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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BRIAN HENDRICKS; ANDREW SAGALONGOS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AETNA LIFE INSURANCE COMPANY

Defendant.

ANDREW HOWARD, on behalf of himself and all others similarly situated,

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY;

Defendant.

Case No.: 2:19-cv-6840-AB (MAAx)
Consolidated w/ 2:22-CV-01505-AB (MAAx)

Assigned to Hon. Andre Birotte Jr.

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: November 7, 2025
Time: 10:00 a.m.
Courtroom: 7B

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 7, 2025 at 10:00 a.m. in Courtroom 7B of the above-entitled court, located at First Street U.S. Courthouse, 350 W 1st Street, Los Angeles, CA 90012-4565, Plaintiffs Brian Hendricks, Andrew Sagalongos and Andrew Howard will move the Court for an order preliminarily approving the proposed class action settlement, attached as Exhibit 1 to the Declaration of Joshua S. Davis, submitted herewith, approving issuance of notice to the class, and setting a hearing for final approval of the settlement.

This motion is based on this notice, the attached memorandum of points and authorities, the Declarations of Joshua S. Davis, Dr. Jack E. Zigler and Christopher Longley, the attached settlement agreement and exhibits thereto, the Court's files and records in this action, and upon such other matters as may be presented at the hearing.

DATED: October 8, 2025

GIANELLI & MORRIS, ALC

By: /s/Joshua S. Davis
ROBERT S. GIANELLI
JOSHUA S. DAVIS
ADRIAN J. BARRIO
Attorneys for Plaintiffs

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I. INTRODUCTION

This is a certified consolidated ERISA[1] class action for injunctive and declaratory relief under FRCP 23(b)(1) and (2) regarding Aetna's practice to deny all single level artificial disc replacement surgeries (L-ADR) as experimental and investigational. After nearly six years of vigorous litigation, investigation, and discovery, multiple mediations, and only six weeks before the scheduled trial in this matter, Plaintiffs Brian Hendricks, Andrew Sagalongos, and Andrew Howard (collectively, "Plaintiffs" or "Class Representatives") and Defendant Aetna Life Insurance Company ("Aetna") agreed to settle this class action on the terms set forth in the Settlement Agreement ("the Settlement") attached as Exhibit 1 to the concurrently filed Declaration of Joshua S. Davis ("Davis Decl.").

Plaintiffs respectfully request that the Court preliminarily approve the Settlement. At the preliminary approval stage, the Court makes only a preliminary determination of the Settlement's fairness, reasonableness, and adequacy so that notice of the Settlement may be given to the Class and a fairness hearing may be scheduled to make a final determination about the Settlement's fairness.

The proposed Settlement easily meets this standard. It is the product of extensive, arm's-length negotiations between the parties, was assisted by an experienced, well-respected mediator, and will fairly resolve this case. Indeed, the Settlement provides a better outcome for members of the *Hendricks* Class and the *Howard* Class (collectively the "Class") than the remedy of reprocessing, the traditional ERISA remedy that would have applied had Plaintiffs gone to trial and prevailed.

The Settlement provides that all Class Members who paid out-of-pocket for Single-Level L-ADR will be reimbursed up to $55,000 (the "Individual Cap"),

[1] The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq*. (ERISA).

which is well within the reasonable range of such surgeries. In addition, the Settlement provides that Class Members who have not yet the L-ADR are entitled to surgery or reimbursement for a future surgery. Class Members who are current Aetna members will be authorized for a future Single-Level L-ADR so long as their surgeon attests that the surgery is medically necessary for them, without any review by Aetna using Aetna's own internal medically necessity criteria. Class Members who are no longer Aetna members are also eligible for reimbursement up to the Individual Cap for a future L-ADR if they do not have coverage for L-ADR under their current non-Aetna health plan or a reasonable ability to enroll in individual health coverage that provides coverage for L-ADR.

Plaintiffs therefore respectfully request that the Court enter the [Proposed] Order Granting Motion for Preliminary Approval of Class Action Settlement, direct issuance of Notice of Proposed Settlement of Class Action and Final Approval Hearing to the class members, and set a Final Approval Hearing to consider whether to grant final approval of the Settlement, and the motion by Plaintiffs and Class Counsel for an award of attorneys' fees and expenses and an incentive award for the Class Representatives.

