

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MARION COUNTY

P.S., by and through her parents and
guardians, Kelly Alford-Smith and Duane
Smith, individually and on behalf of
similarly situated individuals, and **KELLY
ALFORD-SMITH**, individually and on
behalf of similarly situated individuals,

Plaintiffs,

v.

STATE OF OREGON, and OREGON
PUBLIC EMPLOYEES' BENEFIT BOARD,

Defendants.

NO. 14C15068

CLASS ACTION

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT**

I. INTRODUCTION

Plaintiffs brought this class action lawsuit to compel the State of Oregon to end alleged discrimination against individuals diagnosed with Autism Spectrum Disorders (ASD) and their families in its health coverage for public employees. Plaintiffs alleged that Defendants excluded all coverage of Applied Behavior Analysis (ABA) therapy, the essential mental health therapy to treat ASD, in violation of Oregon and United States law. This case has been heavily litigated, as discussed in this Motion and in the

1 accompanying Declarations, and mediated, resulting in the Settlement Agreement
2 attached as Appendix 1.

3 Plaintiffs hereby move for preliminary approval of the Settlement Agreement. If
4 the Settlement Agreement is finally approved, it will be the first class-wide settlement
5 in Oregon that ensures that class members – all dependents with ASD and their
6 families -- will be reimbursed for medically-necessary ABA therapy going back to the
7 implementation of the federal Mental Health Parity Act. Then Oregon will join other
8 states, like California and Washington, in fully implementing the federal Parity Act for
9 persons with ASD. For this reason and those discussed herein, Plaintiffs respectfully
10 request that this Court grant Plaintiff's Motion.

11 **II. STATEMENT OF FACTS**

12 **A. Procedural History**

13 Since this case was filed in April of 2014 it has been very heavily litigated. On
14 October 3, 2014, defendants filed a Motion for Partial Summary Judgment seeking
15 dismissal of Plaintiffs' employment law claims. At the same time, Plaintiffs filed a
16 Motion for Partial Summary Judgment arguing that PEBB's Developmental Disability
17 Exclusion violated the Paul Wellstone and Pete Domenici Mental Health Parity and
18 Addiction Equity Act ("Federal Parity Act"). Defendants then cross-moved on this
19 same issue, along with its opposition briefing to Plaintiff's motion. The Court heard
20 oral argument on the motions on December 17, 2014. On March 2, 2015, the Court
21 denied defendants' Motion for dismissal of employment law claims, finding that there
22 were genuine issues of material fact that prevented adjudication on summary
23 judgment. By agreement of the parties, the Court continued adjudication of the
24 motions related to Plaintiffs' federal Mental Health Parity Act claims to allow time for
25 additional discovery.
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1 After additional discovery, the parties filed another round of briefing. Plaintiffs
2 moved for class certification, renewed their Motion regarding the Developmental
3 Disability Exclusion and filed a new Motion for Partial Summary Judgment regarding
4 PEBB's application of prior authorization to requests for ABA coverage. Defendants
5 also renewed their Motion for Summary Judgment under the Federal Parity Act. After
6 these Motions were filed, the parties continued briefing to allow time for additional
7 discovery. Opposition briefing to the pending motions has never been filed.

8 **B. Settlement Negotiations**

9 During the summer of 2015, the parties exchanged opening demand letters and
10 formal and informal discovery related to damages. Their counsel met on several
11 occasions by telephone and in person, resulting in an agreement on September 9, 2015
12 to postpone additional briefing on the pending motions and pursue mediation with Sid
13 Brockley. Hamburger Decl., ¶2.

14 Between September 9 and October 22, the parties' counsel continued to meet,
15 both in person and by telephone, and exchanged many emails, in an effort to narrow
16 the issues and develop a framework for settlement discussions at mediation. Despite
17 the extensive advanced efforts by both parties' counsel, there were issues that were not
18 possible to resolve without the assistance of an independent mediator. An agreement
19 was only reached after a full-day mediation with Mr. Brockley on October 22, 2015. A
20 final settlement agreement was executed on December 4, 2015.

21 **C. Discovery History**

22 Extensive discovery has been exchanged in this litigation. Defendants served
23 exhaustive Requests for Production of Documents and Requests for Admissions on
24 Plaintiffs, took the depositions of Kelly Alford-Smith, and P.S.'s provider of Applied
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1 Behavior Analysis therapy, Melissa Gard and served *subpoena duces tecum* on many of
2 P.S.'s health providers. Hamburger Decl. ¶4.

3 Plaintiffs also undertook substantial discovery, taking depositions of Rule 30
4 (b)(6) witnesses for PEBB, Providence and Optum, Providence's behavioral health
5 administrator, as well as several medical directors at Providence. Plaintiffs served
6 significant document discovery on PEBB, Providence and Optum as well. *Id.*

7 **III. STATEMENT OF ISSUE**

8 Should the Court: (a) preliminarily approve the Settlement Agreement;
9 (b) authorize the mailing of notice; (c) approve the notice plan; (d) establish a schedule;
10 and (e) set a final settlement approval hearing date?

11 **IV. EVIDENCE RELIED UPON**

12 Plaintiffs rely upon the Declarations of Eleanor Hamburger and Megan Glor in
13 Support of Motion for Preliminary Approval of Settlement Agreement as well as the
14 records and pleadings in this case. While Defendants do not oppose this motion, they
15 do not agree with the facts or legal conclusions alleged herein.

16 **V. OVERVIEW OF THE SETTLEMENT AGREEMENT**

17 This "Overview" section provides a summary of the key terms of the proposed
18 Settlement Agreement. The "Law and Argument" section of this brief then addresses
19 why the Court should preliminarily approve the Agreement.

