its many prohibitions, the Agreement  
 11 prohibits the application of exclusions and age limits on coverage. *Id.*, ¶¶ 6.1.3, 6.2.2.1.  
 12 The Agreement prohibits the imposition of monetary caps or visit limits on these  
 13 therapies. *Id.*, ¶¶ 6.1.4, 6.2.2.2. The Agreement further codifies ABA coverage under  
 14 agreed criteria developed with the University of Washington and Children’s Hospital,  
 15 so that there is access to proven and effective ABA therapy for Regence’s insureds. *Id.*  
 16 ¶6.2.1 and *App. A*. This prospective relief alone benefits tens of thousands of  
 17 Washington Regence insureds, both now and well into the future.

18 In addition to the broad prospective relief, the Settlement Agreement requires  
 19 Regence to place \$6,000,000 into a settlement fund. Unlike Premiera, which did pay for  
 20 some ABA therapy, Regence excluded it altogether. As a result, the cash fund is  
 21 designed to pay for past claims related to both NDT and ABA therapy, in addition to  
 22 attorney fees, costs, incentive awards and costs of administration.

23 Accordingly, plaintiffs Disability Rights Washington, B.S. and K.M. move for an  
 24 Order preliminarily approving the global Settlement Agreement. Specifically,  
 25 pursuant to FRCP 23(e), they move the Court to:

26 (a) preliminarily approve the Settlement Agreement;

- (b) authorize the mailing of notice to K.M. NDT class members and K.M. ABA class members; and
- (c) establish a final settlement approval hearing and process.

## II. FACTS<sup>3</sup>

Regence was originally sued for violating the Washington State Parity Act in a case filed on January 19, 2012, *J.T. v. Regence Blue Shield*, No. 12-00090RAJ. The present case was filed on July 11, 2013 on behalf of K.M. and B.S., children with autism/ASD, and on behalf of similarly situated individuals, after the Court denied B.S.'s request to join as a class representative in *J.T.* Dkt. No. 51, p. 2, fn. 3; Dkt. No. 1.

In this case, plaintiffs alleged that Regence failed to comply with both Washington's Mental Health Parity Act and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. Dkt. No. 1, ¶¶10-14. Plaintiffs asserted violations of ERISA, including *inter alia*, breach of fiduciary duties, recovery of benefits, clarification of rights under the terms of the plan, and enforcement of plan terms. Dkt. No. 13, ¶¶36-49.

Along with the Complaint, the plaintiffs filed for class certification and entry of a preliminary injunction to bar Regence from applying its NDT age exclusion to plaintiffs and the putative class. Dkt. No. 4; Dkt. No. 17. Plaintiff Disability Rights Washington (DRW), the designated protection and advocacy origination in Washington State, was added as a plaintiff in an amended Complaint filed on July 18, 2013. Dkt. No. 13. After the parties agreed to a briefing schedule on the motions, *see* Dkt. No. 15, a hearing was held on January 22, 2014. On January 24, 2014, the Court granted plaintiff's motions, (1) certifying a prospective neurodevelopmental subclass related to Regence's age exclusion for neurodevelopmental therapy to treat mental

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<sup>3</sup> These facts incorporate by reference the more detailed factual discussion contained in this Court's Order dated January 24, 2014 at Dkt. No. 51, pp. 2-5.

1 health conditions, and (2) entering a preliminary injunction barring Regence from  
2 excluding coverage of mental health services based on its age exclusion. Dkt. No. 51.  
3 Regence appealed this Order on February 13, 2014. Dkt. No. 58.

4 After the class was certified and an injunction entered, the parties concluded  
5 that a global settlement in both *O.S.T.* and this case might be possible. Class counsel  
6 and Regence entered into a detailed agreement to negotiate on February 19, 2014,  
7 which set forth the principles upon which the parties would discuss settlement.  
8 Spoonemore Decl., *Exh. N*. As part of that agreement, the parties agreed to exchange  
9 damage reports and to engage in targeted discovery in order to create an environment  
10 where informed settlement could occur. *Id.* The parties jointly moved for a stay of this  
11 case, *O.S.T.* and *J.T.*, and proceeded to engage in the discovery and expert-related  
12 disclosures required by the agreement to negotiate. Dkt. No. 63.

13 Upon completion of the discovery and depositions, the parties engaged in  
14 mediation with Tom Harris on June 4, 2014, but a settlement agreement could not be  
15 reached. However, Tom Harris recommended that the process continue, so extensions  
16 of the stays were requested from the courts. Dkt. No. 68. An additional session was  
17 held on July 31, 2014, after the parties exchanged additional material and met face-to-  
18 face. The July 31 session was generally successful, with many of the key deal points  
19 resolved. Additional progress was made the next day, when the parties again meet  
20 face-to-face. By August 14, the parties were confident that the case could settle.  
21 Codifying the understandings into an actual agreement, however, proved difficult.  
22 Protracted exchanges occurred in an attempt to agree on language in the final  
23 agreement. After more than a month of discussions and drafts, the parties finally  
24 reached agreement on the language of the proposed Settlement Agreement. That  
25 Agreement is filed as *Appendix 1* to this Motion.  
26

### III. EVIDENCE RELIED UPON

Plaintiffs rely upon the Declaration of Richard E. Spoonemore in Support of Motion for Preliminary Approval of Settlement Agreement as well as the records and pleadings in this case. While Regence does not oppose this motion, it does not agree with the facts or legal conclusions alleged herein.

### IV. OVERVIEW OF THE SETTLEMENT AGREEMENT

This “Overview” section provides a summary of the key terms of the proposed Settlement Agreement. The “Law and Argument” section of this brief then addresses why the Court should preliminarily approve the Agreement and authorize notices to be sent.

#### **A. Regence Will Provide Coverage of Neurodevelopmental Therapies to Treat Mental Health Conditions Without Age Exclusions, Treatment Limits or Caps.**

Under the terms of the Settlement Agreement, Regence will affirmatively and immediately provide coverage of neurodevelopmental therapies to treat individuals with a DSM mental health condition without exclusions, age limitations, or treatment limits. *App. 1*, ¶¶6.1.1, 6.1.2, 6.1.3, 6.1.4. Any and all blanket exclusions must be eliminated. *Id.*, ¶6.1.2 (“Blanket exclusions for services, therapy, and supplies related to developmental delay or neurodevelopmental disabilities that are Mental Health Conditions, or other similar exclusions will not be enforced or used to exclude or limit coverage under Defendants’ health insurance plans.”). Regence must change its policies to reflect these new coverage obligations. *Id.*, ¶¶ 6.1.2, 6.1.3, 6.1.4 (“Such exclusions shall be removed from Defendants’ certificates of insurance.”)

#### **B. Regence Will Provide Coverage for ABA Under Agreed Clinical Criteria.**

Regence also agrees to provide ABA coverage without age or treatment limitations, or any other exclusion that categorically denies ABA coverage. *App. 1*, ¶¶6.2.1, 6.2.2, 6.2.2.1, 6.2.2.2, 6.2.2.3, 6.2.2.4, 6.2.2.5, 6.2.2.6, 6.2.2.7. The Settlement Agreement specifically prevents Regence from denying coverage for any of the reasons

historically raised by other insurers. *Id.* Regence must affirmatively provide coverage for ABA under the agreed ABA coverage criteria, creating a clear “path to coverage” for Regence insureds. *Id.*, ¶ 6.2.1 and *App. A*. The ABA coverage criteria follow a “best practices” model for the delivery of ABA informed by experts from the University of Washington’s Autism Clinic and the Seattle Children’s Autism Center. Spoonemore Decl., ¶4.

**C. Agreement Provides \$6,000,000 for Retrospective Relief.**

The Settlement Agreement provides for a \$6,000,000 fund from which payments will be made for attorney fees, costs, claims administration costs, incentive awards, and class members’ claims for uncovered NDT and ABA services. *App. 1*, ¶ 7.1.

All class members will be eligible for payment from the settlement fund upon submission of a claim form that verifies: (1) the class member’s DSM diagnosis and date of diagnosis; (2) the date(s) of NDT or ABA treatment for that diagnosis (month/year); (3) the provider(s) of the treatment; and (4) the unreimbursed charges or debt incurred with that treatment. *App. 1*, ¶¶ 7.4, 7.4.2.1. *See also App. 2* (proposed Class Notice); *App. 3* (proposed Claims Form, Claim Form Matrix, Claim Form Instructions, and Opt-Out Form). Various forms of documentation are accepted to support the approximate dates of service and the amount of unreimbursed charges or debt incurred. *App. 1*, ¶¶ 7.4.2.2, 7.4.2.2.1, 7.4.2.2.2.

A Claims Processor – Seattle-based Nickerson & Associates – will review the claims to confirm that the four requisite items are on the Claim Form. *App. 1*, ¶ 7.4.3. It will also confirm with Regence that the class member was insured by Regence at the time the services were received and that the claimed sums are not duplicative of claims previously paid by Regence. *Id.* The Claims Processor must provide a class member who has a deficient claim form an opportunity to cure any problems, and class counsel is empowered to assist the class member in making any claim. *App. 1*, ¶¶ 7.4.3.1,

7.4.3.2. Any dispute concerning whether a claim should be granted or denied is subject to binding arbitration before (ret.) Judge Steve Scott. *Id.*, ¶¶7.4.5, 13.1.

**D. *Pro Rata* Reduction in the Event of Insufficient Funds, Subject to a Threshold Payment Level for Class Members to Ensure Sufficient Compensation.**

Class counsel anticipates that the settlement amount will be sufficient to pay all claims at 100%, even after payment of attorney fees, costs, incentive awards and costs of administration. Spoonemore Decl., ¶6. However, if insufficient funds remain to pay all claimants at 100% after fees, costs, incentive awards and expenses, then all class members will receive a *pro rata* distribution of their approved claimed amount. *App. 1*, ¶7.4.8. However, class members are guaranteed a minimum payment amount: the Agreement will automatically terminate if the *pro rata* deduction exceeds 45.14%:

*Threshold Payment Level.* This Agreement shall terminate if a *pro rata* deduction under Section 7.4.8 exceeds 45.14% of Class Members' total approved claims.

*App. 1*, ¶9.6.

This threshold level was set to approximate a class member's net recovery in the event of an individual suit for damages.<sup>4</sup> As the Agreement explains:

The 45.14% figure represents an imputed deduction of 15.6% to approximate the effect of copays/coinsurance/ deductibles that likely would have applied to the claims, plus an imputed deduction of 35% to approximate the amount that a Class Member would be required to pay for continent legal representation and costs in an individual legal case.

*Id.* Class counsel is also "putting money where its mouth is" by going at risk for payment of the costs of administration incurred by the Claim Processor in the event of

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<sup>4</sup> Under the Settlement Agreement, claims submitted by class members are not subject to a deduction as a result of copays, coinsurance or deductibles. If, as class counsel anticipates, class members are paid at 100% of their claims, then the class members are actually receiving *significantly more money than if the claim had been paid under the Regence contracts* which uniformly impose copays, coinsurance and/or deductibles to claims.

1 termination under this section:

2 If the Agreement is terminated solely by this clause, then the  
3 Classes shall be responsible for the payment of the costs of  
administration incurred by the Claims Processor.

4 *Id.* Finally, the provision permits the parties to cure any potential termination by  
5 ensuring that sufficient funds exist to meet the threshold payment level. This could  
6 include, for example, a lowering of attorney fees requested by class counsel or an  
7 additional payment by Regence (or both) to ensure that the minimum is reached:

8 The Parties, individually or collectively, may cure termination  
9 under this section by taking steps to ensure that Class Members  
receive the threshold payment level under this subsection.

10 *Id.*

11 **E. Cy Pres Award**

12 If funds remain after the payment of claims, attorney fees, costs, incentive  
13 awards and costs of administration, then those funds shall be attributed 75% to this  
14 litigation and 25% to the O.S.T. case in state court. (This allocation is driven by the  
15 Regence ERISA insured population to the non-ERISA population.) Spoonemore Decl.,  
16 *Exh. C* (*Exh. B* to Fox Decl., p. 1) (Regence non-ERISA population); Dkt. No. 9-6, p. 223  
17 (*Exh. S* to Hamburger Decl.) (Regence ERISA population). With respect to the funds  
18 allocated to this case, any residual funds shall be distributed to organizations to assist  
19 families with a family member with developmental conditions to provide health care  
20 and access health coverage. *App. 1*, ¶ 7.4.6.3. The parties will attempt to reach  
21 agreement on *cy pres* recipient(s) to present to the Court. *Id.* If no agreement can be  
22 reached, then class counsel will submit a proposal to the Court for distribution of the *cy*  
23 *pres* funds. *Id.* Regence may object and/or provide an alternative proposal to the  
24 Court. *Id.* The Court will have the final authority to distribute the *cy pres* funds. *Id.*

**F. Attorney Fees, Costs and Incentive Awards**

Class counsel is permitted to apply for attorney fees under the common fund doctrine/common benefit doctrine in an amount up to but not exceeding 35% of the settlement amount, or \$2,100,000. *App. 1*, ¶ 11.1. Litigation costs and claims processing costs will also be paid from the settlement amount. *Id.*, ¶¶ 11.2, 11.4. Finally, up to, but not exceeding, \$25,000 in incentive awards for each class representative family and DRW (\$175,000 total to all class representatives) may be requested from the settlement amount. *Id.*, ¶ 11.3. All of these disbursements are subject to Court review and approval. *Id.*, ¶¶ 11.1, 11.2, 11.3.

**V. LAW AND ARGUMENT**

**A. Legal Standards for the Approval of a Class Action Settlement Agreement**

Compromise in complex litigation is encouraged and favored by public policy. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Federal Rule of Civil Procedure 23 governs the settlement of certified class actions and provides that “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” FRCP 23(e). The Court must consider the settlement as a whole, “rather than the individual component parts,” to determine whether it is fair and reasonable. *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“The settlement must stand or fall in its entirety”). Where, as here, the settlement agreement includes broad prospective relief, the Court must include consideration of that relief in its decision. *See, e.g., Laguna v. Coverall N. Am., Inc.*, 2014 U.S. App. LEXIS 10259, 12 (9th Cir., June 3, 2014); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (in both cases, the Ninth Circuit affirmed approval of a settlement which provided broad prospective relief in addition to a cash settlement fund).

**B. The Agreement Is Inherently Fair and Reasonable.**

The touchstone of approval is fairness to the class:

Although Rule 23(e) is silent respecting the standard by which a proposed settlement is to be evaluated, the “universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable.”

*Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Under this umbrella, courts have adopted a variety of tests to determine whether a settlement meets this standard.

The district court’s ultimate determination will necessarily involve a balancing of several factors which may include, among others, some or all of the following: the strength of plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982). *See also Staton*, 327 F.3d at 959. Some of these factors, such as the reaction of class members, can only be gauged after preliminary approval and notice is provided to class members. Especially at this preliminary phase, the question is not “whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.” *Hanlon*, 150 F.3d at 1027.

**1. The Strength of Plaintiffs’ Case**

Despite the initial risks in this case, in light of the recent decision by the Washington State Supreme Court, plaintiffs believe that this case is very strong and that they would have prevailed at trial. Indeed, class counsel has had a string of successful decisions against other carriers on the interpretation of the Parity Act; *e.g.*, the Act mandated coverage for therapies to treat mental health conditions when the treatment was medically necessary. In short, the claims for prospective relief were

1 very strong. However, the Agreement reflects this strength: the Agreement provides  
 2 expansive prospective relief and class counsel projects that the settlement amount is  
 3 large enough to pay claimants at 100%. Spoonemore Decl., ¶6. In addition, any  
 4 payment would have likely been delayed for years because Regence had already  
 5 appealed key parts to this case to the Ninth Circuit.

## 6 **2. Future Expense and Duration of Litigation**

7 As many courts in Washington have noted, class counsel's cases under the  
 8 Mental Health Parity Act raise significant issues of law which have far-reaching public  
 9 policy implications. *See, e.g.,* Spoonemore Decl., *Exh. D* (Supreme Court  
 10 Commissioner's Ruling Granting Motions to Transfer and Denying Other Motions,  
 11 dated 7/8/13), p. 4 ("[T]hese cases are potentially of broad public import, and ... they  
 12 raise an urgent issue justifying prompt and ultimate determination."). Moreover,  
 13 Regence has appealed this Court's prior orders in this case. Without a settlement,  
 14 extensive appellate practice was guaranteed.