II. SUMMARY OF THE LITIGATION

A. Relevant procedural history.

On August 7, 2019, Plaintiffs Brian Hendricks and Andrew Sagalongos filed the class action Complaint for Recovery of ERISA Plan Benefits; Enforcement and Clarification of Rights; and Breach of Fiduciary Duty (the "*Hendricks* Action"). In the Complaint, plaintiffs alleged claims against Aetna over its denial of their requests for coverage of Single-Level L-ADR as "experimental and investigational," on behalf of themselves and all others similarly situated. (Dkt. 1.)[2] A First Amended Complaint was filed on November 15, 2019. (Dkt. 31.) A Second Amended Complaint was filed

[2] All docket references are to the *Hendricks* matter unless the *Howard* matter is specifically indicated.

on November 2, 2020. (Dkt. 52.) On February 8, 2021, Plaintiffs Brian Hendricks and Andrew Sagalongos filed the operative Third Amended Complaint ("TAC"). (Dkt. 55.)

On March 5, 2021, Plaintiffs in the *Hendricks* Action filed a motion for class certification. (Dkt. 57.)

On June 11, 2021, the Court granted in substantial part Plaintiffs' motion for class certification in the *Hendricks* Action, but limited the scope of the class to Aetna members subject to an "abuse of discretion" standard of review. The specific certified class was as follows:

> "All persons covered under Aetna Plans, governed by ERISA, self-funded or fully insured, whose requests for lumbar artificial disc replacement surgery were denied at any time within the applicable statute of limitations, or whose requests for that surgery will be denied in the future, on the ground that lumbar artificial disc replacement surgery is experimental or investigational, and whose denials will be subject to abuse of discretion review by the district court."

(Dkt. 94.) The Court appointed Brian Hendricks and Andrew Sagalongos as Class Representatives and Gianelli & Morris as Class Counsel. (*Id.*) The Court declined to include in the certified class Aetna members subject to a "*de novo*" standard of review because both Brian Hendricks and Andrew Sagalongos were subject to the more stringent "abuse of discretion" standard.

On June 25, 2021, Aetna filed a 23(f) petition with the Ninth Circuit, requesting permission to appeal the Court's order granting class certification. (*Hendricks v. Aetna*, Dkt. 1-2, Ninth Circuit Case No. 21-80071). On October 15, 2021, the Ninth Circuit denied Aetna's Rule 23(f) petition. (*Hendricks v. Aetna*, Dkt. 6, Ninth Circuit Case No. 21-80071.)

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On March 4, 2022, Plaintiff Andrew Howard filed a putative class action on behalf of Aetna members whose L-ADR requests had been denied as experimental or investigation and were subject to a "*de novo*" standard of review. (*Howard* Dkt. 1.)

From the beginning of the class periods (as defined below) to February 7, 2023, Aetna published various successive versions of its Clinical Policy Bulletin (CPB) 591 Intervertebral Disc Prostheses stating that L-ADR was experimental and investigational as a treatment for degenerative disc disease and all other indications. (See Order Granting Plaintiff's Motion for Class Certification in *Howard* Action (Dkt. 72 at p. 3.)

Effective February 8, 2023, Aetna published a new version of its CPB 591 that no longer included the text targeted in the *Hendricks* Action and *Howard* Action that had described L-ADR as experimental and investigational for all indications. (*Id.*)

On June 2, 2023, Aetna filed a motion to decertify the *Hendricks* class. (Dkt. 136.) The Court denied the motion on July 26, 2023. (Dkt. 147.)

On December 11, 2023, plaintiff in the *Howard* Action filed a motion for class certification. (*Howard* Dkt. 47-20.) On January 3, 2024, the Court denied the motion without prejudice. (*Howard* Dkt. 59.)

On January 29, 2024, plaintiff in the *Howard* Action filed a renewed motion for class certification. (*Howard* Dkt. 62-20.)

On February 27, 2024, the Court granted certification in the *Howard* Action certifying the following *de novo* class:

> "All persons covered under Aetna Plans, governed by ERISA, self-funded or fully insured, whose requests for lumbar artificial disc replacement surgery were denied at any time from March 4, 2019 to February 8, 2023, on the ground that lumbar artificial disc replacement surgery is experimental or investigational, and whose denials will be subject to de novo review by the district court."

(*Howard* Dkt. 72.) The Court appointed Andrew Howard as Class Representative and Gianelli & Morris as Class Counsel. (*Id.*)

On March 12, 2024, the Court entered an Order consolidating the *Hendricks* Action and the *Howard* Action for all purposes including trial. (Dkt. 158.) Trial was scheduled for December 10, 2024. (*Id.*) That date was ultimately continued to June 30, 2025. (Dkt. 195.)

On May 16, 2025, following the completion of expert discovery and multiple mediations, and less than 45 days before trial (*see* sections II.B and II.C, *infra*), the parties filed a Joint Notice of Settlement in Principle with the Court. (Dkt. 200.)