20 **A. PEBB will Provide Coverage of ABA Therapy to Treat Autism** 21 **Without Age Exclusions, Treatment Limits or Caps.**

22 Under the terms of the Settlement Agreement, PEBB will provide coverage of
23 ABA therapies to treat individuals with an Autism diagnoses. *App. 1*, ¶6.1. The
24 Developmental Disability Exclusion may not be applied. *Id.*, ¶ 6.2. Nor may PEBB
25 apply the "Experimental/Investigational" Exclusion. *Id.* ¶6.3. PEBB must approve
26 medically necessary ABA therapy going back to the date of the most recently approved

1 treatment plan, even if the request for authorization comes in after treatment has
2 started. *Id.* ¶6.5. This coverage will be required under the Settlement Agreement at
3 least through January 1, 2022. *Id.* ¶6.1.

4 **B. PEBB will Provide Reimbursement for Uncovered ABA Therapy**
5 **Services During the Class Period up To \$400,000 and at no Less**
6 **than 60% of Actual Costs.**

7 The Settlement Agreement anticipates that the Court will certify a subclass of
8 enrollees with a diagnosis of Autism who were enrolled during the Class Period
9 (January 1, 2010 to January 30, 2015) and who incurred unreimbursed expenses or debt
10 for ABA therapy services (“ABA Claims Subclass”). *App. 1*, ¶ 1.17.

11 Assuming a class is certified, the Settlement Agreement establishes a process
12 whereby all ABA Claims Subclass members will be eligible for payment for uncovered
13 ABA therapy services obtained upon submission of a claim for that verifies: (1) the
14 class member’s DSM diagnosis and date of diagnosis; (2) the date(s) of NDT or ABA
15 treatment for that diagnosis (month/year); (3) the provider(s) of the treatment; and (4)
16 the unreimbursed charges or debt incurred with that treatment. *App. 1*, ¶¶ 7.1, 7.1.2.1.
17 *See also App. 2* (proposed Class Notice); *App. 3* (proposed Claims Form, Claim Form
18 Matrix, Claim Form Instructions, and Opt-Out Form). Various forms of documentation
19 are accepted to support the approximate dates of service and the amount of
20 unreimbursed charges or debt incurred. *App. 1*, ¶¶ 7.1.2.2, 7.1.2.2.1, 7.1.2.2.2.

21 Providence Health Plan will act as the Claims Processor under the Settlement
22 Agreement, and will review the claims to confirm that the four requisite items are on
23 the Claim Form. *App. 1*, ¶¶ 1.5; 7.1.3. It will also confirm with Defendants that the
24 class member was enrolled in a PEBB self-funded health benefit plan at the time the
25 services were received and that the claimed sums are not duplicative of claims
26 previously paid by PEBB. *Id.* The Claims Processor must provide a class member who

1 has a deficient claim form an opportunity to cure any problems, and class counsel is
2 empowered to assist the class member in making any claim. *App. 1*, ¶¶ 7.1.3.1, 7.1.3.2.
3 Any dispute concerning whether a claim should be granted or denied is subject to
4 binding arbitration before neutral arbitrator to be selected by the parties. *Id.*, ¶¶ 7.1.5.

5 The parties have stipulated to the ABA expenses incurred by P.S. during the
6 class period, totaling \$30,395.25. *App. 1*, ¶ 7.1.7. Both parties have reviewed the
7 documentation from P.S. regarding uncovered ABA therapy services, which meets the
8 requirements for claims under the Settlement Agreement, ¶ 7.1.2.1. *Hamburger Decl.*
9 ¶¶ 4-5.

10 The parties have also stipulated that an absent class member, N.B., has incurred
11 a total of \$7,748.00 in documented expenses related to PEBB's non-coverage of ABA
12 during the Class period. *App. 1*, ¶ 7.1.8. *Hamburger Decl.*, ¶ 6. N.B., by and through
13 his parents, will not submit a claim through the claims process, and although he is not
14 a named Plaintiff, his parents have executed the Settlement Agreement on his behalf
15 and specifically release his claims for coverage of ABA therapy services by PEBB
16 during the class period. *App. 1*, ¶¶ 1.21; 3.2; pp. 17, 18.

17 **C. Resolution of Alford-Smith and the Employee Class's Employment**
18 **Discrimination Claims.**

19 The Settlement Agreement also anticipates that the Court will certify a subclass
20 of employees with dependents with Autism, where the dependents incurred
21 uncovered costs for ABA therapy ("Employment Claims Subclass"). *App. 1*, ¶ 1.17.

22 The Settlement Agreement requires waiver by the Employment Claims Subclass
23 members of any claims these employees may have against defendants arising out of
24 defendants' exclusion of coverage for ABA therapy during the class period. *Id.*, ¶¶ 1.20;
25 3.1. Based upon discovery produced by defendants, the Developmental Disability
26 Exclusion was only applied to a total of four (4) PEBB enrollees. *See Jensen Decl.*

1 (11/14/14) ¶5. Defendants have confirmed that PEBB stopped applying the Exclusion
2 effective August 1, 2014. Hamburger Decl. ¶7. Defendants maintain that Plaintiff
3 Alford-Smith is the only member of the Employment Claims Subclass who provided
4 notice under ORS 30.275, filed a complaint under ORS 659A.820 or filed a lawsuit
5 under ORS 659A.875 within one year of any application of Exclusion. *Id.* As a result,
6 the parties do not believe that there are any members of the Employment Claims
7 Subclass, other than Kelly Alford-Smith, who have enforceable claims for employment
8 discrimination related to PEBB's exclusion of coverage for ABA therapy services.
9 Nonetheless, if there is an Employment Claims Subclass member who has an
10 enforceable claim and who is dissatisfied with the Settlement Agreement, that
11 individual has the option to exclude themselves and their dependent(s) from the
12 settlement.

13 The Settlement Agreement reflects the parties' understanding that Ms. Alford-
14 Smith is the only member of the Subclass entitled to a claim for damages. The parties
15 agreed that Alford-Smith's claim for damages related to her employment
16 discrimination claim was not substantial, but nonetheless existed and required
17 compensation. Through negotiation, the parties ultimately agreed that Ms. Alford-
18 Smith should be compensated \$17,500 for her employment discrimination claim. *App.*
19 *1*, ¶7.1.9.