## 15 **3. The Settlement Was the Result of Arm's-Length Negotiations.**

16 The Agreement was only reached after a contentious mediation process that  
 17 spanned more than 7 months. It required two separate formal mediation sessions with  
 18 Tom Harris, and a number of face-to-face meetings between counsel, before the  
 19 Agreement was reached. Participation of an independent mediator in settlement  
 20 negotiations "virtually insures that the negotiations were conducted at arm's length  
 21 and without collusion between the parties." *Bert v. AK Steel Corp.*, 2008 WL 4693747, \*2  
 22 (S.D. Ohio, Oct. 23, 2008). *See also In re Toys "R" Us Antitrust Lit.*, 191 F.R.D. 347, 352  
 23 (E.D. N.Y. 2000).  
 24  
 25  
 26

**4. There Was Sufficient Discovery.**

This case settled only after extensive motions practice in the state court case *O.S.T. v. Regence*, an argument before the Washington State Supreme Court, and after a class was certified and a number of key dispositive issues had been decided in this case. Thousands of documents were produced, and many depositions took place in *O.S.T.*, *J.T.* and this case. The parties informally exchanged and evaluated both sides' expert analyses of damages under the procedure set forth in the agreement to negotiate. Spoonemore Decl., *Exh. N*. The depth of discovery was evident in material filed in support of connection with the previous motions before this court. Discovery was more than "sufficient" – it was exhaustive.

**5. The Proponents of the Settlement Are Experienced in Similar Litigation and Recommend Settlement.**

Class counsel is very experienced in similar class action litigation and strongly recommends that the Settlement Agreement be approved. Spoonemore Decl., ¶2.

**6. The Settlement Terms and Conditions Are Fair and Reasonable.**

*a. The Prospective Relief Is Reasonable.*

Under any standard, the proposed settlement is fair and adequate with respect to prospective class relief. All of Regence's insureds with neurodevelopmental conditions will have full access to medically necessary NDT and ABA without the imposition of exclusions, visit caps or other limitations. The ABA Coverage Criteria provides a level of ABA that has scientific backing, given that it was developed in conjunction with the leading authorities on ABA in the State of Washington.<sup>5</sup> It is not an overstatement to say that, for many children, this access will be life-changing.

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<sup>5</sup> Similar coverage of ABA has already been successfully implemented by the State of Washington as a result of the *D.F.* settlement, and by Group Health as a result of the *D.M.* settlement.

**b. The Retrospective Payment Is Reasonable.**

On its face, the retrospective payment provision in the Settlement Agreement is fair, adequate and reasonable. If class members do not receive a threshold payment level of 54.86% of their gross claims, then the Agreement automatically terminates (unless class counsel and/or Regence take steps to ensure that class members receive the threshold). The threshold is more than fair to class members – it fairly approximates the net payment that a class member would recover if the claim was subject to cost sharing (averaging 15.6% of the gross claim) and a 35% contingent fee in private litigation. Class members are therefore assured a recovery that is at least more than half of their gross claim.

But it is likely that class members will get much more than the minimum. Class counsel believes that the \$6,000,000 settlement amount is adequate and sufficient to pay the thousands of class members without any *pro rata* deduction. If that is the case, then class members would actually get more than their Regence contracts permit because the Settlement Agreement does not impose any copayment, coinsurance or deductibles on the payment of claims. Spoonemore Decl., ¶6.

Class counsel have a sound evidentiary basis for their projections. Based upon confidential enrollment data provided by Regence, class counsel's expert health economist, Frank G. Fox, Ph.D., developed utilization models for both NDT and ABA. See Spoonemore Decl., Exhs. E, F and O. (Regence also created utilization models. Spoonemore Decl., ¶6, a, ii.) The parties differed on the estimated past utilization of NDT and ABA by class members: both actual utilization where the claims were not submitted to Regence, and the utilization that would have occurred had Regence been properly covering NDT and ABA during the class period. Class counsel relied upon data based upon the Medical Expenditure Panel Survey (MEPS) to determine the likely utilization of NDT by class members in the past, and the amount that Regence would

1 have spent but for its NDT and ABA exclusions. Regence used MEPS as well, but its  
 2 expert drew very different conclusions. Both sides, however, assumed that care would  
 3 be suppressed due to the lack of insurance coverage (the “insurance effect”), and the  
 4 amount of those assumptions further impacted the total anticipated amount of  
 5 utilization.<sup>6</sup>

6 Although Dr. Fox’s model predicts costs that are greater than the final  
 7 Settlement Fund, class counsel anticipates that the claims can be paid 100%. Dr. Fox’s  
 8 analysis modeled the entire universe of unpaid claims, not the class members who  
 9 would make a claim. *See Chesbro v. Best Buy Stores, L.P.*, 2014 U.S. Dist. LEXIS 25404  
 10 (W.D. Wash. 2014) (participation of only 8.5% of class members is “within the normal  
 11 range for participants in class actions.”). Dr. Fox’s analysis does not exclude claims  
 12 that were paid by secondary insurance, Medicaid or other third-party payors such as  
 13 the state’s birth-to-three program. He did not include cost-sharing deductions. The  
 14 detailed basis for class counsel’s opinion that the settlement fund will likely result in  
 15 full payment to claimants is contained in the Spoonemore Declaration, ¶6.

16 *c. The Settlement Agreement Provisions Governing Attorney*  
 17 *Fees and Costs Are Reasonable.*

18 The benchmark percentage in the Ninth Circuit is 25% of the common fund,  
 19 with the opportunity to adjust the percentage upwards or downwards depending  
 20 upon special circumstances (including exceptional results, the level of risk involved in  
 21 the litigation, any additional common benefits obtained in the Settlement Agreement  
 22 beyond the cash fund, and a showing that the fee award is similar to standard fees in  
 23 other similar litigation). *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir.  
 24 2002); *accord*, MANUAL FOR COMPLEX LITIGATION (4<sup>TH</sup>), § 14.121 (“[T]he factor given the

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25 <sup>6</sup> Dr. Fox’s reports provide an analysis of the potential number of claimants. Spoonemore Decl., *Exh. E*,  
 26 p. 6, *Exh. F*, p. 6, *Exh. O*, P. 2.

1 greatest emphasis is the size of the fund created, because ‘a common fund is itself the  
2 measure of success ... [and] represents the benchmark from which a reasonable fee will  
3 be awarded.’”); NEWBERG ON CLASS ACTIONS, § 14.6 (same).

4 Courts typically award fees in the range of 20% to 50% of the common benefit  
5 created by counsel’s efforts. NEWBERG ON CLASS ACTIONS, § 14.6. *See also* MANUAL FOR  
6 COMPLEX LITIGATION, § 24.121 (“Attorney fees awarded under the percentage method are  
7 often between 25% and 30% of the fund.”). Indeed, 20%-30 % is the “usual” range under  
8 Ninth Circuit authority. *Vizcaino*, 290 F.3d at 1047-48. But the “usual” range is not a cap  
9 or ceiling on fees. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1310  
10 (9th Cir. 1990) (“The benchmark percentage should be adjusted ... when special  
11 circumstances indicate that the percentage recovery would be either too small or too large  
12 ....”). When supported by “the complexity of the issues and the risks,” as well as  
13 exceptional results, a court can – and should – depart from that range. *See, e.g., In re Pacific*  
14 *Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (approving 33⅓% award); *In re*  
15 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming 33⅓% award).

16 The first step in computing a fee under the common fund doctrine is to calculate  
17 the total value of the benefit conferred upon the class. *Vizcaino*, 142 F. Supp. 2d 1299,  
18 1302 (“[U]nder federal case law, the ‘benchmark’ percentage of recovery fee is 25% of  
19 the recovery obtained, *including future benefits*, with 20 to 30% as the usual range of  
20 common fund fees.”); *Vizcaino*, 290 F.3d at 1049 (“[N]onmonetary benefits conferred by  
21 the litigation are a relevant circumstance” to consider when evaluating the total benefit  
22 of the litigation). This value includes the amount a defendant was forced to pay into a  
23 fund, as well as sums paid (or to be paid) directly by a defendant to class members due  
24 to a forced change in policy:

25           Though in many common fund cases the size of the recovery is  
26           easily determined, if prospective or other nonmonetary relief is  
              granted, the recovery may be difficult to evaluate. Nevertheless,

1 the fee should be based on a percentage of the value of *all* the relief  
 2 obtained for the class of beneficiaries through counsel's effort,  
 whether monetary or nonmonetary.

3 M.F. Derfner and A. Wolf, COURT AWARDED ATTORNEY FEES, ¶ 2.06, pp. 2-86-87 (2000)  
 4 (emphasis in original). *See also* A. Conte, ATTORNEY FEE AWARDS, § 2.05, p. 37 (1993)  
 5 ("[N]umerous courts have concluded that the *amount of the benefit conferred* logically  
 6 is the appropriate benchmark against which a reasonable common fund fee charge  
 7 should be assessed.") (emphasis added); *id.*, § 2.22 (all benefits should be presented to  
 8 court in common fund fee application).

9 *The value of future benefits is very significant in this case.* Spoonemore Decl.,  
 10 ¶7. In this case, class counsel not only secured a cash fund, but also obtained a massive  
 11 and unprecedented expansion of coverage for NDT and ABA services for class  
 12 members. In fact, the majority of value in this settlement is not the cash, but the  
 13 promise of coverage into the future without visit limits or other caps. If the value of  
 14 just one year of prospective ABA coverage were added to the cash fund, then class  
 15 counsel's percentage fee request would be just 14% of the common benefit to the class.  
 16 Spoonemore Decl., ¶7.

17 The Court may "cross-check" the percentage approach by considering the  
 18 potential loadstar fee award. *Vizcaino*, 290 F.3d at 1050. Performing the "cross-check"  
 19 reveals that the fee request is justified. Through August 31, 2014, class counsel have  
 20 dedicated around 2,000 hours to litigating all three Regence cases. Spoonemore Decl.,  
 21 *Exhs. G-I* (attorney fees schedules in all three cases through August 2014). At class  
 22 counsel's normal hourly rates (from \$295 to \$595), the time value of this effort exceeds  
 23 \$1,100,000.<sup>7</sup> Should class counsel decide to seek a 35% fee award, the amount sought

24 \_\_\_\_\_  
 25 <sup>7</sup> Class counsel has incurred approximately \$100,000 in costs to date, as reflected in the schedule of the  
 26 litigation costs, by case, attached to the declaration of Richard E. Spoonemore. *See* Spoonemore Decl.,  
*Exhs. J-L*.

1 would represent a multiplier of less than 2, far less than multipliers awarded in other  
 2 similar cases. *Vizcaino*, 290 F.3d at 1051 (approving a percentage-of-the-settlement  
 3 award where the loadstar cross-check multiplier was 3.65, and noting that most lode-  
 4 star cross-check multipliers are often in the 1-4 range). A multiplier of 2 (or even more)  
 5 is reasonable considering the *Kerr* factors, including the risks involved in the litigation,  
 6 the length of the litigation, the novelty of the issues involved, the contingent nature of  
 7 the cases, and awards in similar cases. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,  
 8 70 (9th Cir. 1975). Here, class counsel obtained systemic, far-reaching change for all  
 9 Regence insureds on an issue of first impression. The risk involved in the litigation  
 10 was high, which has been reflected in awards in similar cases. *See, e.g., Spoonemore*  
 11 *Decl., Exh. M*, p. 5 (in *D.F. v. WHCA*, the trial court approved a settlement award of  
 12 33% of the cash fund).

13 In any event, the Court need not approve class counsel's attorney fees at this  
 14 stage. The relevant provision in the Settlement Agreement only secures the  
 15 defendants' agreement not to oppose a later motion for attorney fees up to 35%. *App. 1*,  
 16 ¶11.1 ("Defendants will take no position with respect to this application for attorney's  
 17 fees, which is subject to each Court's review and approval, provided that the request  
 18 does not exceed the amount set forth herein."). The Settlement Agreement does not  
 19 prohibit any lower fee award, and preliminary approval of the Settlement Agreement  
 20 does not bind the Court to any provision of attorney fees. *App. 1*, ¶11.1 ("This  
 21 Agreement is not contingent upon an award of attorney fees at the level requested by  
 22 Class Counsel, and shall not terminate by reason of any Court awarding less than the  
 23 amount requested."). *See, e.g., Jones v. GN Netcom, Inc.*, 654 F.3d 935, 945 (9th Cir. 2011)  
 24 (the Ninth Circuit's rejection of a fee award does not necessitate invalidation of the trial  
 25 court's approval of a settlement agreement).

*d. The Proposed Incentive Award Provision Is Reasonable.*

The Ninth Circuit has established the factors to consider when reviewing incentive awards for named plaintiffs. The Court must consider whether “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, the amount of time and effort the plaintiff expended in pursuing the litigation and reasonable fears of workplace retaliation.” *Staton*, 327 F.3d at 977, *citing to Cook v. Niedert*, 142 F.3d 1004, 1016 (7<sup>th</sup> Cir. 1998). “Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit.” *Cook*, 142 F.3d at 1016 (approving a \$25,000 incentive award); *see, e.g., Louie v. Kaiser Found. Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, 18 (S.D. Cal. Oct. 6, 2008) (preliminary approval of a \$25,000 incentive award where named plaintiffs “have protected the interests of the class and exerted considerable time and effort by maintaining three separate lawsuits, conducting extensive informal discovery, hiring experts to analyze discovered data and engaging in day-long settlement negotiations with a respected mediator”).

Here, DRW and plaintiffs, through their parents, have all dedicated substantial time, effort, and undertaken risk to protect the interests of the plaintiffs. As will be submitted in further detail in support of an application for incentive awards, DRW spent over 280 hours responding to discovery requests, sitting for deposition, and monitoring this litigation. Spoonmore Decl., ¶8. All parents were willing to open themselves and their families up to extensive personal scrutiny in order to win systemic change for all Regence insureds. Spoonmore Decl., ¶8. Many filed individual appeals prior to litigation on their own (without representation by a lawyer). *Id.* Once litigation commenced, Regence sought extensive written discovery from each named plaintiff and his/her parents, delving into years of medical history

1 for each, thousands of emails, and years of school records. *Id.* The named plaintiffs'  
2 parents all spent hours gathering documents responsive to Regence's exhaustive  
3 discovery requests. *Id.*

4 Most of the named plaintiffs' parents work full-time and had to take unpaid  
5 leave from their work to participate in deposition preparation, depositions, and  
6 multiple mediation sessions. *Id.* Because they all have children with special needs,  
7 when they were required to be present for the litigation, they had to arrange for skilled  
8 providers or relatives to watch their children. *Id.* Additionally, all of the parents  
9 invested hours to review the detailed medical and educational records of their children  
10 and to prepare for deposition. *Id.* The class has benefitted tremendously from the  
11 willingness of the named plaintiffs to step forward. Without their willingness to stand  
12 in the place of thousands of other Regence insureds, the broad systemic relief included  
13 in this settlement might never have happened.

14 Finally, the proposed incentive awards are consistent with those approved by  
15 courts in other similar litigation. In *D.F. v. Washington Health Care Authority*, the first  
16 Mental Health Parity Act case brought in Washington State, the named plaintiffs were  
17 awarded incentive awards of \$25,000 per plaintiff family after similar extensive  
18 discovery, years of litigation, and multiple mediation sessions. Spoonemore Decl.,  
19 *Exh. K*, p. 5. The plaintiffs here, like the *D.F.* plaintiffs, have invested many hours in  
20 the litigation, participated in multiple mediation sessions and opened themselves up to  
21 extensive scrutiny by defense counsel. For this reason, plaintiffs seek an incentive  
22 award for each named plaintiff family of up to \$25,000.

23 Nevertheless, the Court need not decide at this time whether such an incentive  
24 award should be ordered. The Court should conclude that the provision in the  
25 Settlement Agreement permitting class counsel to seek an incentive award for each  
26 plaintiff family of up to \$25,000 does not render the proposed Settlement Agreement

1 unfair or a product of collusion. The Court will be in a position to review detailed  
 2 declaration from each representative as part of the application for incentive awards, if  
 3 preliminary approval is granted. *See R.H. v. Premera Blue Cross*, 2014 U.S. Dist. LEXIS  
 4 108503, \*8 (W.D. Wa. August 6, 2014) ("Plaintiff has also provided the court with  
 5 evidence and legal authority that, on a preliminary basis, the incentive award of  
 6 \$25,000 to each plaintiff and guardian (for a total of \$100,000) is reasonable where they  
 7 have all dedicated substantial time, effort and undertaken risk to protect the interests  
 8 of the plaintiffs.").