B. Investigation and extent of discovery completed.

The parties' settlement occurred a mere six weeks before trial and was well informed by the extensive discovery and investigation completed up to that point. At the time of settlement, Aetna had produced nearly 30,000 pages of information concerning the class and merits issues in the consolidated cases. (Davis Decl., ¶ 22.) For their part, Plaintiffs produced nearly 1,500 pages of information supportive of their position that Aetna's policies and practices are amenable to class treatment and that L-ADR is a safe and effective treatment for degenerative disc disease. (*Id.*)

All told, Plaintiffs served 95 document requests, as well as numerous interrogatories, requests for admissions and several third-party subpoenas. (Davis Decl., ¶ 23.) In addition, Plaintiffs deposed numerous Aetna employees, medical directors and corporate officers, and prepared for and defended the depositions of Plaintiffs' witnesses. (*Id.*, ¶ 24) The parties exchanged expert reports on September 13, 2024 and conducted expert depositions in April 2025. (*Id.*, ¶ 25.)

Like every other aspect of this case, discovery was hard fought and contested. (Davis Decl., ¶ 26.) Discovery disputes arose that required multiple informal discovery conferences (IDCs) and adjudication by Magistrate Judge Maria A. Audero. (*Id.*; *See also* Dkt. Nos. 173, 174, 181, 182.)

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Class Counsel supplemented formal discovery with their own investigation and research. (Davis Decl., ¶ 27.) Class Counsel engaged in extensive investigation and research regarding the safety and effectiveness of L-ADR and retained and extensively worked with renowned experts on L-ADR, the body of medical literature addressing it, and the FDA approval process. (*Id*., ¶¶ 27-28.)

C. Mediation and negotiation of the Settlement.

The parties participated in multiple days of mediation in this matter before Edwin Oster, Esq., an experienced and well-respected private mediator with Judicate West over a three-year period. (Davis Decl., ¶ 29.) The parties first participated in mediations and negotiations between July 2022 and April 2023. After these negotiations failed, the parties engaged in further vigorous litigation, merits discovery and expert discovery before participating in an additional mediation and arm's-length negotiations between March 2025 and May 2025. (*Id*.) The parties notified the Court that they reached a settlement in principle on May 16, 2025, two weeks before the final pre-trial conference and six weeks before trial. (Dkt. 200.) The informed view of experienced Class Counsel is that the proposed Settlement is fair, reasonable, and adequate and easily meets the criteria for preliminary approval. (*Id*., ¶ 31.) Indeed, the proposed Settlement provides more relief than would probably be available following a trial.

III. THE PROPOSED SETTLEMENT

A. Relief for class members.

The proposed Settlement provides the following relief. Class Members who paid out-of-pocket for Single-Level L-ADR are entitled to reimbursement. (Ex. 1 at ¶ 20.) To be entitled to reimbursement, the Class Member need only submit documentation sufficient to show that the Class Member had a Single-Level L-ADR and proof of payment. (*Id*.) Each claim for reimbursement is subject to an individual per-member claim cap of $55,000 ("Individual Cap"). The Class Member does not need to show he or she meets any other medical necessity criteria set by Aetna in its

CPB 591 or any other source.

Second, Class Members who are currently covered under an Aetna Plan governed by ERISA, and have not yet had Single-Level L-ADR, can get coverage for a future Single-Level L-ADR. (Ex. 1 at ¶ 21.) To obtain coverage under the Settlement, the Class Member need only submit a claim form signed by the treating surgeon, attesting that in the surgeon's judgment the planned Single-Level ADR is medically necessary for the Class Member. (*Id.*) Again, the Class Member does not need to show he or she meets any other medical necessity criteria set by Aetna in its CPB 591 or any other source.

Third, those Class Members who (1) are not currently covered under an Aetna Plan governed by ERISA, and (2) have not yet had Single-Level L-ADR, are eligible for reimbursement relief for a future Single-Level L-ADR, up to the Individual Cap, if:

(a) The Class Member does not currently have coverage through another health plan, insurer, Medicare, or other reimbursement source which provides coverage for Single-Level L-ADR; and

(b) The Class Member, if not enrolled in an employer plan, does not currently have any reasonable ability to enroll in individual health coverage that provides any coverage for Single-Level L-ADR. (Ex. 1 at ¶ 22.)

To obtain this relief, Class Members must only submit a claim form signed by the treating surgeon attesting that in the surgeon's judgment, the planned Single-Level ADR surgery is medically necessary for the Class Member. (*Id.*) Again, the Class Member does not need to show he or she meets any other medical necessity criteria set by Aetna in its CPB 591 or any other source. (*Id.*) One the settlement administrator approves the Class Member's request, the person must have the L-ADR within 180 days of the notification. (*Id.*)

Although difficult to quantify, Plaintiffs anticipate that the Settlement will yield a significant monetary benefit for the Class. Class Data produced by Aetna has

identified about 381 Class Members who had pre-authorization and/or post-service reimbursement claims denied by Aetna. (Davis Decl., ¶ 15.) Of these, Aetna denied reimbursement claims totaling approximately $7,105,090.13[3] from about 154 Class Members. (*Id.*) Each of these Class Members is entitled to reimbursement for their L-ADRs up to $55,000, which is well within the reasonable cash price range for these surgeries. (Declaration of Dr. Jack E. Zigler, ¶ 11.)