20 **D. Pro Rata Reduction In the Event Claims for Reimbursement of ABA,**
21 **and the payments to Alford-Smith and N.B. Exceed \$400,000,**
22 **Subject to a Minimum Payment Level to Ensure Sufficient**
Compensation.

23 The Settlement Agreement provides that all ABA claims, including the payment
24 amount established in the Settlement Agreement for claims for P.S., N.B., and Alford-
25 Smith, shall be subject to an aggregate cap of \$400,000. If all approved claims
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1 (including those identified in the Settlement Agreement for P.S., N.B. and Alford-
2 Smith) exceed \$400,000, then each claim will be paid on a *pro rata* (percentage) basis.

3 Class counsel anticipates that all ABA claims will be paid at 100%, based upon
4 her experience in other ABA claims processed. Nonetheless, the Settlement Agreement
5 guarantees that the ABA class will receive a minimum payment amount of 60% of their
6 final, approved claim. *App. 1, ¶9.5.* If the \$400,000 cap results in payments of less than
7 60% of valid claims, the Settlement Agreement terminates. *Id.* This threshold level was
8 set to approximate a class member's net recovery in the event of an individual suit for
9 damages.¹ *Hamburger Decl. ¶8.* This Settlement Agreement will not result in mere
10 "pennies on the dollar" compensation.

11 **E. PEBB Will Pay Attorney's Fees, Litigation Costs and an Incentive**
12 **Award.**

13 Class counsel is permitted to apply for reasonable attorney's fees of \$255,000.00
14 and litigation costs of \$10,392.81 under the Settlement Agreement. *App. 1, ¶11.3.* These
15 fees and costs must be approved by the Court. *Id.* Class counsel will also apply for an
16 incentive award of \$17,500 to P.S., if approved by the Court. *App. 1, ¶11.1.*

17 **F. Cost of Notice and Claims Administration.**

18 PEBB will pay for all expenses related to class notice, claims processing and
19 administration and the cost of retaining a neutral arbitrator to decide claims appeals.
20 *App. 1, ¶¶11.2; 7.1.6.*

21 *////*

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23
24 ¹ Under the Settlement Agreement, claims submitted by class members are not subject to a deduction
25 as a result of copays, coinsurance or deductibles. If, as class counsel anticipates, class members are paid
26 at 100% of their claims, then the class members are actually receiving *significantly more money than if the claim had been paid under the PEBB plan* which imposes copays, coinsurance and/or deductibles to claims.

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VI. LAW AND ARGUMENT

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

Judicial review of this class action settlement, along with class notice, is required, pursuant to ORCP 32D. The standard for the Court's approval is "whether the settlement is fundamentally fair, adequate and reasonable." *Froeber v. Liberty Mut. Ins. Co.*, 222 Or. App. 266, 275, 193 P.3d 999 (2008), citing to *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). "[T]he decision to approve a settlement is committed to the sound discretion of the trial judge." *Froeber*, 222 Or. App. at 275.

Judicial review of a proposed class settlement requires two steps: a preliminary approval review and a final fairness hearing. Preliminary approval is not a commitment approve the final settlement; rather, it is a determination that "there are no obvious deficiencies and the settlement falls within the range of reason." *Smith v. Professional Billing & Management Services, Inc.*, 2007 WL 4191749, *1 (D.N.J. 2007) (citing *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D. N.Y. 1997)). See also MANUAL FOR COMPLEX LITIGATION, Fourth (2004), §21.632 at 320. If the agreement is preliminarily approved by the Court, then notice of the proposed settlement and the final approval hearing is provided to class members. At the final approval hearing, Class Members may object to the proposed settlement. The Court then decides whether final approval is appropriate.

In conducting both its preliminary and final review, 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.

1 See, e.g., *Laguna v. Coverall N. Am., Inc.*, 2014 U.S. App. LEXIS 10259, 12 (9th Cir., June 3,
2 2014); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (in both cases,
3 the Ninth Circuit affirmed approval of a settlement which provided broad prospective
4 relief in addition to a cash settlement fund).

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

6 Under the "fair, reasonable and adequate" standard established in *Froeber* and
7 elsewhere under FRCP 23 (e), courts have adopted a variety of tests to determine
8 whether a settlement meets this standard.

9 The district court's ultimate determination will necessarily involve
10 a balancing of several factors which may include, among others,
11 some or all of the following: the strength of plaintiffs' case; the risk,
12 expense, complexity, and likely duration of further litigation; the
13 risk of maintaining class action status throughout the trial; the
14 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.

15 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982). See also *Staton*,
16 327 F.3d at 959. Some of these factors, such as the reaction of class members, can only
17 be gauged after preliminary approval and notice is provided to class members.
18 Especially at this preliminary phase, the question is not "whether the final product
19 could be prettier, smarter or snazzier, but whether it is fair, adequate and free from
20 collusion." *Hanlon*, 150 F.3d at 1027.

21 **i. The Strength of Plaintiffs' Case**

22 There were significant risks when this case was filed in April 2014. At that time,
23 no court had ruled on whether the Developmental Disability Exclusion violated the
24 federal or state Mental Health Parity Acts. No court had ruled whether the application
25 of such an exclusion by an employer was a form of disability discrimination.
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1 Nonetheless, Plaintiffs believed that the case was very strong and that they would
2 prevail at trial.

3 Plaintiffs' belief was confirmed when Judge Simon issued his decision in *A.F. v.*
4 *Providence*, 2014 U.S. Dist. LEXIS 109507 (D. Or., Aug. 8, 2014) that the Developmental
5 Disability Exclusion used by Providence in that case (identical to that used by PEBB
6 here) violated both the Oregon and federal Mental Health Parity Acts. *See id.* In short,
7 the claims for relief proved to be very strong. The Agreement reflects this strength: the
8 Agreement ensures prospective relief until at least through January 1, 2022. *Id.* ¶6.1. It
9 ensure payment of retrospective claims at a minimum of 60% of approved claims and
10 up to 100%. Class counsel projects that the settlement amount is large enough to pay
11 claimants at 100%. Hamburger Decl., ¶¶9-10.