9 *e. The Cy Pres Award Provision Is Reasonable.*

10 The Settlement Agreement provides that if there are remaining funds after  
 11 payment of class members' claims at 100%, attorney fees and costs, and incentive  
 12 awards, those funds shall be divided, 25% to 75% based on Regence's insured  
 13 population, between *O.S.T. v. Regence* and this case. In this case, the *cy pres* funds must  
 14 be distributed to "organizations to assist families with a family member with  
 15 developmental conditions to provide health care and access health coverage."<sup>8</sup> *See*  
 16 *App. 1*, ¶ 7.4.6.3. The *cy pres* process set forth in this Agreement follows, by design, the  
 17 process previously approved by this Court in *R.H. v. Premera*:

18 With respect to the *cy pres* award in the event that funds remain,  
 19 plaintiff has demonstrated the Settlement Agreement follows the  
 "next best distribution" mandate followed by the Ninth Circuit. *See*

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20 <sup>8</sup> Where the amount of *cy pres* funds to be distributed after a claims process is unknown, courts  
 21 typically postpone identifying a particular *cy pres* recipient. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d  
 22 948, 966 (9th Cir. 2009) (Ninth Circuit declines to consider the propriety of the Settlement Agreement's *cy*  
 23 *pres* distribution provision before it was known whether any excess funds remained after the claims  
 24 process which would "trigger" the *cy pres* distribution); *Six (6) Mexican Workers v. Ariz. Citrus Growers*,  
 25 904 F.2d 1301, 1309 (9th Cir. 1990) ("After the claims period has expired and the amount of the  
 26 unclaimed funds is known, the district court will be in a better position to determine [the appropriate *cy*  
*pres* distribution]."); *see, e.g., Bellows v. NCO Fin. Sys.*, 2008 U.S. Dist. LEXIS 114451, \*10 (S.D. Cal. 2008)  
 (settlement agreement approved by the court provides that *cy pres* award will be made to a "mutually  
 agreed-upon organization" meeting certain requirements, once the amount of *cy pres* funds to be  
 distributed was known).

1 *Lane v. Facebook, Inc.* 696 F.3d 811, 821-22 (9th Cir. 2012). Under the  
 2 Settlement Agreement, any *cy pres* award must be distributed to  
 3 organizations to assist families with a family member with  
 4 developmental conditions to access health care and health  
 5 coverage. Since any *cy pres* award must go to organizations to assist  
 6 families with a developmentally disabled family member to access  
 health coverage, the court finds that, on a preliminary basis, any  
 such distribution accounts for the nature of plaintiff's lawsuit, the  
 objectives of the underlying statutes, and the interests of silent class  
 members. *See Lane*, 696 F.3d at 821.

7 *R.H.*, 2014 U.S. Dist. LEXIS 108503, \*9.

8 As in *R.H.*, the *cy pres* provision in the Settlement Agreement expressly follows  
 9 the "next best distribution" mandate required in the Ninth Circuit. *Lane v. Facebook,*  
 10 *Inc.*, 696 F.3d 811, 820 (9th Cir. 2012). As the Ninth Circuit concluded:

11 We do not require as part of that doctrine that settling parties  
 12 select a *cy pres* recipient that the court or class members would find  
 13 ideal. On the contrary, such an intrusion into the private parties'  
 14 negotiations would be improper and disruptive to the settlement  
 15 process. *See Hanlon*, 150 F.3d at 1027. The statement in *Six Mexican*  
 16 *Workers* and elsewhere in our case law that a *cy pres* remedy must  
 17 be the "next best distribution" of settlement funds means only that  
 18 a district court should not approve a *cy pres* distribution unless it  
 bears a substantial nexus to the interests of the class members—  
 that, as we stated in *Nachshin*, the *cy pres* remedy "must account for  
 the nature of the plaintiffs' lawsuit, the objectives of the underlying  
 statutes, and the interests of the silent class members. . . ."

19 *Id.* at 820-821. Here, the proposed *cy pres* distribution, subject to the Court's approval,  
 20 necessarily has a direct and substantial nexus with the litigation itself. The *cy pres*  
 21 funds, if any, must be dedicated to helping class members access the NDT, ABA and  
 22 other essential health care services and coverage for their developmentally disabled  
 23 insureds. As in *Lane*, this type of "mission statement" codifies a nexus between the  
 24 lawsuit and the objectives of any recipient. *Id.* at 822. It tells the Court and absent class

1 members exactly how the excess funds will be used.<sup>9</sup>

2 The question of the specific organization(s) to receive funds is better considered  
3 after the class claims process. At that time, the Court will know the full amount  
4 available for *cy pres* distribution. It will know how much money was provided to  
5 organizations in the *R.H.* matter – if excess funds exist there – and give the Court the  
6 flexibility to consider how to distribute funds across multiple cases. Under the  
7 Settlement Agreement, the Court, rather than the parties or a third-party entity (as in  
8 *Lane*), will make the final decision as to the proper distribution of the *cy pres* funds.  
9 This process will be more open, public and transparent than the Ninth Circuit-  
10 approved *cy pres* distribution in *Lane*.

11 **C. The Proposed Notice, Opportunity to Submit Objections and Fairness**  
12 **Hearing Are Sufficient to Safeguard the Interests of Class Members.**

13 **1. The Notice Is Expansive.**

14 The Settlement Agreement requires Regence, *at its expense*, to direct mail notice  
15 to all of its current insureds, as well as individuals formally insured during the class  
16 period. *App. 1*, ¶2.2.3.1. (Shifting the burden of notice onto to Regence is another  
17 significant benefit to the class, as the cost of notice is expected to exceed \$400,000.  
18 Spoonemore Decl., ¶6(f).)

19 In addition, as in *R.H. v. Premera*, class counsel will create a detailed webpage  
20 specifically designed to provide information and assistance to class members.<sup>10</sup> *App. 1*,

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21 <sup>9</sup> The *cy pres* doctrine does not require the parties to select a specific organization to provide the *cy pres*  
22 assistance in the Settlement Agreement. Importantly, here, a *cy pres* distribution could only occur *after*  
23 all class members' claims have been compensated at 100%, and is not a substitute for direct  
24 compensation of class members. See *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 176 (3d Cir. 2013).  
Because any *cy pres* award must go to organizations to assist families with a developmentally disabled  
25 family member, the distribution will, with reasonable certainty, benefit absent class members who fail to  
26 submit claims. *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1040 (9th Cir. 2011).

<sup>10</sup> The Premera information page at [www.sylaw.com/PremeraSettlement](http://www.sylaw.com/PremeraSettlement) provides a working example  
of what class counsel would also establish here, if preliminary approval is granted.

¶2.2.3.2 (setting form web notice plan).

## 2. The Notice Text, Opt-Out Form and Claim Forms Should Be Approved.

Class counsel offers the proposed Class Notice, Opt-Out Form and Claim Form attached hereto at *Appendix 2* (Class Notice), and *Appendix 3* (Claim Form, Instruction to Claim Form, Claim Form Instructions and Opt Out Form).

### D. Proposed Scheduling Order

Class counsel proposes the following deadlines:

Preliminary Approval Date + 3 weeks	Deadline by which Regence must complete its initial mailing (with the exception of returns and forwarding mail, which may be forwarded as identified).
Preliminary Approval Date + 3 weeks	Deadline by which settlement website must be available to the public, and deadline for Regence's service of CAFA Notice pursuant to 28 U.S.C. § 1715(b).
Preliminary Approval Date + 3 weeks	Deadline for class counsel to file motion for attorney's fees and incentive awards and make it available on the settlement website.
Preliminary Approval Date + 15 weeks	Deadline for class members to submit claims, exclude themselves from the Settlement Classes, or file objections.
Preliminary Approval Date + 18 weeks	Deadline for class counsel to file motion for final approval, setting forth expected recoveries for class members, and responding to any objections.
Preliminary Approval Date + 20 weeks	Final approval hearing.

### E. A Final Approval Hearing Should Be Set.

Finally, class members with comments on, concerns about or objections to any aspect of the Settlement Agreement should be provided with an opportunity to submit written material for the Court's consideration. Class members who wish to appear in

1 person to address the Court with any comments, concerns or objections should also be  
 2 provided with an opportunity to appear at a hearing before the Court decides whether  
 3 to finally approve the Settlement Agreement.

4 Class members who wish to appear in person should notify the Court and the  
 5 parties of their desire to be heard, along with a statement of the issue or issues that  
 6 they would like to address. The proposed Notice requires that such notice be given so  
 7 that the Court and the parties can consider and address the specific issues that class  
 8 members wish to raise at the hearing. Finally, the class requests that the Court set a  
 9 hearing date to consider class members' comments and to decide whether the  
 10 Settlement Agreement should be finally approved and implemented.  
 11

## 12 VI. CONCLUSION

13 A proposed Order is submitted with this motion. As set forth therein, plaintiffs  
 14 respectfully request that the Court:

- 15 (a) preliminarily approve the Settlement Agreement;
- 16 (b) authorize the mailing of notice;
- 17 (c) approve the notice plan;
- 18 (d) establish a schedule; and
- 19 (e) set a final settlement approval hearing date.

20 DATED: October 13, 2014.

21 SIRIANNI YOUTZ  
 22 SPOONEMORE HAMBURGER

/s/Richard E. Spoonemore

23 Richard E. Spoonemore (WSBA #21833)

Email: [rspoonemore@sylaw.com](mailto:rspoonemore@sylaw.com)

24 Eleanor Hamburger (WSBA #26478)

Email: [ehamburger@sylaw.com](mailto:ehamburger@sylaw.com)

25 Attorneys for Plaintiff R.H.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- **Eleanor Hamburger**  
[ehamburger@sylaw.com](mailto:ehamburger@sylaw.com), [matt@sylaw.com](mailto:matt@sylaw.com), [theresa@sylaw.com](mailto:theresa@sylaw.com)
- **James Derek Little**  
[dlittle@karrtuttle.com](mailto:dlittle@karrtuttle.com), [swatkins@karrtuttle.com](mailto:swatkins@karrtuttle.com), [jnesbitt@karrtuttle.com](mailto:jnesbitt@karrtuttle.com)
- **Medora A Marisseau**  
[MMarisseau@karrtuttle.com](mailto:MMarisseau@karrtuttle.com), [rmoreau@karrtuttle.com](mailto:rmoreau@karrtuttle.com)
- **Richard E Spoonemore**  
[rspoonemore@sylaw.com](mailto:rspoonemore@sylaw.com), [matt@sylaw.com](mailto:matt@sylaw.com), [rspoonemore@hotmail.com](mailto:rspoonemore@hotmail.com),  
[theresa@sylaw.com](mailto:theresa@sylaw.com)

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

- (no manual recipients)

DATED: October 13, 2014, at Seattle, Washington.

/s/ Richard E. Spoonemore

Richard E. Spoonemore (WSBA #21833)

# Appendix 1

## AGREEMENT TO SETTLE CLAIMS

***O.S.T., L.H., K.B., A.B. and D.F. v. Regence BlueShield, No. 11-2-34187-9 SEA,  
Superior Court of Washington for King Count***

***K.M., B.S. and Disability Rights Washington. v. Regence BlueShield  
and Cambia Health Solutions, No. C13 -1214-RAJ,  
United States District Court, Western District of Washington***

***J.T. and S.A. v. Regence BlueShield and Cambia Health Solutions, No. C12-90-RAJ,  
United States District Court, Western District of Washington***

This Agreement to Settle Claims (“Agreement”) is between plaintiffs O.S.T., L.H., K.B., A.B., D.F., K.M., S.A. and B.S., by and through their parents, and Disability Rights Washington (collectively “Named Plaintiffs”), the “O.S.T. NDT Subclass” (as defined in ¶ 1.27), the “O.S.T. ABA Settlement Subclass” (as defined in ¶ 1.26), the “K.M. NDT Settlement Subclass” (as defined in ¶ 1.18) and the “K.M. ABA Settlement Subclass” (as defined in ¶ 1.15), and defendants Regence BlueShield and Cambia Health Solutions, Inc., along with their subsidiaries and affiliate companies (collectively “Defendants,” defined in ¶ 1.11). Named Plaintiffs and Defendants are referred to collectively as the “Parties.” This Agreement is a full expression of the agreements between the Parties.

## RECITALS

This Agreement is made with reference to the following facts:

1. ***O.S.T., L.H., K.B., A.B. and D.F. v. Regence.*** Plaintiffs O.S.T., L.H., K.B., A.B. and D.F., by and through their parents, allege that Regence violated the Washington Consumer Protection Act and their policies by denying (1) neurodevelopmental therapies (“NDT”) for the treatment of their mental health conditions, and (2) Applied Behavioral Analysis Therapy (“ABA”) for the treatment of autism, in violation of Washington’s Mental Health Parity Act. The action, brought in King County Superior Court, seeks relief on behalf of a class of similarly situated individuals and non-ERISA insured group health plans. A CR 23(b)(3) class of NDT insureds was certified on December 13, 2012, and a permanent injunction was issued on July 18, 2013. A CR 23(b)(3) damages class of NDT insureds was certified on September 6, 2013, with the Order entered on January 10, 2014.

2. ***K.M., B.S. and Disability Rights Washington. v. Regence.*** Plaintiffs K.M. and B.S., by and through their parents, and Disability Rights Washington allege that Defendants violated their ERISA fiduciary duties and the terms of the plans under which they administered and insured claims by denying (1) NDT for the treatment of their mental health conditions, and (2) ABA for the treatment of autism, in violation of Washington’s Mental Health Parity Act (“State Parity Act”) and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“Federal Parity Act”) (collectively “Mental Health Parity Acts”). See 29 U.S.C. § 1185a; 42 U.S.C. § 300gg-5; 26 U.S.C. § 9812. The action, brought in the United States Federal District Court for the Western District of Washington, seeks relief on behalf of a class of

similarly situated individuals on ERISA-governed insured health plans. A FRCP 23(b)(1) subclass of NDT insureds was certified, and a preliminary injunction issued, on January 24, 2014.

3. ***J.T., S.A. v. Regence.*** Plaintiff S.A., by and through her parent, alleges that Defendants breached their fiduciary duty and violated the terms of S.A.'s medical plan by applying treatment limitations under the rehabilitation benefit to S.A.'s pre-service inquiry.

4. ***Global Agreement.*** The Parties wish to resolve all potential claims with respect to prospective relief relating to coverage for both ABA and NDT in all of Defendants' insured health plans issued in Washington, *i.e.* in both ERISA and non-ERISA insured health plans. In addition, the Parties wish to resolve claims for damages relating to NDT and ABA therapies for all individuals in both the ERISA and non-ERISA insured health plans.

## AGREEMENT

### 1. *Definitions.*

- 1.1 "ABA" or "*Applied Behavioral Intervention Services*" shall mean: applied behavioral interventions for autism where the goal of the therapy is to improve core deficits associated with autism spectrum disorder (*i.e.* significant issues with communication, social interaction and injurious behaviors). ABA includes the design, implementation and evaluation of environmental modification using behavioral stimuli and consequences to produce clinically significant improvement in behavior and skills associated with autism spectrum disorder. It also includes the use of direct observation, measurement and functional analysis of the relationship between the environment and the individual's behavior. When medically necessary, ABA shall be considered a "mental health service" as defined in the Mental Health Parity Acts.
- 1.2 "*Actions*" shall mean: (1) *O.S.T., L.H., K.B., A.B. and D.F. v. Regence BlueShield*, Cause No. 11-2-34187-9 SEA, a class action pending in the Superior Court of Washington for King County; (2) *K.M., B.S. and Disability Rights Washington v. Regence BlueShield and Cambia Health Solutions, Inc.*, Cause No. C13-1214-RAJ, a class action pending in United States District Court of the Western District of Washington; and (3) *J.T. and S.A. v. Regence BlueShield*, Cause No. C-12-90-RAJ, pending in the United States District Court for the Western District of Washington.
- 1.3 "*Agreement Execution Date*" shall mean: the date on which this Agreement is fully executed.
- 1.4 "*Authorization Criteria*" shall mean: the criteria attached hereto as *Appendix A* and as further detailed in section 6.2.1, *below*
- 1.5 "*Autism*" shall mean: a diagnosis of an Autism Spectrum Disorder of 299.0, 299.10, 299.80 under the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (DSM IV-TR or DSM V) (or any subsequent revisions thereto).