In addition, there are another 212 members whose pre-authorization requests were denied by Aetna, but whose situation is unknown. (Davis Decl., ¶ 16.) Class Counsel anticipates that some of these members went out of pocket for Single-Level L-ADR but never submitted a reimbursement request. (*Id.*) They are also entitled to reimbursement up to the Individual Cap. (*Id.*)

Moreover, Class Members who have not yet had Single-Level L-ADR will be entitled to coverage for a future Single-Level LADR without the need of meeting criteria set forth in Aetna's CBP, a considerable financial benefit. (Davis Decl., ¶ 17.)

Although the total benefit to Class Members cannot be specifically quantified, Class Counsel anticipates it will be millions of dollars. (Davis Decl., ¶ 18.)

B. Released claims.

The Settlement's release of claims provision bars the assertion, by any Class Member, of any and all claims against Aetna that are "based on the facts alleged" in the complaints in the *Hendricks* and *Howard* Actions, i.e., claims "by reason of or arising out of Aetna's denial of any request (whether pre-service or post-service) for Single-Level L-ADR on the grounds that the procedure is experimental or investigational under ERISA-governed plans, either fully insured or self-insured[.]" (Ex. 1 at ¶ 18(t); ¶¶ 25-27.)

Released Claims do not include any reimbursement claims or requests for

[3] The total dollar figure and Class Members is an estimate because it appears some providers submitted the same claim more than once, (Davis Decl., ¶ 15.) It is also unknown whether each Class Members paid the full amount of their submitted claim or paid a lower negotiated cash price. (*Id.*)

surgeries other than Single-Level L-ADR, or requests for Single-Level L-ADR that were denied by Aetna after February 8, 2023 (the date Aetna changed its L-ADR policy). (*Id*. at ¶ 18(t).)

C. Notice.

The parties agree that no later than thirty-five (35) days after entry of the Preliminary Approval Order, a Settlement Administrator will mail notice of the proposed Settlement to all identified Class Members. (Ex. 1 at ¶ 18(f) and (s); ¶ 36.)

D. Class definitions.

In light of Aetna's retraction of its prior classification of all L-ADR as experimental and investigational on February 8, 2023, the Settlement has refined the class definition for the *Hendricks* Class to clarify the Class period. The Settlement Agreement provides that the class period runs from August 7, 2016, three years from the filing of the Complaint which is the Statute of limitations under ERISA (29 U.S.C. §1113) through February 8, 2023.

> "'Hendricks Class' means all persons covered under Aetna Plans, governed by ERISA, self-funded or fully insured, who had a request for L-ADR denied from August 7, 2016 through February 8, 2023 on the ground that L-ADR is experimental or investigational, and whose denials will be subject to an abuse of discretion standard of review by the district court, who are mailed the Class Notice and who do not exclude themselves from the Hendricks Class under Paragraph 45 below."

(Settlement Agreement, ¶ 18(o).) The *Howard* Class already included the specific class period in its definition because the Court did not certify the *Howard* Class until February 2024, a year after Aetna's retraction.

E. Attorney's fees.

If the Court preliminarily approves the Settlement, Class Counsel will move for an award of attorney's fees and litigation costs under the lodestar method pursuant to

ERISA's fee shifting statute (29 U.S.C. 1132(g)(1)) in an amount not to exceed $2,556,000.00. (Ex. 1 at ¶ 32.) This amount includes any fees and costs incurred through Final Approval. (*Id.*) Aetna has agreed not to contest a motion that seeks up to this amount. (*Id.* at ¶ 33.)

In addition, Class Counsel will seek Court approval of incentive awards in the amount of $17,000.00 each for Class Representatives Brian Hendricks and Andrew Sagalongos, and $10,000 for Class Representative Andrew Howard, based on the time and effort they devoted to the litigation. (Ex. 1 at ¶ 35.)

F. Settlement administrator.

The parties request that the Court appoint Atticus Administration LLC ("Atticus") as the Settlement Administrator for this Settlement. Atticus' qualifications are set forth in the concurrently filed Declaration of Christopher Longley.

IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

A. Standards for preliminary approval under Rule 23(e).

The Ninth Circuit maintains a "strong judicial policy" that favors the settlement of class actions. *Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir. 1992). The settlement of a certified class action must be "fair, adequate, and reasonable." Fed. R. Civ. P. 23(e)(2).