12 **ii. Future Expense and Duration of Litigation**

13 Without settlement, this case would have continued to be aggressively litigated
14 by both parties. Such litigation, even if ultimately successful for Plaintiffs, would have
15 delayed reimbursement of back benefits for the ABA Claims Subclass. Similar
16 litigation in Washington state against Regence Blueshield took many years to resolve,
17 with settlement coming only after the Washington Supreme Court ruled in favor of the
18 plaintiff class. *See O.S.T. v. Regence BlueShield*, 181 Wn.2d 691, 706, 335 P.3d 416 (2014).
19 Without a settlement, a lengthy trial and extensive appellate practice was likely.

20 **iii. The Settlement was the Result of Arm's-Length Negotiations.**

21 The Agreement was only reached after a contentious negotiation process that
22 spanned more than 6 months. It required numerous face-to-face meetings between
23 counsel, and a full day mediation before the Agreement was reached. Participation of
24 an independent mediator in settlement negotiations "virtually insures that the
25 negotiations were conducted at arm's length and without collusion between the
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1 parties.” *Bert v. AK Steel Corp.*, 2008 WL 4693747, *2 (S.D. Ohio, Oct. 23, 2008). *See also*
2 *In re Toys “R” Us Antitrust Lit.*, 191 F.R.D. 347, 352 (E.D. N.Y. 2000).

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4 **iv. There was Sufficient Discovery.**

5 This case settled only after extensive paper discovery in which thousands of
6 documents were produced, seven depositions including three Rule 30 (b)(6)
7 depositions, and exhaustive motions practice. In addition, the parties informally
8 exchanged information related to damages. Hamburger Decl., ¶2. The depth of
9 discovery was evident in material filed in support of connection with the previous
10 motions before this court. Discovery was more than “sufficient” – it was exhaustive.

11 **v. The Proponents of the Settlement Are Experienced in Similar**
12 **Litigation and Recommend Settlement.**

13 Class counsel is very experienced in similar class action litigation and strongly
14 recommends that the Settlement Agreement be approved. Hamburger Decl., ¶¶9-10;
15 Glor Decl. ¶¶ 3,4.

16 **C. The Settlement Terms and Conditions Are Fair and Reasonable.**

17 **i. The Prospective Relief is Reasonable.**

18 Under any standard, the proposed settlement is fair and adequate with respect
19 to prospective class relief. All of PEBB’s enrollees with Autism full access to medically
20 necessary ABA without the imposition of the developmental disability and/or the
21 experimental/investigational exclusions. It is not an overstatement to say that, for
22 many children, this access will be life-changing.

23 **ii. The Retrospective Reimbursement is Reasonable.**

24 On its face, the retrospective reimbursement provisions in the Settlement
25 Agreement are fair, adequate and reasonable. If class members do not receive a
26 threshold payment level of 60% of their approved claims, then the Agreement

1 automatically terminates. The threshold is more than fair to class members – it fairly
2 approximates the net payment that a class member would recover if the claim was
3 subject to cost sharing and a contingent fee in private litigation. Hamburger Decl. ¶8.
4 Class members are therefore assured a substantial recovery.

5 But it is likely that class members will get much more than the minimum. Class
6 counsel anticipates that the ABA class members without any *pro rata* deduction. If that
7 is the case, then class members would actually get more than their PEBB contracts
8 permit because the Settlement Agreement does not impose any copayment,
9 coinsurance or deductibles on the payment of claims. Hamburger Decl., ¶¶9-10.

10 Class counsel have a sound evidentiary basis for their projections. Based upon
11 enrollment data provided by PEBB, and claims history in other ABA settlement cases
12 (including Washington PEBB, Boeing, and Regence), class counsel has been able to
13 estimate the likely number of claimants in this settlement process. *Id.* This estimate
14 takes into account the very low number of PEBB enrollee who requested coverage of
15 ABA during the class period (although that number was likely significantly depressed
16 due to PEBB's well-known exclusionary position). It also reflects that participation of
17 class members in a claims process is typically quite low. *See Chesbro v. Best Buy Stores,*
18 *L.P.*, 2014 U.S. Dist. LEXIS 25404 (W.D. Wash. 2014) (participation of only 8.5% of class
19 members is "within the normal range for participants in class actions."). The detailed
20 basis for class counsel's opinion that claims by class members are unlikely to exceed
21 the \$400,000 cap is contained in the Hamburger Decl., ¶¶9-10.

22 **iii. The Settlement Agreement Provisions Governing Attorney**
23 **Fees and Costs are Reasonable.**

24 The Settlement Agreement provides that defendants, not the Plaintiff class, will
25 pay an established amount for class counsel's attorney fees, costs, and Plaintiffs'
26 incentive award subject to the Court's approval of "reasonableness." *Wing v. Asarco*

1 *Inc.*, 114 F.3d 986, 988 (9th Cir. 1997). Reasonableness is first accessed by calculating
2 counsel's "lodestar," i.e. a figure derived by "multiplying the number of hours
3 reasonably spent on the litigation by a reasonable hourly rate." *McCown v. City of*
4 *Fontano Fire Dept.*, 565 F.3d 1097, 1102 (9th Cir. 2009); accord, *Strawn v. Farmers Ins. Co.*,
5 353 Or. 210, 217, 297 P.3d 439 (2013). The hours include time "reasonably expended in
6 pursuit of the ultimate result achieved in a manner that an attorney traditionally is
7 compensated by a fee-paying client for all time reasonably expended on a matter."
8 *Hensley v. Eckerhart*, 461 U.S. 424, 431, 103 S. Ct. 1933 (1983). As a general rule, "the
9 court should defer to the winning lawyer's professional judgment as to how much time
10 he was required to spend on the case; after all, he won, and might not have, had he
11 been more of a slacker." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir.
12 2008).