- 1.6 “*Claims Processor*” shall mean: Nickerson & Associates LLC, 520 Pike Street, Suite 1200, Seattle, WA 98101.
- 1.7 “*Class Counsel*” shall mean: SIRIANNI YOUTZ SPOONEMORE HAMBURGER.
- 1.8 “*Class Members*” shall mean: those individuals who comprise the O.S.T. NDT Subclass, O.S.T. ABA Settlement Subclass, K.M. NDT Settlement Subclass, and the K.M. ABA Settlement Subclass.
- 1.9 “*Class Period*” shall mean: (1) with respect to large group plans, January 1, 2006 to the present and (2) with respect to individual plans and small group plans, January 1, 2008 to the present.
- 1.10 “*Court*” shall mean: (1) with respect to *O.S.T. Action*, the King County Superior Court; (2) with respect to the *K.M. Action and S.A. Action*, the United States District Court of the Western District of Washington.
- 1.11 “*Defendants*” shall mean: (a) Regence BlueShield and Cambia Health Solutions, Inc., (b) any parent, affiliate or subsidiary of Regence BlueShield; and (c) predecessors or successors of Regence or Cambia. “Defendants” do not include Regence BlueCross BlueShield of Oregon or Utah, or Regence BlueShield of Idaho, except with respect to policies issued in Washington state.
- 1.12 “*Effective Date of Settlement*” shall mean: the date on which all of the conditions to settlement set forth in section 2 have been fully satisfied or waived.
- 1.13 “*Final*” shall mean: with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceeding for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and final disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.
- 1.14 “*Final Decision*” shall mean: a decision of the Washington Supreme Court or of any intermediate Court of Appeals that is not appealed within the time permitted for such appeals or that, if appealed, is not accepted for review.
- 1.15 “*K.M. ABA Settlement Subclass*” shall mean: a subclass to be certified for settlement purposes under Federal Rule of Civil Procedure 23(b)(3) consisting of all individuals who have not opted out of such class and who:
  - (1) have been, are, or will be beneficiaries under an ERISA-governed “health plan” as that term is defined by RCW 48.43.005(26), that was or will be delivered, issued for delivery, or renewed on or after January 1, 2006, in Washington state or to Washington state residents by Regence; and
  - (2) have received, require, or are expected to require, Applied Behavioral Intervention Services for the treatment of autism or autism spectrum disorder;

Where “*Regence*” means: (a) Regence BlueShield and Cambia Health Solutions, Inc., (b) any parent, affiliate or subsidiary of Regence BlueShield and; (c) successors in interest of any of the foregoing. “*Regence*” includes Regence BlueCross BlueShield of Oregon, Regence BlueCross BlueShield of Utah, and Regence BlueShield of Idaho only with respect to policies issued to persons residing in Washington State.

- 1.16 “*K.M. ABA Subclass Released Claims*” shall mean: any and all claims demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating to ABA therapy, and claims that were brought, or that could have been brought, by one or more of the Plaintiffs against Defendants in the *K.M. Action* on behalf of a class, including but not limited to claims for breach of fiduciary duty, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorneys’ fees and costs, expenses, prejudgment and post-judgment interest, statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This Release shall be binding on Plaintiffs, the *K.M. ABA Subclass*, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.
- 1.17 “*K.M. Action*” shall mean: *K.M. v. Regence BlueShield and Cambia Health Solutions, Inc.*, Cause No. C13-1214-RAJ, a class action pending in United States District Court of the Western District of Washington.
- 1.18 “*K.M. NDT Settlement Subclass*” shall mean: a subclass to be certified for settlement purposes under Federal Rule of Civil Procedure 23(b)(3) consisting of all individuals who have not opted out of such class and who:
- (1) have been, are, or will be beneficiaries under an ERISA-governed “health plan” as that term is defined by RCW 48.43.005(26), that was or will delivered, issued for delivery, or renewed on or after January 1, 2006 in Washington state or to Washington state residents by Regence; and
  - (2) have received, require, or are expected to require neurodevelopmental therapy for the treatment of a condition listed in the DSM other than: (a) substance related disorders, (b) life transition problems, currently referred to as “V” codes, and diagnostic codes 302 through 302.9 as found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association or (c) where the service received, required, or expected to be required is classified as skilled nursing facility services, home health care, residential treatment, custodial care or non-medically necessary court-ordered treatment.

“*Regence*” means: (a) Regence BlueShield and Cambia Health Solutions, Inc., (b) any parent, affiliate or subsidiary of Regence BlueShield; and (c) predecessors or successors in interest of any of the foregoing. “*Regence*” includes Regence BlueCross BlueShield of Oregon, Regence BlueCross

BlueShield of Utah, and Regence BlueShield of Idaho only with respect to policies issued in Washington State.

- 1.19 “*K.M. NDT Subclass Released Claims*” shall mean: any and all claims demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating to NDT therapy, and claims that were brought, or that could have been brought, by one or more of the Plaintiffs against Defendants in the *K.M. Action* on behalf of a class, including but not limited to claims for breach of fiduciary duty, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorneys’ fees and costs, expenses, prejudgment and post-judgment interest, statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This Release shall be binding on Plaintiffs, the *K.M. NDT Settlement Subclass*, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.
- 1.20 “*Mental Health Condition*” shall mean: mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as “V” codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health care service contractor’s medical director or designee determines the treatment to be medically necessary.
- 1.21 “*S.A. Released Claims*” shall mean: any and all claims demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating to NDT or ABA therapy, and claims that were brought, or that could have been brought by S.A., including but not limited to claims for breach of fiduciary duty, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorneys’ fees and costs, expenses, prejudgment and post-judgment interest, statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This Release shall be binding on S.A., and her lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.
- 1.21 “*Named Plaintiffs*” shall mean: O.S.T., L.H., K.B., D.F., A.B., K.M., B.S., S.A., all through their parents, and Disability Rights Washington.
- 1.22 “*Neurodevelopmental Conditions*” shall mean, (a) for the purposes of claims processing under Section 7.4 of this Agreement, a diagnosis of a neurodevelopmental disorder under DSM IV-TR (or subsequent revisions thereto)

of 299.00, 299.10, 299.80 and 315.00, 315.1, 315.2, 315.31, and 315.39, and (b) with respect NDT coverage modification under Section 6.1 of this Agreement, developmental conditions defined as Mental Health Conditions.

- 1.23 “*Neurodevelopmental Therapies*” or “NDT” shall mean: speech, occupational and physical therapies to treat Neurodevelopmental Conditions.
- 1.24 “*O.S.T. ABA Subclass Released Claims*” shall mean: any and all claims demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating to ABA therapy, and claims that were brought, or that could have been brought, by one or more of the Plaintiffs against Defendants in the *O.S.T. Action* on behalf of a class, including but not limited to claims for breach of duty, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorneys’ fees and costs, expenses, prejudgment and post-judgment interest, statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This Release shall be binding on Plaintiffs, the O.S.T. ABA Settlement Subclass, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.
- 1.25 “*O.S.T. Action*” shall mean: *O.S.T. v. Regence BlueShield*, Cause No. 11-2-34187-9 SEA, a class action pending in the Superior Court of Washington for King County.
- 1.26 “*O.S.T. ABA Settlement Subclass*” shall mean: a subclass to be certified for settlement purposes under Washington Rule of Civil Procedure 23(b)(3) consisting of all individuals who have not opted out of such class and who:
  - (1) have been, are, or will be insured under a non-ERISA governed group “health plan,” as that term is defined by RCW 48.43.005(19), that has been, or will be, delivered, issued for delivery, or renewed on or after January 1, 2006 by *Regence* or an individual “health plan” as that term is defined by RCW 48.43.005(26), that has been, or will be, delivered, issued for delivery, or renewed on or after January 1, 2008 in Washington or to Washington state residents by *Regence*; and
  - (2) have received, require, are expected to require, Applied Behavioral Intervention Services for the treatment of autism or autism spectrum disorder.

Where “*Regence*” means: (a) *Regence BlueShield*, (b) any parent, affiliate or subsidiary of defendants; and (c) predecessors or successors in interest of any of the foregoing; “*Regence*” includes *Regence BlueCross BlueShield of Oregon*, *Regence BlueCross BlueShield of Utah*, and *Regence BlueShield of Idaho* only with respect to those policies issued in Washington State.

- 1.27 “*O.S.T. NDT Subclass*” shall mean: individuals in the Class certified under Washington Civil Rule 23(b)(3) in the Order Granting Plaintiffs’ Motion for Class

Certification dated September 6, 2013 and formally entered on January 10, 2014, but excluding all individuals who opt out of such class.

- 1.28 “*O.S.T. NDT Subclass Released Claims*” shall mean: any and all claims demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating to NDT therapy, and claims that were brought, or that could have been brought, by one or more of the Plaintiffs against Defendants in the *O.S.T. Action* on behalf of a class, including but not limited to claims for breach of duty, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorneys’ fees and costs, expenses, prejudgment and post-judgment interest, statutory damages or penalties, punitive and exemplary damages and contribution, indemnification or any other type of legal or equitable relief. This Release shall be binding on Plaintiffs, the O.S.T. NDT Settlement Subclass, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.
- 1.29 “*Parties*” shall mean: Named Plaintiffs and Defendants.
- 1.30 “*Qualified Opt Outs*” shall mean those individuals who provide timely opt out notice and who: (a) self-identify and certify themselves as a member of the NDT or ABA Settlement Subclass (or both) on the opt out form; or (b) have disclosed to Plaintiffs’ counsel that they have an NDT or ABA claim; or (c) are identified in Regence’s systems as having a Neurodevelopmental Condition or autism diagnosis; or (d) are identified in Regence’s system as having made prior claims for NDT or ABA.
- 1.31 “*Releasees*” shall mean: Defendants, their affiliates, subsidiaries (including Regence BlueCross BlueShield of Oregon, Regence BlueCross BlueShield of Utah, or Regence BlueShield of Idaho, but only with respect to policies issued in Washington), parents and their successors, predecessors, policyholders, officers, directors, representatives, employees, agents, assigns, attorneys, brokers, independent contractors, insurers, re-insurers, and any and all other entities and persons in privity with them which could be ostensibly liable for the claims being released.
- 1.32 “*Settlement*” shall mean: the settlement to be consummated under this Agreement.
- 1.33 “*Settlement Amount*” shall mean: the sum of \$6,000,000.
- 1.34 “*Settlement Trust Fund*” shall mean: a trust account established by Class Counsel to hold and distribute the Settlement Amount.

## 2. *Conditions to Effectiveness of the Settlement.*

- 2.1 *General.* The Settlement provided for in this Agreement shall not become binding unless and until each and every one of the conditions in sections 2.2 through 2.4 have been satisfied or waived.

2.2 *Court Approval.* The Settlement contemplated under this Agreement shall have been approved by the Court in the O.S.T. Action and the Court in the K.M. Action, as provided herein. The Parties agree jointly to recommend to the Courts that they approve the terms of the Agreement and the Settlement contemplated hereunder. The Parties agree to promptly take all steps and efforts contemplated by the Agreement, including the following:

2.2.1 *Certification of Settlement Classes in the O.S.T. Action and K.M. Action.* The Court in the O.S.T. Action shall have certified the O.S.T. ABA Settlement Subclass, and the Court in the K.M. Action shall have certified the K.M. ABA Settlement Subclass and the K.M. NDT Settlement Subclass. Class Counsel shall make motions for certification of the Settlement Classes as part of the motions to approve this Agreement. Defendants will support certification of these Settlement Classes.

2.2.2 *Motions for Preliminary Approval and Notices.* The Courts in the O.S.T. Action and K.M. Action shall have all preliminarily approved the Agreement (“Preliminary Approval Orders”) and authorized the issuance of notice and opt-out rights to the Classes. Class Counsel shall make motions for preliminary approval and authorization to send notice (“Preliminary Motions”). Each Court must conclude that the notice to be sent fairly and adequately describes the terms of the Agreement, gives notice of the time and place of the hearing for final approval of the Settlement, describes how a Class Member may comment on, object to, opt out of, or support the Settlement. Each Court must also conclude that the manner of providing the notice to Class Members is the best notice practicable under the circumstances.

2.2.3 *Issuance of Class Notice.* On the date set by the Courts in their Preliminary Approval Orders, Defendants shall have caused the Court-approved notice to be delivered the relevant Class Members.

2.2.3.1 Defendants, at their expense, shall cause class notice to be issued as follows:

- 1) *U.S. Mail.* All Regence subscribers and former subscribers who were covered under a Regence plan issued in Washington during the relevant class periods shall receive notice by direct first class United States mail, forwarding requested, which includes all members of the K.M. ABA Settlement Subclass, the O.S.T. ABA Settlement Subclass, the K.M. NDT Settlement Subclass and the O.S.T. NDT Settlement Subclass.
- 2) *Webpage.* Regence shall prominently post, on its webpage, a link to the settlement agreement, notice, claim form and instructions to claim form.

2.2.3.2 Class Counsel shall create a webpage which contains the following material:

- a. A description of each of two cases involved in the settlement, including a summary of the litigation to date in each case.
- b. Identification of each of the four classes, and information to assist class members to identify which class, if any, they may belong in.
- c. A summary of the proposed settlement derived from the class notice.
- d. A timeline and schedule of events, including deadlines for submitting claims, objecting, and opting out.
- e. how to contact class counsel for additional information;
- f. Settlement documents, or links to documents, including:
  - i. class notice;
  - ii. instructions to claim forms;
  - iii. claim forms;
  - iv. opt-out form;
  - v. motions for preliminary approval; and
  - vi. all court orders on preliminary approval.
- g. Litigation documents, or links to documents, including:
  - i. each complaint;
  - ii. each answer; and
  - iii. significant orders issued in the case(s).
- h. Updates. The webpage shall be updated as the following become available:
  - i. Class counsel's application(s) for attorney fees, costs and incentive awards (with all supporting materials);

- ii. Motion(s) for Final Approval of the settlement (including any objections and class counsel's response to those objections);
- iii. frequently asked questions; and
- iv. projected claim volume and the anticipated recovery for claimants.

2.2.4 *Fairness Hearing.* On the date set by each Court in their Preliminary Approval Orders, the Parties shall participate in the hearings ("Fairness Hearings") during or after which each Court will determine by order (the "Final Orders"): (i) the proposed Settlement between the Parties is fair, reasonable and adequate and should be approved by the Court; and (ii) the requirements of CR 23/FRCP 23 and due process have been satisfied in connection with the distribution of the notice.

2.2.5 *Motions for Final Approval.* On the date set by each Court in their Preliminary Approval Orders, Plaintiffs shall have filed a motion ("Final Approval Motion") for an order giving final approval to this settlement ("Approval Order").

2.3 *Payment Made.* Payment, pursuant to section 7, has been made by Defendants.

2.4 *No Termination.* The Settlement shall not have terminated pursuant to section 9.