Rule 23(e), as amended in 2018, provides that preliminary approval should be granted where the "parties show[] that the Court will likely be able to: (i) approve the proposal under Rule 23(e)(2)." Rule 23(e)(2), which governs final approval, requires Court to consider the following questions to determine whether the settlement is fair, reasonable and adequate:

(A) Have the Class Representatives and Class Counsel adequately represented the class;

(B) Was the proposed settlement negotiated at arm's length;

(C) Is the relief provided for the class adequate, taking in account:

(i) The costs, risks, and delay of trial and appeal;

(ii) The effectiveness of any proposed method of distributing relief to the Class, including the method of processing class-member claims;

(iii) The terms of any proposed award of attorneys' fees, including timing of payment; and

(iv) Any agreement required to be identified under Rule 23(e)(3); and

(D) Does the proposal treat class members equitably relative to each other.

The advisory committee notes to the Federal Rules provide that the above factors are not exclusive, nor intended to displace any factor previously adopted by the Ninth Circuit. *See* Advisory Committee Notes to 2018 Amendments (324 F.R.D. 905, 919.) The Ninth Circuit's traditional factors utilized to evaluate the propriety of a class action settlement, set forth in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, (9th Cir. 1998) are thus still relevant. These include:

> "[T]he strength of the plaintiff's case; the risk, expenses, complexity and likely duration of further litigation; the risks of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and stage of proceeding, the experience and views of counsel; the presence of a government participant, and the reaction of class members to the proposed settlement."

Id. at 1027, *See also Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021) (holding *Hanlon* factors are still relevant.)

Here, as forth below, the proposed Settlement satisfies the standard for preliminary approval criteria under Rule 23(e)2), as well as the relevant, non-duplicative *Hanlon* factors.

B. Class Counsel and Class Representatives adequately represented the Class.

Adequacy asks (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of their class." *Hanlon*, 150 F.3d at 1020.

First, this Court already determined when it certified both the *Hendricks* Action and *Howard* Action as class actions that the Class Representatives and Class Counsel do not have any conflict of interest with the Class. (See Dkt. 94 at p.15 and *Howard* Dkt. 72 at pp. 20-21.)

Moreover, as detailed above, Class Counsel and Class Representative have vigorously litigated this class action. This case was settled nearly six years after the *Hendricks* Complaint was filed and six weeks before the scheduled trial. The facts and issues relating to L-ADR as a safe and effective treatment for degenerative disc disease were fully developed. The parties exchanged tens of thousands of pages of documents during the discovery process. (Davis Decl., ¶ 22.) Class Counsel engaged in extensive discovery regarding Aetna's bases for refusing to cover L-ADR; engaged in extensive investigation and research regarding the safety and effectiveness of L-ADR; and retained and extensively worked with renowned experts on L-ADR, the body of medical literature addressing it, and the FDA approval process. (*Id.*, ¶¶ 22-28.) Class Counsel also extensively prepared for and took the depositions of numerous Aetna employees, medical directors and corporate officers, and prepared for and defended the depositions of Plaintiffs' witnesses. (*Id.*, ¶ 24.) No stone was left unturned in examining the strengths and weaknesses of the case.

The Class Representatives and Class Counsel have more than adequately represented the Class in this litigation.

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C. The Settlement is the result of arm's-length negotiations between experienced counsel.

Here as detailed above, the Class is represented by counsel who have extensive class action experience, and have successfully prosecuted many other class actions over policyholder's rights to health benefits, including L-ADR. (Davis Decl., ¶¶ 3-5, 7-8.) The Parties attended multiple mediations before an experienced mediator, Ed Oster, Esq. with Judicate West which took place periodically over a three-year period. (*Id*., ¶ 29.) The negotiations were intense and at arm's-length and resulted in a *better result* for the Class than the reprocessing remedy to which the Class would likely have been limited under ERISA had the case gone to trial. *See* section III.D., *infra*.

Accordingly, the Settlement reached in this matter represents the end-result of an adversarial process where the interests of the Class were vigorously and fully represented by Class Counsel.

D. The Settlement is an excellent result considering the benefits of the Settlement and the risks of continued litigation.

It is well settled that, in assessing the reasonableness of a class action settlement, "the relief provided to the class cannot be assessed in a vacuum" but rather must be weighed against what the class stood to gain from litigating the case to conclusion. *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1123 (9th Cir. 2020). *See also*, *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968) ("Basic to [the] process [of evaluating settlements] ... is the need to compare the terms of the compromise with the likely rewards of litigation."); *Hanlon*, *supra*, 150 F.3d at 1026 (relevant considerations include not only "the amount offered in settlement," but also "the strength of the plaintiffs' case," *i.e.*, what plaintiffs could expect from further litigation).