13 The initial burden is on prevailing counsel to provide evidence demonstrating
14 "the number of hours spent, and how it determined the hourly rate requested."
15 *McCown*, 565 F.3d at 1102; *Ruff v. County of Kings*, 700 F. Supp.2d 1225, 1228 (E.D. Cal.
16 2010). Evidence documenting the number of hours spent by counsel on this matter will
17 be submitted to the Court with the Motion for Final Approval.

18 Class counsel had incurred more than \$10,493.24 in costs and out-of-pocket
19 expenses. Evidence documenting the costs and out-of-pocket expenses will also be
20 submitted to the Court with the Motion for Final Approval. Class counsel have been
21 paying for all costs out of pocket with no guarantee of ever being repaid if the action
22 was lost. Class counsel had every incentive to be cautious in incurring costs. All of
23 those costs were necessary to achieve the settlement of this matter, and were
24 reasonable.

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1 **iv. The Proposed Incentive Award Provision Is Reasonable.**

2 “Incentive fees are intended to address a cost burden that class actions
3 disproportionately impose on the class representative.” *Strawn v. Farmers Ins. Co.*, 353
4 Or. 210, 242, 297 P.3d 439 (2013). “Those costs may include spending time learning
5 about the case; being subject to the time, expense, and intrusiveness of discovery; and
6 in some types of cases, such as employment discrimination actions, facing potential
7 retaliation or loss of reputation.” *Id.*; *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir.
8 2003) *citing to* *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). “Because a named
9 plaintiff is an essential ingredient of any class action, an incentive award is appropriate
10 if it is necessary to induce an individual to participate in the suit.” *Cook*, 142 F.3d at
11 1016 (approving a \$25,000 incentive award); *see, e.g., Louie v. Kaiser Found. Health Plan,*
12 *Inc.*, 2008 U.S. Dist. LEXIS 78314, 18 (S.D. Cal. Oct. 6, 2008) (preliminary approval of a
13 \$25,000 incentive award where named plaintiffs “have protected the interests of the
14 class and exerted considerable time and effort by maintaining three separate lawsuits,
15 conducting extensive informal discovery, hiring experts to analyze discovered data and
16 engaging in day-long settlement negotiations with a respected mediator”).

17 Here, P.S.’s family was willing to open themselves up to extensive personal
18 scrutiny in order to win systemic change for all PEBB enrollees. Hamburger Decl., ¶11.
19 P.S.’s parents filed multiple individual appeals prior to litigation on their own (without
20 representation by a lawyer). *Id.* Once litigation commenced, defendants sought
21 extensive written discovery from P.S., delving into years of medical history, school
22 records and stacks of emails. *Id.* P.S.’s parents all spent hours gathering documents
23 responsive to defendants’ exhaustive discovery requests. *Id.*

24 Kelly Alford-Smith also had her employment records obtained from her
25 employer and was questioned extensive at deposition. *Id.* Both of P.S.’s parents work
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1 full-time and had to take leave from their work to participate in deposition
2 preparation, deposition, and mediation session. *Id.* Because of P.S.'s special needs,
3 they had to arrange for skilled providers to watch her during the lengthy mediation.
4 *Id.* The class has benefitted tremendously from the willingness of P.S.'s family to step
5 forward. Without it, the broad systemic relief included in this settlement might not
6 have happened.

7 Finally, the proposed incentive awards are consistent with those approved by
8 courts in other similar litigation. In *D.F. v. Washington Health Care Authority*, the Mental
9 Health Parity Act case brought in Washington State against the Public Employees
10 Benefit Board, the named plaintiffs were awarded incentive awards of \$25,000 per
11 plaintiff family after similar extensive discovery, years of litigation, and multiple
12 mediation sessions. Hamburger Decl., ¶12. The Plaintiffs here, like the *D.F.* plaintiffs,
13 have invested many hours in the litigation, participated in multiple mediation sessions
14 and opened themselves up to extensive scrutiny by defense counsel. For this reason,
15 Plaintiffs seek an incentive award for P.S. of up to \$17,500.

16 Nevertheless, the Court need not decide at this time whether such an incentive
17 award should be ordered. The Court should conclude that the provision in the
18 Settlement Agreement permitting class counsel to seek an incentive award for each
19 Plaintiff family of up to \$17,500 does not render the proposed Settlement Agreement
20 unfair or a product of collusion. The Court will be in a position to review a detailed
21 declaration from each representative as part of the application for incentive awards, if
22 preliminary approval is granted. See *R.H. v. Premera Blue Cross*, 2014 U.S. Dist. LEXIS
23 108503, *8 (W.D. Wa. August 6, 2014) ("Plaintiff has also provided the court with
24 evidence and legal authority that, on a preliminary basis, the incentive award of
25 \$25,000 to each plaintiff and guardian (for a total of \$100,000) is reasonable where they
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1 have all dedicated substantial time, effort and undertaken risk to protect the interests
2 of the plaintiffs.”).

3 **D. The Proposed Notice, Opportunity to Submit Objections and**
4 **Fairness Hearing Are Sufficient to Safeguard the Interests of Class**
5 **Members.**

6 **i. The Notice is Expansive.**

7 The Settlement Agreement requires PEBB, *at its expense*, to direct mail notice to
8 all current and past enrollees who submitted a claim with a 299 diagnosis during the
9 Class period. *App. 1, ¶2.2.3.1*. In addition, class counsel will create a detailed webpage
10 specifically designed to provide information and assistance to class members.² *App. 1,*
11 *¶2.2.3.2* (setting form web notice plan).

12 **ii. The Notice Text, Opt-Out Form and Claim Forms Should Be**
13 **Approved.**

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

17 **E. Proposed Scheduling Order**

18 Class counsel, after consultation with defense counsel, proposes the following
19 deadlines:

20 Preliminary Approval Date + 2 weeks	Deadline by which PEBB must complete its initial mailing (with the exception of returns and forwarding mail, which may be forwarded as identified).
21 Preliminary Approval Date + 3 weeks	Deadline by which Class Counsel to file motion for attorney’s fees and incentive

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25 ² The Regence information page at www.sylaw.com/RegenceSettlement provides a working example
26 of what class counsel would also establish here, if preliminary approval is granted.

	awards, and deadline to establish settlement website
Final Approval Date - 45 days	Deadline for class members to submit claims, exclude themselves from the Settlement Classes, or file objections. Deadline for class members to file a written notice of appearance.
Final Approval Date - 30 days	Deadline for Claims Administrator to provide the Parties' counsel with the initial disposition of claims
Final Approve Date - 5 days	Deadline for Class counsel to file the Motion for Final Approval of Settlement Agreement and supporting documents
April 15, 2016 or later	Final approval hearing.