### 3. ***Releases.***

3.1 *Releases of the Releasees.* Upon the Effective Date of Settlement:

3.1.1 O.S.T., L.H., K.B., A.B. and D.F., on behalf of themselves and, to the full extent permitted by law on behalf of the O.S.T. NDT Subclass that they represent, absolutely and unconditionally release and forever discharge Releasees from any and all O.S.T. NDT Subclass Released Claims that Plaintiffs or the O.S.T. NDT Subclass has directly, indirectly, derivatively, or in any other capacity ever had or now have. This Release shall be binding on Plaintiffs, the O.S.T. NDT Subclass, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

3.1.2 O.S.T., L.H., K.B., A.B. and D.F., on behalf of themselves and, to the full extent permitted by law on behalf of the O.S.T. ABA Settlement Subclass that they represent, absolutely and unconditionally releases and forever discharges Releasees from any and all O.S.T. ABA Subclass Released Claims that Plaintiffs or the O.S.T. ABA Subclass has directly, indirectly, derivatively, or in any other capacity ever had or now have. This Release shall be binding on Plaintiffs, the O.S.T. ABA Subclass, and all their

lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

3.1.3 K.M., B.S. and Disability Rights Washington, on behalf of themselves and, to the full extent permitted by law on behalf of the K.M. ABA Settlement Subclass that they represent, absolutely and unconditionally release and forever discharge Releasees from any and all K.M. ABA Subclass Released Claims that Plaintiffs or the K.M. ABA Subclass has directly, indirectly, derivatively, or in any other capacity ever had or now have. This Release shall be binding on Plaintiffs, the K.M. ABA Subclass, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

3.1.4 K.M., B.S. and Disability Rights Washington, on behalf of themselves and, to the full extent permitted by law on behalf of the K.M. NDT Settlement Subclass that they represent, absolutely and unconditionally release and forever discharges Releasees from any and all K.M. NDT Subclass Released Claims that Plaintiffs or the K.M. NDT Subclass has directly, indirectly, derivatively, or in any other capacity ever had or now have. This Release shall be binding on Plaintiffs, the K.M. NDT Subclass, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

3.1.5 S.A. on behalf of herself, her lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents, releases Releasees to the same extent as the K.M NDT and ABA Settlement Subclasses release Releasees.

3.2 *Defendants' Release of Named Plaintiffs, the Class and Class Counsel.* Upon the Effective Date of Settlement, Defendants, to the full extent permitted by law, absolutely and unconditionally release and forever discharge the Named Plaintiffs, the K.M NDT Settlement Subclass, the K.M. ABA Settlement Subclass, the O.S.T. NDT Subclass, the O.S.T. ABA Settlement Subclass, and Class Counsel from any and all claims relating to the institution or prosecution of the O.S.T. Action, K.M. Action or S.A. Action.

4. ***Representations and Warranties.*** The Parties, and each of them, represent and warrant that they are voluntarily entering into this Agreement as a result of arm's-length negotiations; in executing this Agreement they are relying upon their own judgment, belief and knowledge, and the advice and recommendations of their own counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof. The Parties, and each of them, represent and warrant that they have carefully read the contents of this Agreement; they have made such investigation of the facts pertaining to the Settlement, this Agreement and all of the matters pertaining thereto as they deem necessary; and this

Agreement is signed freely by each person executing this Agreement on behalf of each party. Each individual executing this Agreement on behalf of any other Person does hereby represent and warrant to the other parties that he or she has the authority to do so.

5. ***No Admission of Liability.*** The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing herein shall be deemed to constitute an admission of any wrongdoing by Regence, Defendants or any of the Releasees. Neither the fact nor the terms of this Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement or arising out of or relating to the Final Orders and motions for approval.

6. ***Prospective Coverage Modifications and Agreements.***

- 6.1 ***NDT Coverage Modifications and Agreements.***

- 6.1.1 ***Coverage of NDT for Individuals with Neurodevelopmental Mental Health Conditions.*** Defendants shall cover neurodevelopmental therapies as mental health services when the therapies are medically necessary.
- 6.1.2 ***Blanket Exclusions of Coverage of Neurodevelopmental Therapies Prohibited.*** Blanket exclusions for services, therapy, and supplies related to developmental delay or neurodevelopmental disabilities that are Mental Health Conditions, or other similar exclusions will not be enforced or used to exclude or limit coverage under the Defendants' health insurance plans. Such exclusions shall be removed from the Defendants' certificates of insurance.
- 6.1.3 ***Elimination of Age Exclusions for Coverage of Neurodevelopmental Therapies.*** Defendants will not deny coverage of Neurodevelopmental Therapies by asserting that the Class Member's age, such as being over the age of 6, disqualifies him or her from coverage. Such exclusions shall be removed from the Defendants' certificates of insurance.
- 6.1.4 ***Elimination of Treatment Limitations on Neurodevelopmental Therapies.*** Defendants will not impose caps or quantitative treatment limitations on medically necessary Neurodevelopmental Therapies. Such caps or treatment limitations shall be removed from the Defendants' certificates of insurance.
- 6.1.5 ***Health Insurance Plan Appeal Rights.*** Nothing herein shall be construed to limit or affect a Settlement Class Member's right to appeal a claims determination under their health insurance plan or under applicable law.
- 6.1.6 ***Medical Necessity.*** Nothing herein shall be construed to require coverage for any service that is not medically necessary for that individual.

6.2 *ABA Coverage Modifications and Agreements.*

- 6.2.1 *Coverage of ABA Therapy.* Defendants agree, subject to and limited by the provisions in this Agreement and, to the extent not inconsistent with this Agreement, the terms of the Class Member's health insurance plan, to cover requests for ABA therapy as a mental health service in accordance with the attached Authorization Criteria in *Appendix A*.
- 6.2.2 *Limitations on Certain Conditions and Exclusions.* Subject to and limited by the provisions of this Agreement, Defendants agree not to use the following as exclusions or limitations for Applied Behavioral Intervention Services:
- 6.2.2.1 *Age Exclusion or Limitation.* Defendants will not deny ABA by asserting that an individual's age categorically disqualifies him or her from coverage. This subsection does not prohibit Defendants from considering an insured's age in a medical necessity determination.
- 6.2.2.2 *Treatment Limitations.* Defendants will not impose blanket caps or quantitative treatment limitations on ABA. The fact that Defendants' health plan may impose certain visit limitations on rehabilitation services shall not permit Defendants to impose those same limitations on ABA when used to treat a mental health condition. This subsection does not prohibit Defendants from limiting treatment based on a medical necessity determination.
- 6.2.2.3 *Habilitative Exclusion.* Defendants shall not categorically deny or limit ABA coverage based upon a habilitative exclusion.
- 6.2.2.4 *Clinic-based Exclusion.* Defendants will not deny ABA on the basis that the therapy is excluded solely because the service is provided in the Class Member's home or community-based setting, rather than in a professional office. Nothing in this paragraph shall prevent Defendants from considering the location of the service delivery in a medical necessity determination.
- 6.2.2.5 *Academic or Educational Exclusion.* Defendants shall not apply blanket exclusions to deny or limit medically necessary ABA services solely on the basis that it is "academic" or "educational." Nothing in this paragraph requires coverage for services provided pursuant to an Individualized Education Plan when provided by the Class Member's school.

- 6.2.2.6 *Experimental/Investigational Exclusion.* Defendants shall not deny or limit ABA coverage as defined in this Agreement and in Appendix A on the basis that it is “experimental” or “investigational.”
- 6.2.2.7 *Specific Exclusions.* Defendants agree that they will not create any exclusions categorically denying ABA to Class Members or whose purpose is to avoid Defendants’ coverage obligations under this Agreement.
- 6.2.3 *Evaluation of Medical Necessity and ABA Authorization Criteria.*
  - 6.2.3.1 *Development of Clinical Criteria.* The Parties agree that subsequent to the Effective Date of this Agreement, and with 30 days advance written notice to Class counsel, which notice shall be required for a period until one year from the Effective Date, Defendants may revise the Authorization Criteria in *Appendix A* consistent with evidence-based clinical practice, peer-reviewed scientific literature or industry-wide changes, provided that such revisions do not conflict with any other provisions of this Agreement. Defendants may also revise the processes in the Authorization Criteria in a manner that is not substantially more restrictive than what appears in Appendix A.
  - 6.2.3.2 *Medical Necessity.* Nothing herein shall be construed to require coverage for ABA that is not medically necessary, as determined by the Regence medical director or designee, consistent with RCW 48.44.341(4).
  - 6.2.3.3 *IRO Rights Preserved.* Nothing herein, or in any clinical review criteria, shall be construed to limit a Class Member’s right to seek an independent review of any denial of ABA under law. Defendants agree to comply with existing law regarding notification of Class Members, in any denial of coverage for ABA, of their appeal rights, including the right to seek an IRO.
- 6.2.4 *Provider Certification and Provider Networks.*
  - 6.2.4.1 *Certification.* Defendants shall be permitted to develop and apply appropriate certification criteria to providers of ABA as part of its standard credentialing process. The Parties agree that the certification criteria contained in the Authorization Criteria in *Appendix A* are appropriate. The parties further agree that subsequent to the Effective Date of this Agreement, and with 30 days advance written notice to Class counsel, which notice shall be required for a period until one year from the Effective Date,

Defendants may modify the certification criteria in *Appendix A* provided that such modifications do not conflict with any other provisions of this Agreement and the network of providers after any such modification is adequate under provisions of applicable state law. Nothing herein shall be construed to modify, waive, limit or expand Defendants' credentialing obligations under law.

6.2.4.2 *Network Adequacy Rights Preserved.* Nothing herein shall be construed to modify, waive, limit, or expand Defendants' network adequacy obligations under law.

6.2.4.3 *Notice of Providers.* Defendants shall disclose its network of approved providers of ABA.

6.2.5 *Management of Care Permitted.* Nothing herein shall be construed to modify, waive, limit, or expand Defendant's obligations and/or ability to manage care or utilization, or to employ care management techniques for mental health services including but not limited to authorized treatment plans; preauthorization requirements based on the type of service; concurrent and retrospective utilization review; utilization management practices, discharge coordination and planning; and contracting with and using a network of participating providers consistent with the Mental Health Parity Acts, this Agreement, and the Authorization Criteria.

6.3 *Coverage Modification Based on Subsequent Judicial Decisions and Statutory/Regulatory Changes.*

6.3.1 *Reduction or Elimination of Coverage Obligations.* In the event a statute, regulation, or Final Decision from a Washington State appellate court reduces or eliminates some or all of the obligations to cover NDT or ABA to treat a Mental Health Condition, Defendants may reduce or eliminate the coverage as stated herein to that required by that statute, regulation or decision.

6.3.2 *Increase in or New Coverage Obligations.* In the event a statute, regulation or Final Decision from a Washington State appellate court increases or imposes new obligations to cover NDT or ABA to treat a Mental Health Condition beyond those required herein Defendants must provide the coverage required by the statute, regulation or Final Decision from a Washington State appellate court.

## **7. *Settlement Fund.***

7.1 *Settlement Amount.* Defendants shall pay \$6,000,000 into the Settlement Trust Fund established by Class Counsel upon entry of the last of all three Final Orders.

7.2 *"All In" Payment.* Defendants' payment of the Settlement Amount into the Settlement Trust Fund constitutes the sole monetary contribution by the

Defendants under this Agreement. All claims, attorney fees, litigation costs, costs of administration, and payments to plaintiffs shall come exclusively from the Settlement Amount in the Settlement Trust Fund, with Defendants having no further monetary obligation to affect this Agreement.

- 7.3 *Distribution of Settlement Amount.* The Settlement Amount will be used to pay (1) attorney's fees, (2) litigation costs, (3) costs of claims administration, (4) incentive awards, (5) payments to O.S.T. NDT Subclass Members and K.M. NDT Settlement Subclass Members for NDT claims for Neurodevelopmental Conditions (as defined in Section 1.22(a)), and (6) payments to O.S.T. ABA Settlement Subclass Members and K.M. ABA Settlement Subclass Members for claims for ABA (as defined in Section 1.1).
- 7.4 *Claims Processing.* NDT and/or ABA costs incurred by a Class Member (or the parents or legal guardians on behalf of the Class Member) shall be eligible for reimbursement as follows:
  - 7.4.1 *Payment to Holder.* Payment to Class Members shall be made to the certificate holder, *i.e.*, the parent(s) or legal guardian(s) of the Class Member or their properly documented assignee.
  - 7.4.2 *Submission of Claims.* Class Members (or their parents and/or legal guardians) will be provided with a Claim Form in connection with the Notice of Settlement provided herein.
    - 7.4.2.1 *Elements of Claim.* The Claim Form shall require the Class Member (or his or her designee) to indicate and verify (1) the DSM diagnosis of the Class Member; (2) the date of the diagnosis and the name of the provider who made the diagnosis; (3) the date(s) of NDT and/or ABA treatment (month/year); and (4) the unreimbursed charges or debt incurred associated with that NDT or ABA treatment.
    - 7.4.2.2 *Documentation Required.* The following documentation will be required:
      - 7.4.2.2.1 The actual or approximate date(s) of NDT and/or ABA treatment, which can be evidenced by clinical notes, an appointment schedule/log created at the time of treatment, invoices seeking payment that include dates of service, a signed letter from the provider, a sworn statement attesting to the dates, or other evidence of similar reliability; and
      - 7.4.2.2.2 The unreimbursed charges or debt incurred associated with NDT and/or ABA treatment, which can be evidenced by cancelled checks, credit card account statements, provider ledgers, invoices stamped "paid" or showing amounts due, checking account

statements, signed letters from the provider or the provider's employer documenting the amount paid or debt incurred (so long as the letter clearly connects payments/debt with NDT and/or ABA Services dates), or other evidence of similar reliability and containing similar specificity connecting payments/debt to the NDT and/or ABA services date.

- 7.4.3 The Claims Processor shall review the claim forms to confirm that the items indicated in Sections 7.4.2.1, 7.4.2.2.1, and 7.4.2.2.2, *above*, are present in the claim form and that the submitted documentation supports the claimed amount. The Claims Processor shall also confirm with the Defendants that the Class Member was insured under a health plan covered by this Agreement at the time the unreimbursed charges were incurred. The Claims Processor shall further confirm that the claimed sums are not duplicative of each other or of previously submitted claims paid by Defendants.
  - 7.4.3.1 *Opportunity to Cure.* In the event of a deficiency of proof, the Claims Processor shall provide the Class Member (or the parent/legal guardian of the Class Member) with an explanation of the deficiency and a reasonable opportunity, not to exceed 90 days, to cure the deficiency.
  - 7.4.3.2 *Assistance in Perfecting Claim.* A copy of all deficiency notices shall also be provided to Class Counsel, who may assist the Class Member in curing any problems with the Class Member's claim.
- 7.4.4 *Disposition of Claims.* The Claims Processor shall provide Class Counsel and Defendants' Counsel with copies of all Claim Forms submitted by Class Members (or their designees), along with the disposition of each claim (denied, approved at \$X, etc.). The decision of the Claims Processor is entitled to a rebuttable presumption of accuracy.
- 7.4.5 *Arbitration.* Defendants, Class Counsel or a Class Member may challenge the decision of the Claims Processor. Any dispute over whether a claim is valid or not shall be submitted for final and binding arbitration before Judge Steve Scott (ret.). The type and manner of the arbitration (in-person, by phone or on the papers) shall be determined by the arbitrator in his sole discretion. Expenses of the arbitrator shall be paid from the Settlement Fund, provided, however, that the arbitrator may assess costs and fees against Defendants if a challenge is not brought in good faith.
- 7.4.6 *Cy Pres.* If, after the payment of all items under Section 11 and all valid claims under this Section 7, funds remain in the Settlement Trust Fund, then those funds shall be allocated and distributed as follows:
  - 7.4.6.1 *Allocation.* For the purposes of this Section 7.4.6, one third (1/3) of any residual funds shall be allocated to the O.S.T.

Action, and two-thirds (2/3) of the residual funds shall be allocated to the K.M. Action.

7.4.6.2 *O.S.T. Action Distribution.* With respect to the sums allocated to the O.S.T. Action, those funds shall be distributed as follows: (1) 25% to the Legal Foundation of Washington, as required by Civil Rule 23(f)(2) and (2) 75% to organizations to assist families with a family member with developmental conditions to provide health care and access health coverage. The parties will endeavor to present a mutually agreed proposed *cy pres* distribution to the O.S.T. Court. To that end, Class Counsel will submit a proposal to the Defendants and try to reach agreement for an appropriate distribution of the *cy pres* funds. If no agreement can be reached, Plaintiffs may submit a proposal to the O.S.T. Court and Defendants may object, and/or provide an alternative proposal to the Court. The O.S.T. Court shall have the final authority to distribute the *cy pres* funds allocated to the O.S.T. Action.

7.4.6.3 *K.M. Action Distribution.* With respect to the sums allocated to the K.M. Action, those funds shall be distributed to organizations to assist families with a family member with developmental conditions to provide health care and access health coverage. The parties will endeavor to present a mutually agreed proposed *cy pres* distribution to the K.M. Court. To that end, Class Counsel will submit a proposal to the Defendants and try to reach agreement for an appropriate distribution of the *cy pres* funds. If no agreement can be reached, Plaintiffs may submit a proposal to the K.M. Court and Defendants may object, and/or provide an alternative proposal to the Court. The K.M. Court shall have the final authority to distribute the *cy pres* funds allocated to the K.M. Action.