Moreover, in assessing reasonableness, the Court must keep in mind that "[s]ettlement is the offspring of compromise; the question we address is not whether

the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, *supra*, 150 F.3d at 1027.

This case was brought because Aetna denied all requests for L-ADR as "experimental and investigational," on the basis of an internally developed coverage guideline—CPB 591. This case sought to reverse Aetna's coverage position by showing that CPB 591 is wrong: L-ADR is generally accepted as being safe and effective for the treatment of degenerative disc disease when performed with an FDA-approved device.

Plaintiffs sought an injunction requiring Aetna to retract its CPB 591 designation that classified L-ADR as experimental and investigational and provide notice to Aetna members who had their L-ADR requests denied, to re-review the denied claims under the proper standard and make payment where appropriate. (Dkt. 55 at ¶ 84; Howard Dkt. 1 at ¶ 63.)

The proposed Settlement is reasonable because it effectively provides even more relief than requested. Litigating this matter to conclusion would provide Plaintiffs and the Classes no further benefit. In fact, it could easily and would likely lead to a worse result for the Class.

To begin with, as a direct result of this litigation, Aetna has agreed to retract its coverage position in former CPB 591 that Single-Level L-ADR is experimental and investigational. This by itself represents a sea change in Aetna's coverage position, accomplishing the fundamental purpose of these class-action lawsuits.

Reprocessing is ordinarily the appropriate remedy under ERISA where, as here, a claims administrator has applied a "wrong standard" to a claim for benefits. *Saffle v. Sierra Pacific Power Co. Bargaining Unit Long Term Disability Income Plan*, 85 F.3d 455, 460-461 (9th Cir. 1996) ("We now make it explicit, that remanded for reevaluation of the merits of a claim is the correct course to follow when an ERISA plan administrator, with discretion to apply a plan, has misconstrued the Plan and applied a wrong standard to a benefits determination.")

When a claim is reprocessed, the claims administration essentially re-reviews the original claim using a correct standard.

The Settlement affords a much better result for the Class than the traditional remedy of reprocessing—a remedy "which, while it may result in payment for certain putative class members, presumably will not result in payment for others." *Meidl v. Aetna, Inc.*, No. 15-cv-1319 (JCH), 2017 WL 1831916 at *20 (D. Conn. May 4, 2017).

First, Aetna will reimburse class members for any out-of-pocket costs they incurred for Single-Level L-ADR up to Individual Cap, without the need to meet any medical necessity criteria in Aetna's new CPB 591, i.e. reprocessing. (Exh. 1. at ¶ 20.) To obtain this relief, Class Members need only provide a simple claim form, along with documentation sufficient to show that the Class Member had a Single-Level L-ADR and reasonable proof of payment. (*Id.*)

As to Class Members who still need the surgery, the Settlement affords Class Members an automatic right so long as their treating surgeon attests that L-ADR is medically necessary for them. (Exh. 1 at ¶ 21.) The Settlement in effect takes the medical necessity determination out of Aetna's hands and puts it in the hands of the Class Members' treating surgeons. This relief will even be afforded to Class Members who are no longer members of Aetna if their current health plans do not provide coverage for L-ADR or they do not have any reasonable ability to enroll in individual health coverage that provides coverage for Single-Level L-ADR. (*Id.* at ¶ 22.)

Moreover, as noted *supra* at section III.A., the Settlement should yield a substantial monetary benefit for the Class.

If Plaintiffs were to proceed to trial, there is a risk that the Class could do worse. Aetna has raised several significant defenses to this lawsuit during class certification, that it will again raise at trial and on appeal. Among other things, Aetna asserted the Class Representatives failed to exhaust their administrative remedies.

The Court ruled against Aetna on its exhaustion defense because it found exhaustion would be futile given Aetna's position that L-ADR was experimental and investigational. (Dkt. 94 at pp. 10-14; Howard Dkt. 72 at pp. 11-13) If Plaintiffs proceed to trial, it can be anticipated that Aetna will re-argue the exhaustion issue.

In addition, at trial the Court may still rule against Plaintiffs and find that L-ADR was experimental and investigational during some or all of the class period, which stretches back to 2015, in which case class members would get nothing.

Even if Plaintiffs prevail at trial, Aetna will raise all the issues it lost on in the district court on appeal, including class certification, exhaustion and merits. The Ninth Circuit's ruling in *Wit v. United Behavioral Health*, 58 F.4th 1080 (9th Cir. 2023), which reversed in part certification of an ERISA class action for denial of healthcare benefits, as well as a judgment in favor of Plaintiffs following a 10-day bench trial, points out the risks to the Class on any appeal.