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

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

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VII. CONCLUSION

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

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

DATED: December 4, 2015.

Respectfully Submitted,

SIRIANNI YOUTZ
SPOONEMORE HAMBURGER

s/ Eleanor Hamburger

Eleanor Hamburger (WSBA #26478)

(pro hac vice application to follow)

Stephen Sirianni (OSB #070346)

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— and —

MEGAN E. GLOR ATTORNEYS AT LAW

s/ Megan E. Glor

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Portland, OR 97205

Telephone: (503) 223-7400

Facsimile: (503) 227-2530

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on December 4, 2015, I served a copy of **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT** on counsel of record as indicated below:

Sheila H. Potter
Deputy Chief Trial Counsel
DEPARTMENT OF JUSTICE - TRIAL
DIVISION
1162 Court Street NE
Salem, OR 97301-4096
Attorneys for Defendants

☒ By Email
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Medora Marisseau
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Seattle, WA 98104
Attorneys for Defendants

☒ By Email
mmarisseau@karrtuttle.com
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DATED: December 4, 2015.

s/ Megan E. Glor
Megan E. Glor (OSB #930178)
megan@meganlor.com
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Tel. (503) 223-7400; Fax (503) 227-2530

AGREEMENT TO SETTLE CLAIMS

P.S. v. PEBB, No. 14C15068

Marion County Circuit Court, Oregon

This Agreement to Settle Claims (“Agreement”) is between P.S., a minor, by and through her parents, Kelly Alford-Smith and Duane Smith, Kelly Alford-Smith, the “Settlement Class” (as defined in ¶1.17) and N.B., a minor by and through his parents, L.B. and B.B. (collectively, “Claimants”) and Defendants State of Oregon and the Oregon Public Employees’ Benefit Board (collectively “Defendants,” defined in ¶1.10). Claimants and Defendants are referred to collectively as the “Parties.” This Agreement is a full expression of the agreements between the Parties.

RECITALS

P.S. is a covered dependent under the PEBB Providence Choice Plan, a self-funded health plan and Alford-Smith is a participant under that Plan, and was a participant prior to April 29, 2014.

A dispute arose between P.S. and PEBB as to coverage for Applied Behavior Analysis (“ABA”) prior to April 29, 2014. On April 29, 2014, P.S. and Alford-Smith filed an action entitled, *P.S., Alford-Smith v. Oregon Public Employee Benefit Board and the State of Oregon*, No 14C15068, pending in Marion County Oregon. P.S. brought claims on her own behalf and on behalf of similarly situated others for declaratory and injunctive relief related to PEBB’s exclusion of coverage for ABA therapy. Alford-Smith brought claims on her own behalf and on behalf of similarly situated others under O.R.S. 659A.112.

N.B., by and through his parents L.B. and B.B., was a covered dependent under the PEBB Providence Choice Plan and asserts that he incurred other compensable expenses during the period of January 1, 2014 to July 31, 2014, relating to non-coverage of ABA under the Plan during that period.

By this Agreement, the Parties wish to resolve all claims and all potential claims with respect to coverage of ABA therapies for all individuals under the Plans.

AGREEMENT

1. Definitions.

1.1 “ABA” or “Applied Behavioral Analysis” shall mean: the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences to produce significant improvement in human social behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior.

1.2 “Action” shall mean: *P.S., Alford-Smith v. Oregon Public Employee Benefit Board and the State of Oregon*, No. 14C15068, a class action pending in Marion County, Oregon.

1.3 “Agreement Execution Date” shall mean: the date on which this Agreement is fully executed.

1.4 “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).

1.5 “Claims Processor” shall mean Providence Health Plan.

1.6 “Class Counsel” shall mean: SIRIANNI YOUTZ SPOONEMORE HAMBURGER and MEGAN E. GLOR ATTORNEYS AT LAW.

1.7 “Class Members” shall mean: those individuals who comprise the Settlement Class.

1.8 “Class Period” shall mean: January 1, 2010 through January 30, 2015.

1.9 “Court” shall mean: the Marion County Circuit Court, Oregon.

1.10 “Defendants” shall mean: (a) Oregon Public Employee Benefit Board; and (b) State of Oregon.

1.11 “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.

1.12 “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.

1.13 “Final Decision” shall mean: a decision of the Oregon Supreme Court or of any intermediate appellate court that is not appealed within the time permitted for such appeals or that, if appealed, is not accepted for review.

1.14 “Named Plaintiffs” shall mean: P.S. by and through her parents Kelly Alford-Smith and Duane Smith, and Kelly Alford-Smith.

1.15 “Parties” shall mean: Named Plaintiffs, the Settlement Class, N.B. and Defendants.

1.16 “Plans” means the Providence Choice Plan and the Statewide Plan, the self-funded employee health plans offered through PEBB.

1.17 “Settlement Class” shall mean: a class to be certified for settlement purposes consisting of all individuals who have not opted out of such class and who fall into one of the following Subclasses:

ABA Claims Subclass:

All individuals who:

- (1) are or were enrolled in the Plans on or after January 1, 2010 through January 30, 2015;
- (2) have a diagnosis of Autism and;
- (3) incurred unreimbursed expenses for or incurred debt for (or whose parents/guardians incurred unreimbursed expenses for or debt for) Applied Behavioral Analysis services for the treatment of Autism during the Class Period.