7.4.8 *Pro Rata Distribution.* If, after the payment of amounts set forth in Section 11, insufficient funds remain in the Settlement Trust Fund to pay all valid claims under this Section 7 at 100%, then each claim shall be paid on a *pro rata* basis with all other valid claims provided that the threshold payment level is met pursuant to Section 9.6.

## 8. *Effective Date of Settlement.*

8.1 *Effective Date.* This Agreement shall be fully effective and binding on the date on which all of the conditions to settlement set forth in section 2 have been fully satisfied or waived.

8.2 *Disputes Concerning the Effective Date of Settlement.* If Parties disagree as to

whether each and every condition set forth in section 2 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within ten (10) business days thereafter, shall present their dispute for mediation and/or arbitration under Section 13.1.

**9. *Termination of Agreement to Settle Claims.***

- 9.1 *Court Rejection.* If the Court in the O.S.T. Action or the Court in the K.M. Action declines to preliminarily or finally approve the Settlement, then this Agreement shall automatically terminate, and thereupon become null and void. Both Courts must both preliminarily and finally approve the Agreement for it to be effective and binding.
- 9.2 *Court of Appeals Reversal.* If any Court of Appeals reverses any Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this section.
- 9.3 *Supreme Court Reversal.* If any Supreme Court reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this section.
- 9.4 *Pending Appeal.* If an appeal is pending of an order declining to approve the Settlement, this Agreement shall not be terminated until final resolution of dismissal of any such appeal, except by written agreement of the Parties.
- 9.5 *Threshold Participation and Qualified Opt-Outs.* In the event 50 or more of the NDT class members constituting Qualified Opt Outs, opt out of the Settlement, or 10 or more of the ABA class members constituting Qualified Opt Outs opt out of the Settlement, then, Defendants may, in their sole and absolute discretion, terminate this Settlement Agreement by delivering a notice of termination to Class Counsel within 15 court days of the final calculation of opt-outs received by the Claims Processor. If this Agreement is terminated by this clause, then the Defendants shall be responsible for the payment of the costs of administration incurred by the Claims Processor.
- 9.6 *Threshold Payment Level.* This Agreement shall terminate if a *pro rata* deduction under Section 7.4.8 exceeds 45.14% of Class Members' total approved claims. The 45.14% figure represents an imputed deduction of 15.6% to approximate the effect of copays/coinsurance/deductibles that likely would have applied to the claims, plus an imputed deduction of 35% to approximate the amount that a Class Member would be required to pay for continent legal representation and costs in an individual legal case. If the Agreement is terminated solely by this clause, then the Classes shall be responsible for the payment of the costs of administration incurred by the Claims Processor. The Parties, individually or collectively, may

cure termination under this section by taking steps to ensure that Class Members receive the threshold payment level under this subsection.

**10. *Consequences of Termination.*** If the Agreement is terminated and rendered null and void for any reason, then the following shall occur:

10.1 *Reversion of Action.* Each Action shall revert to its status as of February 19, 2014.

10.2 *Releases and Terms Void.* All Releases given or executed pursuant to this Agreement shall be null and void and none of the terms of the Agreement shall be effective or enforceable.

**11. *Attorney Fees and Expenses; Case Contribution Award and Cost of Administration.***

11.1 *Attorney Fees.* Class Counsel shall apply for attorney's fees under the common fund/common benefit doctrine in an amount up to, but not exceeding, 35% of the Settlement Amount. This Agreement is not contingent upon an award of attorney fees at the level requested by Class Counsel, and shall not terminate by reason of any Court awarding less than the amount requested. Defendants will take no position with respect to this application for attorney's fees, which is subject to each Court's review and approval, provided that the request does not exceed the amount set forth herein.

11.2 *Litigation Costs.* Class Counsel's actual out-of-pocket litigation costs shall be reimbursed out of the Settlement Amount, subject to each Court's review and approval. Defendants will take no position with respect to this application for costs, provided that the request does not exceed the amount set forth herein.

11.3 *Case Contribution Awards.* Incentive awards, up to \$25,000 for parents of O.S.T., L.H., K.B. and A.B., D.F., K.M., and B.S., and for Disability Rights Washington, (for a total of \$175,000 for all class representatives) will be requested. This Agreement is not contingent upon an award of incentive payments to any Class Representative, and shall not terminate by reason of any Court awarding less than the amount requested. Defendants will take no position with respect to this application for incentive awards, which is subject to each relevant Court's review and approval, provided that the request does not exceed the amount set forth herein.

11.4 *Costs of Administration.* All costs and expenses of claims processing and administration shall be paid from the Settlement Amount. Class Counsel may advance any such payments, and shall be entitled to reimbursement of the same from the Settlement Fund.

12. ***Press Releases.*** The Parties agree to create and issue two joint press releases about this Agreement to be issued on (1) the date(s) the parties move for joint approval of this Agreement and (2) the date(s) the courts finally approve, or reject, this Agreement. Unless they mutually agree, the Parties will issue no further press releases other than these two agreed statements.
13. ***Miscellaneous***
- 13.1 ***Dispute Resolution.*** The Parties agree that any dispute regarding the terms, conditions, releases, enforcement or termination of this Agreement shall be resolved by mediator and retired Judge Steve Scott, through mediation and, if mediation is unsuccessful, through binding arbitration without the ability or right to appeal.
- 13.2 ***Governing Law.*** This Agreement shall be governed by the laws of State of Washington without regard to conflict of law principles.
- 13.3 ***Severability.*** The provisions of this Agreement are not severable.
- 13.4 ***Amendment.*** Before entry of any Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of any Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Courts.
- 13.5 ***Waiver.*** The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
- 13.6 ***Construction.*** None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision thereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.
- 13.7 ***Principles of Interpretation.*** The following principles of interpretation apply to this Agreement:
- 13.7.1 ***Headings.*** The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
- 13.7.2 ***Singular and Plural.*** Definitions apply to the singular and plural forms of each term defined.
- 13.7.3 ***References to a Person.*** References to a person include references to an entity, and include successors and assigns.

- 13.8 *Survival.* All representations, warranties and covenants set forth in herein shall be deemed continuing and shall survive the Effective Date of Settlement.
- 13.9 *Entire Agreement.* This Agreement contains the entire agreement among the Parties relating to this Settlement.
- 13.10 *Counterparts.* This Agreement may be executed by exchange of executed faxed or PDF signature pages, and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.
- 13.11 *Binding Effect.* This Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans, predecessors, and transferees, and their past and present shareholders, officers, directors, agents, and employees.
- 13.12 *Further Assurances.* Each of the Parties agree, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith promptly execute and deliver such other documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.

**SIGNATURES:**

REGENCE BLUESHIELD,

DATED: 10-10-14

By [Signature]

Its EVP Corp Sucs

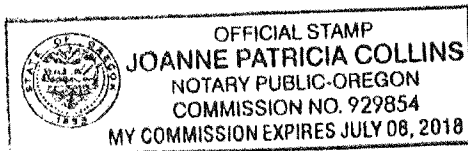
STATE OF OREGON)

) ss.

COUNTY OF MULTNOMAH )

On this 10<sup>th</sup> day of October, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kerry Barnett <sup>OR</sup>, to me known to be the Secretary of REGENCE BLUESHIELD, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of REGENCE BLUESHIELD, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of REGENCE BLUESHIELD.

Witness my hand and official seal hereto affixed the day and year first above written.



Joanne Patricia Collins  
NOTARY PUBLIC in and for the State of  
Oregon, residing at Portland  
My commission expires: 7/8/2018

CAMBIA HEALTH SOLUTIONS, INC.,

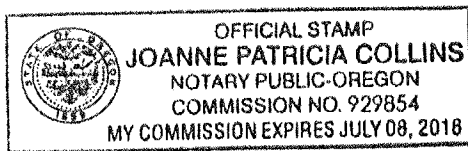
DATED: 10-10-14

By [Signature]  
Its EVP Corp Svcs.

STATE OF OREGON            )  
  ) ss.  
COUNTY OF MULTNOMAH    )

On this 10<sup>th</sup> day of October, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kerry Barnett, to me known to be the Exec Vice President of CAMBIA HEALTH SOLUTIONS, INC., who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of CAMBIA HEALTH SOLUTIONS, INC., for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of CAMBIA HEALTH SOLUTIONS, INC.

Witness my hand and official seal hereto affixed the day and year first above written.



Joanne Patricia Collins  
NOTARY PUBLIC in and for the State of  
Oregon, residing at Portland  
My commission expires: 7/8/2018

O.S.T. BY AND THROUGH HIS PARENT C.T.

DATED: 9.24.2014

By [Redacted Signature]

STATE OF WASHINGTON )

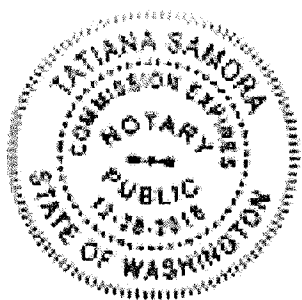
) ss.

COUNTY OF KING )

WITNESSES

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, C.T., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 24 day of September, 2014.



Tatiana Samora  
NOTARY PUBLIC in and for the State of  
Washington, residing at Everett, WA  
My commission expires: 12-28-18

O.S.T., BY AND THROUGH HIS PARENTS,

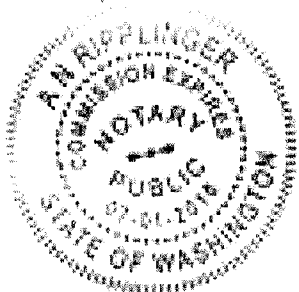
DATE: 9/23/14

By [Redacted]

STATE OF WASHINGTON )  
                    King ) ss.  
COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, E.S., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he ~~has~~<sup>has</sup> signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 23 day of September, 2014.





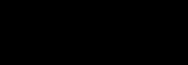


[Signature]  
NOTARY PUBLIC in and for the State of  
Washington residing at Bellevue  
My commission expires: 07/01/2016

[Redacted]

L.H., BY AND THROUGH HIS PARENT M.S.,


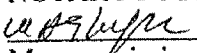
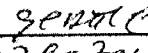
DATED: <sup>35</sup>  
9/18/14

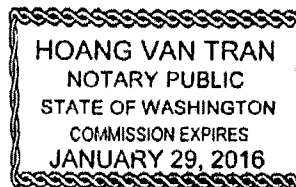
By    
M  B  S 

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, M.S., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 19 day of 09, 2014.

  
NOTARY PUBLIC in and for the State of  
, residing at   
My commission expires: 1-28-2016



L.H., BY AND THROUGH HIS PARENT K.H.,

DATED: 9/19/14

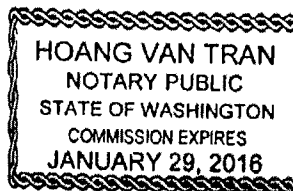
By [Redacted Signature]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, K.H., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 19 day of 09, 2014.

Hoang Van Tran  
NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle  
My commission expires: 1-29-2016



K.B. AND A.B., BY AND THROUGH THEIR PARENT  
H.B.,

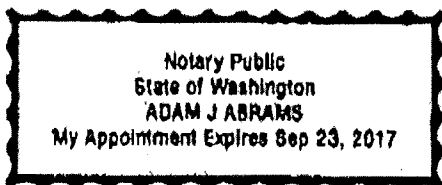
DATED: 10-2-2014

By [Signature] [Redacted] [Signature] [Redacted]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING PERLE )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, H.B., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 23 day of October, 2014.



[Signature]  
NOTARY PUBLIC in and for the State of  
WASHINGTON, residing at Royalup  
My commission expires: Sep 23, 2017

K.B. AND A.B., BY AND THROUGH THEIR PARENT  
M.B., [REDACTED] [REDACTED]

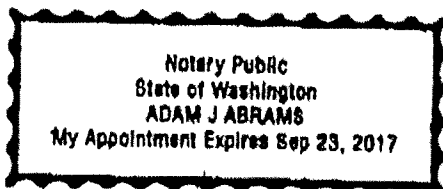
DATED: 10/2/14

By

STATE OF WASHINGTON )  
COUNTY OF KING <sup>At</sup> Pref ) ss.

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, M.B., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 2 day of October, 2014.



NOTARY PUBLIC in and for the State of WASHINGTON  
 \_\_\_\_\_, residing at Prallup  
 My commission expires: SEP. 23, 2017

**D.F., BY AND THROUGH HIS PARENT AN.F.,**

DATED: 9/19/2014

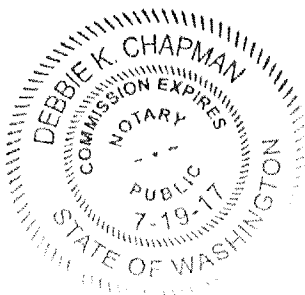
By

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, An.F., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 19 day of September, 2014.

NOTARY PUBLIC in and for the State of  
Washington, residing at Issaquah  
My commission expires: 7-19-17



D.F., BY AND THROUGH HIS PARENT AL.F.,

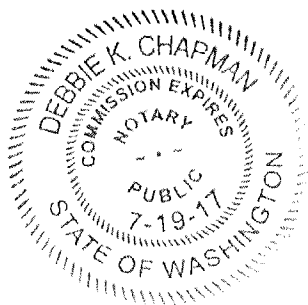
DATED: 9/19/14

By [REDACTED] [REDACTED]  
[REDACTED]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, AL.F., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 19 day of September, 2014.



[Signature]  
NOTARY PUBLIC in and for the State of  
Washington, residing at Issaquah  
My commission expires: 7-19-17

K.M., BY AND THROUGH HIS PARENT L.M.,

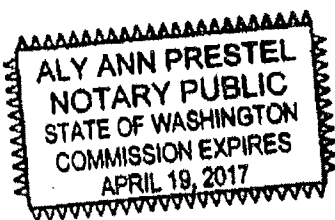
DATED: 9/19

By [Redacted Signature]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, L.M., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 22<sup>nd</sup> day of September, 2014.



Aly Ann Prestel  
Aly Ann Prestel  
NOTARY PUBLIC in and for the State of  
Washington, residing at King County / Issaquah  
My commission expires: 4/19/2017

K.M., BY AND THROUGH HIS PARENT E.M.,

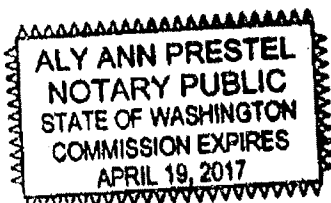
DATED: 9/22/2014

By [REDACTED]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, E.M., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 22<sup>nd</sup> day of September, 2014.



Aly Ann Prestel

ALY ANN PRESTEL

NOTARY PUBLIC in and for the State of Washington

, residing at Issaquah

My commission expires: 4/19/2017

B [REDACTED] S [REDACTED] E [REDACTED] S [REDACTED]  
B.S., BY AND THROUGH HIS PARENT E.S.,

DATED: 9/19/2014

By [REDACTED] [REDACTED]

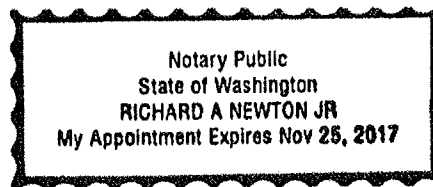
STATE OF WASHINGTON )  
COUNTY OF ISLAND ) ss.  
KING )

E [REDACTED] S [REDACTED]

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, E.S., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 19<sup>th</sup> day of SEPTEMBER, 2014.

[Signature]  
NOTARY PUBLIC in and for the State of  
WASHINGTON, residing at POZZANO WA  
My commission expires: NOV 25, 2017



B [REDACTED] S [REDACTED] R [REDACTED] S [REDACTED]  
B.S., BY AND THROUGH HIS PARENT R.S., R.S.

DATED: 9/19/14

By [REDACTED]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF ~~KING ISLAND~~ )

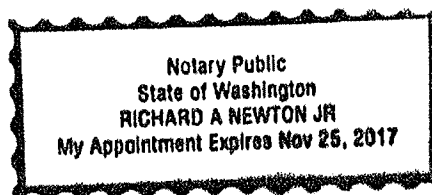
R.S.  
[REDACTED]

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, R.S., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 19th day of September, 2014.