Finally, even if Plaintiffs prevail on appeal, Class Members would probably be subject to a reprocessing remedy under which Aetna, as the plan administrator, could deny many of the reimbursement claims or authorization requests under the medical necessity criteria in its new CPB 591.

Given the potential risks of further litigation, that the proposed Settlement provides even more relief than requested in the operative TAC in *Hendricks* and Complaint in *Howard,* the Settlement is well within the range of reasonableness.

E. The Settlement treats all Class Members equitably relative to each other.

Rule 23(e)(2)(D) requires Courts to evaluate whether the Settlement treats Class Members equitable relative to each other. This Settlement satisfies this requirement.

Here, all Class Members who paid out of pocket for Single-Level L-ADR who submit reasonable proof of payment will be reimbursed up to the Individual Cap. Class Members who are still Aetna members, who have not yet had L-ADR,

can be authorized for future Single-Level L-ADR. Even former Aetna members are entitled to reimbursement for a future Single-Level L-ADR surgery if they are not eligible for coverage for Single-Level L-ADR under their current non-Aetna ERISA insurance or do not have the reasonable ability to enroll in an individual health plan that provides such coverage.

Additionally, there is no preferential treatment for the Class Representatives, who will receive the same benefit as other Class Members. Similar to other Class Members seeking reimbursement, Plaintiffs Brian Hendricks and Andrew Howard will have to submit proof of their out-of-pocket payments to obtain reimbursement relief. Plaintiff Andrew Sagalongos, like any other class member who has not yet had L-ADR will be required to provide Aetna with an attestation from his treating surgeon that L-ADR is medically necessary for him to obtain coverage for Single-Level L-ADR.

F. Fee provision and *Bluetooth* factors do not weigh against approval.

The Ninth Circuit identified the following three "subtle signs" of collusion that district courts should scrutinize when approving class action settlements: (1) "when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution, but class counsel are amply rewarded"; (2) "when parties negotiate a 'clear sailing' arrangement" and (3) "when the parties arrange for fees not awarded to revert to the defendant rather than be added to the class fund." *Id.* at 947. *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 946 (9th Cir. 2011).

In *Campbell v. Facebook, Inc.*, 951 F.3d 1106 (9th Cir. 2020), the Ninth Circuit examined the *Bluetooth* factors in affirming the settlement of an injunctive relief class action settlement which included a "clear-sailing" fee provision. As to the first factor, the Ninth Circuit held the fact the class received no monetary distribution did not weigh against approval of an injunctive relief class settlement. The court explained that further litigation could not result in any meaningful monetary relief to

class members, and thus was not a sign that class counsel had bargained away something valuable to benefit themselves. *Id.* at 1126. Relatedly, the Court upheld the district court's finding that class members had received valuable injunctive relief based on its oversight and attendant understanding of the litigation, which involved protections to class member's privacy rights. *Id*. at 1127.

As to the second factor regarding the "clear-sailing" fee provision, the Ninth Circuit found no evidence that the class would have received more meaningful injunctive or declaratory relief had the defendant been permitted to oppose class counsel's fee application. *Campbell, supra*, 951 F.3d at 1127. Finally, as to the third factor, the Ninth Circuit held that reversion was inapplicable in an injunctive relief class because it has "no fund into which any fees not awarded by the court could possibly revert." *Id.* at 1127.

Here, the *Bluetooth* factors similarly do not weigh against approval of this excellent class action settlement. The operative complaints sought, and the Court certified injunctive and declaratory relief classes only, pursuant to FRCP 23(b)(1) and (b)(2). (Dkt 94 at pp. 15-16; Howard Dtk. 71 at pp. 21-23.) Thus, this litigation could not result in any common-fund distribution to the Class. Accordingly, as explained in *Campbell*, that the settlement in this injunctive relief class action provides no common fund distribution is not a sign that the Class Counsel bargained away monetary relief to benefit themselves.

Moreover, there is no question that the injunctive relief provided in the Settlement contains significant and substantial value as explained above in Section IV(D), either through direct cash reimbursement for out-of-pocket costs, or authorization for a future surgery. While a specific dollar value cannot be assigned the injunctive relief provided in this Settlement because it is not known who had the surgery in the past, how much they actually paid for the non-covered surgery, or who will want Single-Level L-ADR in the future, there is no question that receiving insurance coverage for past and future single-level L-ADR constitutes significant and

substantial value. Indeed, based on Aetna's class data Class Counsel anticipates millions of dollars in insurance benefits will be received by Class Members.