Employment Claims Subclass:

All individuals who:

- (1) are or were an employee of the State of Oregon and;
- (2) are the parent or legal guardian of a dependent who has a diagnosis of Autism who was enrolled under the Plans, on or after January 1, 2010 through January 30, 2015 and;
- (3) incurred unreimbursed expenses for or incurred debt for Applied Behavioral Analysis services for the treatment of Autism for such dependent during the Class Period.

1.18 “Settlement” shall mean: the settlement to be consummated under this Agreement.

1.19 “Settlement Class Released Claims for ABA Claims Subclass” 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 coverage for ABA therapy that were brought, or that could have been brought, by the Named Plaintiffs against Defendants in the Action on behalf of a class, including but not limited to any claims under federal, state or local law or at equity, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type, attorney’s 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 ABA Claims Subclass and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

1.20 “Settlement Class Released Claims for Employment Claims Subclass” 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 coverage for ABA therapy that were brought, or that could have been brought, by the Named Plaintiffs against Defendants in the Action on behalf of a class, including but not limited to claims under federal, state or local laws, statutory or common law causes of action, any and all losses, opportunity losses and damages of any type,

attorney's 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 specifically includes any employment discrimination claims that could have been brought by or on behalf of the Employment Claim Subclass. This Release shall be binding on Named Plaintiffs, the Employment Claims Subclass, and all their heirs, beneficiaries, representatives, assigns, attorneys and agents.

1.21 "N.B. Released Claims" shall mean: all claims, demands, debts, liabilities, and causes of action, known or unknown, of any nature, whatsoever, arising out of or relating in any way to claims for coverage of ABA services by PEBB during the Class Period, 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, attorney's 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 specifically includes any employment discrimination claims that could have been brought by or on behalf of the parents or guardians of N.B.

1.22 "Releasees" shall mean: Defendants, their affiliates, subsidiaries, their successors, predecessors, officers, directors, representatives, employees, agents, assigns, attorneys, independent contractors, and any and all other entities and persons in privity with them which could be ostensibly liable for the claims being released, including without limitation Providence Health & Services, and its affiliates, including without limitation, Providence Health Plan.

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, as provided herein. The Parties agree jointly to recommend to the Court that it 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 Class. The Court shall have certified the Settlement Class. Defendants' Counsel and Class Counsel shall make a joint stipulated motion for certification of the Settlement Class as part of the motions to approve this Agreement.

2.2.2 Motions for Preliminary Approval and Notice. The Court shall have preliminarily approved the Agreement ("Preliminary Approval Order") and authorized the issuance of notice and opt-out rights to the Settlement Class. Class Counsel shall make a motion for preliminary approval and authorization to send notice ("Preliminary Motion"). The 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. The 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 Court in its Preliminary Approval Order, Defendants shall have caused the Court-approved notice to be delivered the relevant Class Members.

2.2.3.1 Defendants shall cause class notice, with any related costs to be paid by Defendants, to be issued as follows:

- (1) U.S. Mail. All PEBB self-funded plan enrollees who have submitted claims with an Autism diagnosis at any time from January 1, 2010 to the present shall receive class notice via U.S. mail.
- (2) Webpage. Defendants shall prominently post, on the PEBB webpage, a link to the settlement agreement, notice, claim form and instructions to claim form.

2.2.3.2 Class Counsel Sirianni Youtz Spoonemore Hamburger shall create a webpage which contains the following material:

- (1) A description of P.S. v. PEBB, including a summary of the litigation to date.
- (2) A description of the Settlement Class definition.
- (3) A summary of the proposed settlement derived from the class notice.
- (4) A timeline and schedule of events, including deadlines for submitting claims, objecting, and opting out.
- (5) How to contact Class Counsel for additional information.
- (6) Litigation and Settlement documents, or links to documents, including:
 - i. complaint and answer;
 - ii. class notice;
 - iii. instructions to claim form;
 - iv. claim form;
 - v. opt-out form;
 - vi. motion for preliminary approval; and
 - vii. the Court's order on preliminary approval.

2.2.4 Fairness Hearing. On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in the hearing ("Fairness Hearing") during or after which the Court will determine by order (the "Final Order"): (i) the proposed Settlement between the Parties is fair, reasonable and adequate and should be approved by the Court; and (ii) the requirements of ORCP 32 and due process have been satisfied in connection with the distribution of the notice.

2.2.5 Motion for Final Approval. On the date set by the Court in its Preliminary Approval Order, Plaintiffs shall have filed a motion (“Final Approval Motion”) for an order giving final approval to this settlement (“Approval Order”).

2.3 Claims Processing Completed. Claims Processing, pursuant to section 7, has been completed.

2.4 No Termination. The Settlement shall not have terminated pursuant to section 10.

3. Releases.

3.1 Releases of the Releasees by Named Plaintiffs and the Settlement Class. Upon the Effective Date of Settlement, Named Plaintiffs on behalf of themselves and, to the full extent permitted by law, on behalf of the Settlement Class that they represent, unconditionally release and forever discharge Releasees from any and all Settlement Class Released Claims for both the ABA Claims subclass and the Employment Claims subclass that Plaintiffs or the Settlement Class has directly, indirectly, derivatively, or in any other capacity ever had or now have. This Release shall be binding on Plaintiffs, the Settlement Class members, and all their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents.

3.2 Release of the Releasees by N.B. Upon the Effective Date of Settlement, N.B., by and through his parents L.B. and B.B. unconditionally release and forever discharge Releasees from any and all N.B. Released Claims that N.B. has directly, indirectly, derivatively, or in any other capacity ever had or now has. This Release shall be binding on N.B. and all his lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys and agents. This Release is contingent upon execution of a separate release agreement by Providence Health Plan in favor of N.B.

3.3 Defendant’s Release of Named Plaintiffs, Settlement Class, N.B., 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 Settlement Class, and Class Counsel from any and all claims that Defendants may have or had with respect to the Action.

3.4 Upon the Court’s approval of this Settlement Agreement, all claims under the Action shall be dismissed with prejudice.