[Signature]

NOTARY PUBLIC in and for the State of  
WASHINGTON, residing at REEDMAN WA  
My commission expires: Nov 25, 2017



DATED: 9/30/2014

## DISABILITY RIGHTS WASHINGTON

By Mark Stroh  
Its Executive Director

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 30<sup>th</sup> day of September, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Mark Stroh, to me known to be the Executive Director of DISABILITY RIGHTS WASHINGTON, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of DISABILITY RIGHTS WASHINGTON, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of DISABILITY RIGHTS WASHINGTON.

Witness my hand and official seal hereto affixed the day and year first above written.

Samana Rennie  
NOTARY PUBLIC in and for the State of  
Washington, residing at Kent WA  
My commission expires: 11.19.16

S.A., BY AND THROUGH HER PARENT AND NEXT  
FRIEND A.K.,

DATED: 9.22.2014

By A [REDACTED] K [REDACTED]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, A.K., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

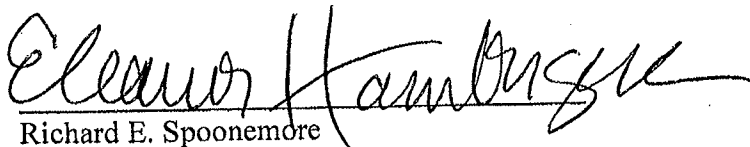
GIVEN under my hand and official seal this 22<sup>nd</sup> day of September, 2014.

Lamara Kenni

NOTARY PUBLIC in and for the State of  
Washington, residing at Kent WA  
My commission expires: 11-19-16

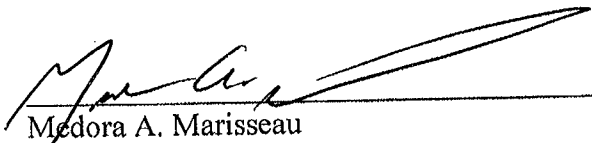
APPROVED:

SIRIANNI YOUTZ SPOONEMORE HAMBURGER

A handwritten signature in cursive script, appearing to read "Eleanor Hamburger", written over a horizontal line.

Richard E. Spoonemore  
Eleanor Hamburger  
Attorneys for the Plaintiffs and the Classes

KARR TUTTLE CAMPBELL

A handwritten signature in cursive script, appearing to read "Medora A. Marisseau", written over a horizontal line.

Medora A. Marisseau  
J. Derek Little  
Attorneys for Regence BlueShield  
and Cambia Health Solutions, Inc.

## **APPENDIX A TO AGREEMENT TO SETTLE CLAIMS**

***O.S.T., L.H., K.B., A.B. and D.F. v. Regence BlueShield, No. 11-2-34187-9 SEA,  
Superior Court of Washington for King Count  
K.M., B.S. and Disability Rights Washington. v. Regence BlueShield  
and Cambia Health Solutions, No. C13 -1214-RAJ,  
United States District Court, Western District of Washington  
J.T. and S.A. v. Regence BlueShield and Cambia Health Solutions, No. C12-90-RAJ,  
United States District Court, Western District of Washington***

Terms for Authorization Criteria of Applied Behavioral Analysis for K.M. and O.S.T. ABA Subclass Members.

Definition. Applied Behavioral Analysis Therapy or “Applied Behavioral Analysis” (“ABA”) means the design, implementation and evaluation of environmental modifications, using behavioral interventions for the treatment of autism spectrum disorder. The goal of the therapy is to produce clinically significant improvements in core deficits associated with autism spectrum disorder (*i.e.* significant issues with communication, social interaction or injurious behaviors). It includes the use of direct observation, measurement and functional analysis of the relationship between the environment and behavior and uses behavioral stimuli and consequences.

Coverage requirements. All of the requirements listed below must be met:

1. The member has a diagnosis of an Autism Spectrum Disorder (DSM-IV-TR 299.0; 299.10; 299.80; DSM 5 299.00 or effective October 1, 2015, ICD-10 F84.0) by a neurologist, pediatric neurologist, developmental pediatrician, psychiatrist or doctoral level psychologist experienced in the diagnosis and treatment of autism. The diagnosis has been validated by a documented comprehensive assessment demonstrating the DSM-5 diagnostic criteria have been met, if the diagnosis was made after the release of DSM-5, or demonstrating the DSM-IV diagnostic criteria have been met, if the diagnosis was made prior to the release of DSM-5.
2. ABA therapy must be recommended or prescribed by the Prescribing Provider (who shall be a neurologist, pediatric neurologist, developmental pediatrician, psychiatrist or doctoral level psychologist experienced in the diagnosis and treatment of autism) and such Provider

shall determine and document the target symptoms and objectives of the therapy.

3. The Autism Spectrum Disorder (ASD) related symptoms and behaviors are impairing the member's communication, social and/or behavioral functioning such that the member is a safety risk to self or others and/or is unable to participate in age-appropriate home or community activities.
4. Based upon the recommendation or prescription from the Prescribing Provider, which includes the target symptoms and objectives of the therapy, a documented individualized treatment plan (ITP) is prepared by the Prescribing Provider or a Lead Behavior Analysis Therapist (LBAT) within 90 days before beginning ABA. An ITP prepared by an LBAT shall be reviewed and documented in the medical record and signed by the Prescribing Provider before implementation.
5. The ITP shall include all of the following:
  - A detailed description of specific behaviors targeted for therapy. Targeted behaviors must be those which prevent the member from participating in age-appropriate home or community activities or are presenting a safety risk to self or others.
  - For each targeted behavior, an objective baseline measurement using standardized instruments that include frequency, intensity and duration.
  - A detailed description of treatment interventions and techniques specific to each of the targeted behaviors, including the frequency and duration of treatment for each intervention which is designed to improve the member's ability to participate in age appropriate home or community activities or reduce the safety risk to self or others.
  - Where there was a prior course of ABA therapy and the documentation related to that therapy is available to the LBAT, a description of the prior treatment interventions and techniques, the goals of treatment, whether the goals were achieved, and the rationale for additional course of ABA therapy.
  - Specific treatment goals for each targeted behavior, including all of the following:
    - a. Goals can be generalized outside the treatment setting
    - b. Objective measures

c. Time-based milestones

- A description of training and participation of family (parents, legal guardians and/or active caretakers as appropriate) in achieving treatment goals, including detailed description of interventions with family, including, as appropriate, family education, support, training, overall goals for the family, and plan for transferring to the family the interventions with member.
- The total number of days per week and hours per day of direct ABA services to the member and of services to the family, and the hours per week of direct face to face supervision of the treatment being delivered and observation of the child in his/her natural setting.
- Measurable discharge and/or transition criteria.

The ITP may reference school-based healthcare services, early intervention program-based services or academic services, but these services are not provided within the scope of the ITP.

Ongoing Coverage requirements

Ongoing coverage is appropriate where there has been functional and measurable progress in the ITP goals, which is demonstrated when all of the following are met:

- Data on targeted behaviors is documented by the individuals who are delivering the prescribed or recommended ABA therapy to the member during each ABA session. The LBAT collates and evaluates the data from all sessions and conducts a case review and treatment plan review at least once/month. Such LBAT review shall include in-person and direct observation of the patient;
- Member clinical response to treatment is monitored and treatment is provided according to the ITP and member clinical response;
- Progress toward each of the defined goals in the ITP is assessed and documented for each targeted behavior regarding whether clinically significant improvements are achieved and sustained both during treatment sessions and outside the treatment setting (e.g. home/community). Progress toward the

ITP goals is measured using the same indices utilized for baseline measurements in the ITP;

- There is objective evidence of continued improvement in at least one of the core functional areas of communication, social interaction or adaptive behavior, as measured by the indices established in the ITP;
- At least every three months, the LBAT has assessed the member and updated the ITP as indicated by the member's response to therapy and obtained review and sign off by the Prescribing Provider or another neurologist, pediatric neurologist, developmental pediatrician, psychiatrist, doctoral level psychologist experienced in the diagnosis and treatment of autism, or the member's primary care provider, who has experience in the treatment of autism.
- Intervals at which progress towards goals will be evaluated: objective measurements and evaluation to occur at least every three to six months.

Regence may require additional information as is necessary, including an updated clinical evaluation from the Prescribing Provider or another neurologist, pediatric neurologist, developmental pediatrician, psychiatrist or doctoral level psychologist experienced in the diagnosis and treatment of autism.. If Regence requests additional information or evaluation as part of ongoing review, Regence will continue to authorize ABA therapy services for the member for a reasonable time while the additional information and/or evaluations are obtained.

Direct service delivery of ABA to class members must meet the following qualifications:

Applied Behavior Analysis (ABA) services are:

- a. provided or supervised by a licensed Provider under Title 18 RCW acting within the scope of his or her license, with experience in designing and implementing ABA therapy programs. Persons providing direct ABA services working under the supervision of a licensed Provider shall meet the qualifications of an LBAT or Therapy Assistant, as defined

- by the Washington state Health Care Authority in its regulations; or
- b. delivered by an agency that is licensed by the Washington Department of Social and Health Services, Division of Behavioral Health Resources as a Community Mental Health Agency and is also certified by the Department of Social and Health Services, Division of Behavioral Health Resources to deliver ABA services.
- c. For Class Members residing in states that specifically license agencies or providers for ABA services, ABA services may be provided by such licensed ABA agency or provider, or its grandfathered equivalent, when delivered in those states.

When direct ABA services are provided by a Therapy Assistant, supervision of patient care shall be conducted in-person by an LBAT or licensed provider consistent with the appropriate standard of care. Services rendered by family members are not included.

8. In addition to the above, participation in a case management program may be required.

9. Providers must use the following codes to obtain reimbursement for ABA and ABA-related services:

- (i) H0031, H0031(TM), H0031(TS)
- (ii) H0032, H0032 (TS)
- (iii) H0046(HP), H0046(HO)
- (iv) S5111, S5111 (UN)
- (v) H2014 Skills training and development, per 15 minutes – Used for direct services to member and/or parents (including parent education and training)

This list will be updated after Regence adopts the American Medical Association CPT codes for ABA therapy.

## **Appendix 2**

**ATTENTION**  
**Regence BlueShield Insureds:**  
**A SETTLEMENT AGREEMENT MAY AFFECT YOUR RIGHTS.**

*Two Courts authorized this notice. This is not a solicitation from a lawyer.*

- Two Courts have ordered this notice to be sent to current and former Regence BlueShield insureds. As a result, many people will receive this notice who are not Class Members, and who are not affected by this notice. If you neither received nor required neurodevelopmental (speech, occupational and physical) therapies or Applied Behavior Analysis to treat a DSM mental health condition (as defined in ¶1.20 of the Agreement), then you should disregard this notice and its enclosures. However, if you require, or did receive, either neurodevelopmental therapies or Applied Behavior Analysis to treat a DSM mental health condition, then you should review this notice – and your rights – carefully.
- Individuals with neurodevelopmental conditions and autism sued Regence BlueShield and Cambia Health Solutions (“Regence”) in two different class action lawsuits: *O.S.T., et al. v. Regence BlueShield, et al.* and *K.M., et al. v. Regence BlueShield, et al.* Disability Rights Washington joined as a plaintiff in the *K.M.* case. The individuals and Disability Rights Washington, called “Class Representatives,” sought coverage for neurodevelopmental therapies and Applied Behavior Analysis therapy to treat certain DSM conditions. You may have received a prior notice about one of these cases.
- Class Representatives and Regence have reached a global settlement agreement of both cases in which Regence will (1) provide coverage for neurodevelopmental therapies and Applied Behavior Analysis therapy, and (2) pay \$6,000,000.00, a portion of which will be used to reimburse Class Members for unpaid neurodevelopmental therapies and Applied Behavior Analysis services incurred in the past. You may have the right to file a claim if you paid out-of-pocket for these therapies. A claim form with instructions is enclosed.
- The two Courts involved in the cases have granted preliminary approval of the Agreement.

**Legal Rights of Class Members**

<b>You may comment on the proposed Settlement Agreement.</b>	<p><b>If you are a Class Member, then you have the right to comment on, object to or support the proposed Agreement.</b> Each Court will decide whether to approve or reject the proposed Settlement Agreement after a Final Hearing:</p> <p><i>O.S.T. v. Regence:</i> _____, 2015 at __, King County Courthouse, Room _____.</p> <p><i>K.M. v. Regence:</i> _____, 2015 at __, United States District Court for the Western District of Washington, 700 Stewart Street, Seattle, WA 98101.</p> <p>You may submit written comments or objections you wish to be considered by each Court by _____. You should not call either court.</p>
<b>You may make a claim.</b>	<p><b>If you are a Class Member, you may submit a claim</b> if you paid for neurodevelopmental therapy or Applied Behavior Analysis therapy to treat a neurodevelopmental condition from January 1, 2006 (for large group health plan members) or January 1, 2008 (for individual and small group health plan members) to the Effective Date of the Settlement Agreement. Claims must be submitted by _____. A claim form is included with this notice.</p>
<b>You may do nothing.</b>	<p><b>You do not need to take any action to receive coverage for medically necessary neurodevelopmental therapies and/or Applied Behavior Analysis therapy as described in the Agreement.</b> If you do nothing, however, any claims you have against Regence that could have been brought in the two lawsuits will be forever released.</p>
<b>You may ask to be excluded.</b>	<p><b>If you are a Class Member, you may opt out of the class.</b> If you opt out, you will be prohibited from filing a claim and obtaining reimbursement. You will keep the right to file a separate lawsuit. <b>YOU DO NOT NEED TO OPT OUT IF YOU DO NOT HAVE ANY CLAIMS.</b></p>

## FREQUENTLY ASKED QUESTIONS

### 1. Why did I get this notice?

You are receiving this notice because you or a member of your family has, or had in the past, Regence insurance. **You are not a Class Member simply because you got this notice.**

Only individuals who have received or require speech, occupational and/or physical therapy to treat mental health conditions listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM) or who require Applied Behavior Analysis therapy to treat Autism Spectrum Disorders are "Class Members." A complete definition of each class appears at [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement).

**If you did NOT receive or require speech, occupational, physical or Applied Behavior Analysis therapy and/or do not expect to need those therapies to treat a mental condition listed in the DSM, then you are NOT in any of the Classes and you should disregard this notice.**

### 2. What is a class action, and who is involved?

In a class action lawsuit, individuals or entities called "Class Representatives" sue individuals or entities on behalf of themselves and others who may have a similar claim. In this type of lawsuit, one Court makes decisions on behalf of everyone in the class. If you or your dependants received or require speech, occupational, physical or Applied Behavior Analysis therapy to treat a mental condition listed in the DSM, then you may be Class Members.

This notice concerns the proposed settlement of two separate class actions: (1) *O.S.T. v. Regence*, King County Cause No. 11-2-34187-9 SEA; and (2) *K.M. v. Regence*, United States District Court for the Western District of Washington, Cause No. C13-1214-RAJ.

### 3. What are these lawsuits about?

In the lawsuits, the Class Representatives claim that Regence illegally excluded and/or limited coverage of medically necessary neurodevelopmental and/or ABA therapies to treat developmental mental health conditions. They allege that these exclusions and limitations violated their health plans and the State and/or Federal Mental Health Parity Acts. In *O.S.T. v. Regence*, the plaintiffs also allege that Regence's actions violated the Washington Consumer Protection Act. Regence denies all claims.

### 4. What does the proposed Settlement Agreement provide?

The main points of the Agreement are described below. You are encouraged to review the entire proposed Agreement, which is available at [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement). To be effective, both Courts must approve the Agreement.

#### ♦ Coverage of Neurodevelopmental Therapy

Regence will cover medically necessary speech, occupational and physical therapies to treat DSM developmental conditions as Mental Health Services. ***Regence will not impose age exclusions or treatment limits on coverage of these therapies.***

#### ♦ Coverage of Applied Behavioral Analysis Therapy

Regence will cover medically necessary Applied Behavioral Analysis therapy to treat autism spectrum disorders as a Mental Health Service and consistent with "Authorization Criteria" in *Appendix A* to the

Settlement Agreement (also located at [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement)). Regence will not impose age exclusions or treatment limitations on coverage of ABA therapy. Regence will not deny or limit coverage of ABA therapy based on an “academic” or “educational” exclusion. All requests for ABA therapy must meet other standard requirements, such as the requirement that care be medically necessary.