As to the second factor, the Class will not receive more valuable injunctive or declaratory relief if Aetna is permitted to oppose the fee application. As explained above in Section III(D), Plaintiffs have obtained through this Settlement all the relief sought in the Hendricks TAC and Howard Complaint, and all the relief Plaintiffs could obtain if this consolidated class action is successfully litigated to a judgment after a trial and affirmed on appeal. Moreover, to prevent even the appearance of any collusion, the Parties did not have any discussions regarding attorney fees and costs until after they had agreed upon all the other material terms of the Settlement. (Davis Decl., ¶ 29.)

Finally, as to the third factor, as the Ninth Circuit held in *Campbell*, reversion is inapplicable here because there is no common fund into which any fees not awarded by the Court can be placed for distribution.

In sum, the *Bluetooth* factors do not weigh against approval here. The settlement should be finally approved.[4]

G. The views of experienced counsel.

Class Counsel are experienced in cases of this nature having certified and tried cases against health plans over their refusal to provide benefits. This included

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[4] Plaintiffs further note that they are not seeking fees based on a percentage value of the Settlement but ERISA statutory fees pursuant to the fee-shifting statute 29 U.S.C. section 1132(g)(1). ERISA's fee provisions in particular are intended to encourage beneficiaries to enforce their statutory rights, *Donachie v. Liberty Life Ass. Co. of Boston*, 745 F.3d 41, 45-46 (2nd Cir. 2014), and "to encourage attorneys to take on such cases, which are often time consuming and complex," *Hanley v. Kodak Ret. Income Plan*, 663 F.Supp.2d 216, 219 (W.D.N.Y. 2009). The Ninth Circuit has rejected the rule that ERISA fees be proportional to the underlying benefit provided. *Operating Eng'rs Pension Trusts v. B & E Backhoe, Inc.,* 911 F.2d 1347, 1355 (9th Cir.1990) (rejecting a proportionality rule). ERISA fees must be determined using the lodestar method. *S.A. McElwaine v. U.S. West, Inc.*, 176 F.3d 1167, 1173 (9th Cir. 1999) (held ERISA fees calculated using the lodestar method).

successful class action trial against Kaiser for violating California's reconstructive surgery law, a case that resulted in thousands of Kaiser members gaining access to excess skin surgery. (*Gallimore v. Kaiser Foundation Health Plan, Inc.*, Alameda Superior Court, Case No. RG12616206.)

Class Counsel are experienced in cases of this nature having certified and tried class actions against health plans over their refusals to provide benefits. For example, Class Counsel obtained a judgment against Kaiser including *h v. Kaiser Foundation Health Plan, Inc.*, Alameda Superior Court, Case No. RG12616206 (following month-long class-action trial, court entered judgment for class against California's largest health plan over systematic denial of reconstructive surgery benefits). Class Counsel have also certified and obtained court-approved settlements on similar L-ADR ERISA class action against Blue Shield, Anthem and United Healthcare Insurance Company. *See, e.g.*, *Escalante v. California Physicians Service dba Blue Shield of California* (C.D. Cal.) Case No. 2:14-CV-3021 DDP (ERISA Class action against Blue Shield re L-ADR); *Hill v. United Healthcare Insurance Company* (C.D. Cal.) Case No. SACV15-00526 DOC (ERISA class action against United Healthcare regarding L-ADR); *Bradford v. Anthem Inc.*, Case No. 2:17-CV-5098 AB (ERISA class action against Anthem regarding cervical ADR).

It is the view of Class Counsel that the Settlement is reasonable, fair, and adequate. (Davis Decl., ¶ 31.) The Settlement should be preliminarily approved.

V. PROPOSED SCHEDULE

Based on the foregoing, Plaintiffs respectfully request that the Court set the following schedule for the dissemination of the class notice and the setting of the final approval hearing in this case.

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Event	Event Date
Aetna provides the notice required under 28 U.S.C. Section 1715.	Within 10 days after Plaintiff files a motion for preliminary approval
Aetna provides a list of the last known addresses of each person in the Class available from its records to the Settlement Administrator	20 days after the date of the Preliminary Approval Order
The Administrator mails the notice of the proposed Settlement	35 days after the date of the Preliminary Approval Order
Class Counsel files a motion for an award of attorneys' fees and costs	35 days after the date of the Preliminary Approval Order
Deadline for postmarking of exclusions, objections, and requests to be heard at the Final Approval Hearing	95 days after the date of the Preliminary Approval Order
Class Counsel to file notice specifying those who have objected, together with a declaration of the Settlement Administrator	105 days after the date of the Preliminary Approval Order
Class Counsel to file motion for final approval	28 days prior to the Final Approval Hearing
Final Approval Hearing	To be set by the Court, at least 132 days after the date of the Preliminary Approval Order

VI. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement; direct that notice be sent to Class Members; appoint Atticus as the Settlement Administrator and set a Final Approval Hearing.

DATED: October 8, 2025

GIANELLI & MORRIS

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