♦ **\$6,000,000 Settlement Fund**

The Agreement provides for a \$6,000,000 Settlement Fund to reimburse Class Members for unpaid neurodevelopmental therapy services and Applied Behavior Analysis therapy to treat neurodevelopmental conditions and autism since January 1, 2006 for Class Members in large group plans and since January 1, 2008 for Class Members in individual and small group plans, plus attorneys’ fees and costs, claims administration costs and incentive awards.

♦ **Claims Process for Unpaid Neurodevelopmental and ABA Therapy Services**

A Class Member (through his or her parents and/or legal guardian) will be eligible for payment from the Settlement Fund upon submission of a claim form (which is provided, with instructions, as part of this class notice) that contains the following four items:

1. the member’s DSM diagnosis, who made the diagnosis, and the date of diagnosis;
2. the date(s) of neurodevelopmental or ABA therapy treatment (month/year); and
3. the unreimbursed charges or debt incurred with that treatment.

Agreement, § 7.4.2.1 To be entitled to reimbursement, a Class Member must have a diagnosis of ICD-9 299.00, 299.10, 299.80, 315.00, 315.1, 315.2, 315.31 and/or 315.39 that required treatment with ABA, speech, occupational and/or physical therapies. Agreement, §§ 1.22(a), 7.3. In addition, the charges must be documented with some evidence of payment(s) or obligation, such as (but not limited to) cancelled checks, credit card account statements, checking account statements, provider ledgers or signed letters from the provider or the provider’s employer documenting the amount paid or debt incurred (so long as the letter clearly connects payments/debt with service dates by at least the month/year). Agreement, § 7.4.2.2. A Class Member is entitled to reimbursement even if no claim was made to Regence, and/or a claim was denied by Regence, at the time the service was rendered.

A Claims Processor will review the claims to confirm that the requisite items are on the claim form. Agreement, § 7.4.3. The Claims Processor will also confirm with Regence that the Class Member was insured under a health plan covered by the Agreement at the time the services were received, and that the claimed sums are not duplicative of claims previously paid by Regence. Agreement, § 7.4.3. The Claims Processor must provide a Class Member with a deficient claim form an opportunity to cure any problems, and Class Counsel is empowered to assist the Class Member in making any claim. Agreement, §§ 7.4.3.1; 7.4.3.2.

♦ **Attorneys’ Fees, Litigation Costs and the Costs of Claims Administration**

Under the proposed Agreement, Class Counsel may apply for attorneys’ fees under the common fund doctrine/common benefit doctrine in an amount totaling 35% of the Settlement Amount (\$2,100,000), to be paid out of the Settlement Fund. Agreement, § 11.1. In addition, reimbursement will be sought from the Settlement Fund for litigation costs (sums Class Counsel paid out of pocket on behalf of the Class) and costs for claims administration. Agreement, §§ 11.2; 11.4. Class Counsel will seek approximately \$110,000 in litigation costs from the Settlement Fund. Class Counsel’s requests for attorneys’ fees and litigation costs are subject to review, and must be approved by the Courts. Agreement, §§ 11.1; 11.2; 11.4.

You are permitted to review, object to, support or comment on Class Counsel’s request for attorneys’ fees and costs. On or before \_\_\_\_\_, Class Counsel will post its fee and cost application on [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement). Alternatively, you may write or email Class Counsel and request that a copy of the application be sent to you.

♦ **Incentive Awards**

Incentive awards of up to \$25,000 for each Class Representative family and Disability Rights Washington (a total of \$175,000) will be requested from the Settlement Amount. Agreement, § 11.3. The Courts must approve the incentive awards. Agreement, § 11.3.

You are permitted to review, object to, support or comment on the request for incentive awards. On or before \_\_\_\_\_, Class Counsel will post the application for incentive awards on [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement). Alternatively, you may write or email Class Counsel and request that a copy of the application be emailed or mailed to you.

♦ **Insufficient Funds, Termination if Funds Do Not Meet Threshold, and Excess Funds**

Class Counsel expects, but does not guarantee, that the \$6,000,000 fund will be sufficient to pay all Class Member claims at 100%, even after payment of attorneys' fees, costs, incentive awards and costs of administration. If insufficient funds remain to pay all Class Members who file valid claims at 100% after the payment of attorneys' fees, costs, incentive awards and expenses, then all Class Members will receive a *pro rata* (percentage) distribution of their approved claimed amount. Agreement, § 7.4.8. If, however, Class Members would sustain over a 45.14% deduction of their claims, then the Settlement Agreement will automatically terminate unless adjustments are made to ensure payment at or above that threshold level. Agreement, § 9.6. The threshold payment level represents an deduction of 15.6% to approximate the effect of copays/coinsurance/deductibles that likely would have applied to the claims, plus a deduction of 35% to approximate the amount that a Class Member would likely be required to pay for contingent legal representation and costs in an individual legal case. Agreement, § 9.6.

As claims are received and processed, Class Counsel will periodically post projections on [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement) with respect to whether sufficient funds will exist to pay all valid claims at 100%.

If funds remain after the payment of claims, attorneys' fees, costs, incentive awards and costs of administration, then those funds shall be distributed by the Courts to charitable organizations to assist families with a family member with developmental conditions to provide health care and access health coverage. The parties will make recommendations to the Courts, who have ultimate authority to distribute any excess funds.

♦ **Claims Release**

Class Members who require or have required neurodevelopmental or ABA therapy services will release Defendants from any and all claims related to those therapies that were or could have been brought in the lawsuit. Agreement, §§ 1.16; 1.19; 1.24; 1.28; 3.1. This means that if you have any claims arising out of Regence's past failure to provide neurodevelopmental or ABA therapy, then those claims will be resolved as part of the Agreement, and your right to payment related to neurodevelopmental or ABA therapy coverage will be governed exclusively by the Agreement.

♦ **Regence's Right to Terminate Due to Opt-Outs**

Regence has the right, at its option, to terminate the Settlement Agreement if a certain number of Class Members elect to opt out of the Agreement. Agreement, § 9.5.

**5. How do I get Applied Behavioral Analysis therapy covered by Regence?**

Appendix A to the Settlement Agreement describes how Regence will provide Applied Behavioral Analysis therapy coverage.

## 6. When will the Settlement Fund be available?

Both Courts must finally approve the Agreement and, if any Class Members appeal, a final adjudication of any appeal(s) must be made before these funds are available.

If you have questions, you may refer to [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement) or call the legal counsel for the Class at 206-838-3210.

## 7. How can I respond to the proposed Settlement Agreement?

### ♦ You May Opt Out (Exclude Yourself or Your Dependent).

If you wish to opt out or exclude yourself or your dependent from one of the classes, then you must send in the enclosed "Opt-Out Form." It must be sent to the address below, and must be received by \_\_\_\_\_. If you choose to opt out, you must send the Opt-Out Form to:

Regence Class Opt-Out  
c/o Nickerson & Associates, LLC  
1700 7th Avenue, Suite 116, #330  
Seattle, WA 98101

If you opt out, then you will not be entitled to make a claim, or receive payment, if the proposed Agreement is approved. You will, however, retain any rights you may have to pursue individual claims against the Regence regarding neurodevelopmental or ABA therapy coverage. If you believe that you have such claims, you may wish to consult with your own legal counsel.

**Only Class Members may opt out, and you must certify that you are a Class Member when opting out. If you are not a member of one of the classes, then these cases do not affect you and you need not opt-out.**

### ♦ You May Comment on, Object to, or Support the Proposed Agreement.

Each Court will hold a hearing on the proposed Settlement Agreement to consider comments and approve or reject the Settlement Agreement.

- The *O.S.T. v. Regence* Court will hold a hearing on \_\_\_\_\_ at \_\_\_\_\_. The hearing will be located in Courtroom \_\_\_\_\_ at the King County Courthouse, 516 Third Avenue, in Seattle.
- The *K.M. v. Regence* Court will hold a hearing on \_\_\_\_\_ at \_\_\_\_\_. The hearing will be located in the courtroom of the Hon. Richard A. Jones at the United States District Court for the Western District of Washington, 700 Stewart Avenue, in Seattle.

**In general, if you are (or were) enrolled in a Regence-insured health plan through private employment, then you are likely covered by the *K.M. v. Regence* action. If you are (or were) enrolled in a Regence insured individual health plan, or a health plan issued to a governmental or religious entity, then you are likely covered by the *O.S.T. v. Regence* action. If you are unsure which hearing you should attend, you can call Class Counsel at 206-838-3210 for help. Class Counsel will assist you with identifying the class to which you belong. You can also refer to [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement), which has more detail on how to determine which action affects you.**

You are not required to attend the hearing, and you are not required to be present to submit comments for consideration. All comments on the Agreement, however, must be submitted in advance to the address listed below.

You may attend the hearing, and may choose to bring a legal representative if you wish and at your own expense. You must tell the Court you plan to come to the hearing to object to, comment on, or formally support the

Settlement Agreement or the Class Representatives' request for payment of attorney fees, costs, expenses or case contribution awards by \_\_\_\_\_.

♦ **Addresses to Comment on, Object to, or Support the Proposed Agreement**

If you choose to submit written comments or appear at the Court hearing, your letter must be received no later than \_\_\_\_\_ and must be mailed to:

Regence Settlement Claims Processor  
Nickerson & Associates, LLC  
1700 7th Avenue Suite 116, #330  
Seattle, WA 98101

You should identify whether you are a member of the *O.S.T. or K.M.* class. If you are unsure, please provide a telephone number in your letter and Class Counsel will contact you in order to determine which action is relevant to you.

All communications with the Courts must be in writing. Class Members should not call the Courts.

**8. What happens if I do nothing at all?**

You are not required to do anything related to this lawsuit. If the Court approves the Agreement, and you are a Class Member, then your Regence insured health plan will cover medically necessary neurodevelopmental therapy services to treat DSM conditions and Applied Behavioral Analysis therapy services to treat Autism Spectrum Disorders.

If you do nothing, however, any claims you have against Regence regarding neurodevelopmental or ABA therapy that could have been brought in these lawsuits will be released.

**9. Where can I get more information?**

For information about your rights related to the lawsuit, you may refer to the information at [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement), or write Class Counsel:

Richard Spoonemore or Eleanor Hamburger  
SIRIANNI YOUTZ SPOONEMORE HAMBURGER  
999 Third Avenue, Suite 3650  
Seattle, WA 98104

Email: [rspoonemore@sylaw.com](mailto:rspoonemore@sylaw.com) or [ehamburger@sylaw.com](mailto:ehamburger@sylaw.com)

You may request from Class Counsel copies of any of the documents in this matter, including the Class's motion for preliminary approval of the Settlement Agreement, which details the settlement and explains in more detail the reasons why approval is being requested.

## **Appendix 3**

## OPT OUT CERTIFICATION

Regence Class Opt Out  
Nickerson & Associates, LLC  
1700 7<sup>th</sup> Ave Ste 116 #330  
Seattle, WA 98101

## CLAIM FORM INSTRUCTIONS

You must complete a claim form for reimbursement of neurodevelopmental therapies (speech, occupational and physical therapies) and/or Applied Behavior Analysis therapy. Please follow these instructions in making a claim.

**All claims must be received by the Claims Administrator by no later than \_\_\_\_\_.  
Any claims received after this date will not be eligible for payment.**

### A. Front and Back of Claim Form Must Be Completed.

The DSM diagnosis of the Class Member, the date (month/year) of the diagnosis and the identity of the provider who made the diagnosis must be entered on the form. The following DSM diagnoses are eligible for reimbursement: 299.00, 299.10, 299.80, 315.00, 315.1, 315.2, 315.31 and 315.39. If you do not know the correct diagnosis, then you can call your provider to obtain that information.

For each date of service, you must provide, on the claim form: (1) the date of service (month/year); (2) a short description of the service; and (3) the amount paid or debt owed related to that service. *You must also sign the back of the form and certify that the information you have provided is true and correct.*

### B. Documentation.

You must also send in evidence of (1) the service dates (month/year) and (2) payment or obligation to pay:

1. Service dates can be evidenced by clinical notes, an appointment schedule/log, invoices seeking payment that include dates of service, or other evidence of similar reliability.
2. Proof of payment or debt owed may consist of cancelled checks, credit card account statements, provider ledgers, invoices stamped "paid" or showing amounts due, checking account statements, signed letters from the provider or provider's employer documenting the amount paid or debt incurred (so long as the letter connects payments or debt with service dates), or other evidence of similar reliability and containing similar specificity connecting payments/debt to the service date(s). You must include this additional proof with your Claim Form.

### C. All Claims Submitted in One Mailing.

All claims should be submitted in a single mailing. You may obtain additional copies of Claim Forms or make copies of the form yourself. Documents that you submit will not be returned, so please do not send originals.

### D. Mail Your Claim Form.

Your claim form, with documentation, must be received by \_\_\_\_\_. It should be mailed to:

Regence Claims Processing  
Nickerson & Associates, LLC  
1700 7<sup>th</sup> Avenue, Suite 116, #330  
Seattle, WA 98101

You may not submit claim forms by telephone, fax, e-mail or other means. If you want verification that your Claim Form was received, then you must mail your Claim Form via registered or certified mail.

### E. Investigation.

The Claims Administrator, Regence and/or Class Counsel may independently confirm any claim. By submitting a Claim Form you agree that such an investigation may be made. The failure to cooperate may be grounds for denial.

### F. Payment of Claims.

After you submit your claim, the Claims Processor will process the claim and determine whether you may be paid out of the settlement funds. Payment is contingent upon final Court approval of the proposed Agreement. This process will take several months.

If your claim is approved by the Claims Processor and authorized by the Court, you will be mailed a check for the approved amount of the claim. If your claim is denied, in whole or in part, the Claims Processor will provide a letter of explanation. That letter will explain why your claim was denied. You will be given an opportunity to correct any problems. If you disagree with the Claims Processor's determination, then you may follow the steps set forth in the denial letter to appeal. If you have questions about how to complete this Claim Form, your claims, or how to appeal a denial, then you may contact Class Counsel, Sirianni Youtz Spoonmore Hamburger, at 206-838-3210.

## CLAIM FORM FOR

Please print your name and, if known, Regence ID number here

**NOTE:** If you need additional pages for more claims, you may either make a copy of this blank claim form or obtain additional forms from [www.sylaw.com/RegenceSettlement](http://www.sylaw.com/RegenceSettlement). You must also fill out the back side of this form to be eligible for reimbursement.

Date of Service (at least month and year)	Provider Name	Provider Address (or Phone Number)	Description of Service	Diagnosis of Condition Treated*	Amount You Paid or Owe for the Service

Please attach all documents that show that you received and incurred a debt for the services identified above, such as itemized statements, cancelled checks, credit card statements, receipts, treatment summaries, etc.

**DO NOT SEND ORIGINALS AS THEY WILL NOT BE RETURNED TO YOU.**

\* If you do not know the diagnosis given by your provider, please contact your provider to obtain the diagnosis of the condition for which you received treatment.

*O.S.T. v. Regence and K.M. v. Regence*  
**CERTIFICATION OF PAYMENT(S)**

I hereby certify that I (or my dependents) incurred out-of-pocket expenses, or debt, for the Neurodevelopmental Therapy (NDT) and/or Applied Behavior Analysis (ABA) services as set forth on the claim form on the back of this page and any additional pages I have attached. I further certify that the information provided in this Claim Form is true and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\* \* \*

Type or Print Your Name (required): \_\_\_\_\_

Name of Person who received services (required): \_\_\_\_\_

DSM Diagnosis of Person who received NDT or ABA services (required): \_\_\_\_\_

Diagnosis made by: \_\_\_\_\_ (Name of provider required)

Date of Diagnosis: \_\_\_\_\_ (Date of original diagnosis required)

You **must** include the following elements of proof with this claim form: (1) proof of NDT or ABA service dates; (2) identity of the NDT or ABA provider; and (3) the unreimbursed charges or debt incurred. Please see the enclosed "Instructions for Claim Form" material under "Documentation" for a list of the type of documents that must be submitted to establish each element.

Current Address: \_\_\_\_\_  
(Street or P.O. Box)

\_\_\_\_\_  
City, State and Zip Code

Daytime/Evening  
Telephone Numbers: \_\_\_\_\_ (day) \_\_\_\_\_ (eve.)

If you received this notice in the mail, then please write your identification number (from the address label on the envelope) here: \_\_\_\_\_