4. Representations and Warranties.

4.1 Knowing and Voluntary. 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.

4.2. No Assignment and Tax Consequences. Each class member who submits a claim shall warrant and represent that he/she/they are the sole owner of the claims submitted, and he/she/they have not assigned any such claims to anyone, including to any health care providers. No representation is made by the Released Parties regarding any potential tax consequences of the payments made as a result of this Agreement, and the Parties agree and understand that the Released Parties do not have any responsibility for any tax consequences.

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 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 ABA Coverage and Agreements.

6.1 Coverage of ABA Therapy. Defendant PEBB will continue to cover ABA under its self-funded plans at least through January 1, 2022, but may continue to provide ABA coverage beyond that date.

6.2 Developmental Disability Exclusion. Defendant PEBB will not deny coverage of ABA therapy based upon an exclusion of mental health services designed to treat developmental disabilities.

6.3 Experimental/Investigational Exclusion. Defendant PEBB shall not deny or limit ABA coverage as defined in this Agreement on the basis that it is “experimental” or “investigational.”

6.4 Medical Necessity. Nothing herein shall be construed to require coverage for ABA that is not medically necessary, as determined by PEBB or its designee.

6.5 Prior Authorization. The Parties agree that the plans’ requirement for Prior authorization for coverage of ABA shall permit coverage, if medically necessary, approved back to the date of the most recently approved individualized ABA treatment plan for that course of treatment.

6.6 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. Defendant PEBB agrees 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 independent review.

7. Claims Processing.

7.1 Claims Processing. Unreimbursed ABA costs incurred by a Class Member (or the parents or legal guardians on behalf of the Class Member) during the Class Period shall be eligible for reimbursement as follows:

7.1.1 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.

7.1.2 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.

7.1.2.1 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 ABA treatment (month/year); and (4) the unreimbursed charges or debt incurred associated with that ABA treatment (excluding unreimbursed charges associated with annual deductibles, co-payments and co-premiums).

7.1.2.2 Documentation Required. The following documentation will be required:

7.1.2.2.1 The actual or approximate date(s) of 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

7.1.2.2.2 The unreimbursed charges or debt incurred associated with 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 ABA Services dates), or other evidence of similar reliability and containing similar specificity connecting payments/debt to the ABA services date.

7.1.3 The Claims Processor shall review the claim forms to confirm that the items indicated in Sections 7.1.2.1, 7.1.2.2.1, and 7.1.2.2.2, 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 enrolled under a PEBB self-funded health benefit 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 and that the claims were incurred during the Class Period.

7.1.3.1 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, no less than 30 days and not to exceed 90 days, to cure the deficiency.

7.1.3.2 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.

7.1.4 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 disposition of claims shall be provided to Class counsel at least thirty (30) days before the Fairness Hearing (See ¶2.2.4).

7.1.5 Payment of Claims. Defendants shall pay all final claims approved by the Claims Processor up to an aggregate cap of Four Hundred Thousand Dollars (\$400,000.00), which includes the payments to be made under Sections 7.1.7, 7.1.8, and 7.1.9 of this Agreement. If the total amount of all approved claims exceeds \$400,000, then each claim shall be paid on a *pro rata* basis with all other approved claims provided that the threshold payment level is met as set forth in section 9.5. Payment of final claims shall be made 35 days after entry of final approval of the Settlement Agreement, if no appeal of the final approval order is taken. If entry of the final approval of the Settlement Agreement is appealed, then payment of all final claims approved by the Claims Processor shall occur within 35 days of the issuance of the Final Decision upholding approval of this Settlement Agreement.

7.1.6 Dispute Resolution Process. 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 dispute resolution based on paper submissions before a sole neutral arbitrator, to be selected by the parties. Defendants shall bear the cost of the arbitrator's fee and each party shall bear his/her/its own costs and attorney fees incurred in the dispute resolution proceedings if any. Claims submitted under this provision will become final upon the rendering of the arbitrator's decision. Any claims determined to be valid as a result of the Dispute Resolution Process must be accounted for and paid according to the deadlines set forth in ¶7.1.5.

7.1.7 Payment of Unreimbursed ABA Claims for P.S. The Parties agree that the documented amount of unreimbursed ABA claims incurred by P.S. during the Class Period is \$30,395.25 and this amount shall be paid pursuant to ¶7.1.5.

7.1.8. Payment of Compensable Expenses for N.B. The Parties agree that N.B. has incurred documented expenses during the period of January 1, 2014 to July 31, 2014, relating to

PEBB's non-coverage of ABA during that period in the amount of \$7,748.00. This amount shall be paid pursuant to ¶7.1.5.

7.1.9. Payment of Alford-Smith Employment Discrimination Claim. In consideration of the promises and obligations hereunder and in order to avoid the ongoing expense of litigation, Defendants agree to pay Alford-Smith Seventeen Thousand Five Hundred Dollars (\$17,500) relating to her claim under ORS 659A.112 brought in the Action. This amount shall be paid pursuant to ¶7.1.5.

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 12.1.

9. Termination of Agreement to Settle Claims.

9.1 Court Rejection. If the Court declines to preliminarily or finally approve the Settlement, then this Agreement shall automatically terminate, and thereupon become null and void.

9.2 Court of Appeals Reversal. If the Oregon Court of Appeals 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.

9.3 Supreme Court Reversal. If the Oregon 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 Payment Level. This Agreement shall terminate if under Section 7.1.5 due to the \$400,000 cap on approved claims, approved claims could not be paid at least at 60% of their approved value.

9.6 Threshold Participation. If more than 10 individuals opt out through a timely submission by qualified Class Members, Defendants at their sole option, may terminate the

Agreement by delivering notice of their termination within 15 days of the final calculation of opt outs received by the Claims Processor. For purposes of this paragraph, a timely opt out by a parent/guardian on his/her own behalf and on behalf of their dependent who incurred unreimbursed ABA expenses during the Class Period, shall be treated as a single opt out.

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 October 23, 2015.

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. Attorneys' Fees/Costs, Case Contribution Award, and Cost of Administration.

11.1 Incentive Award. An incentive award for P.S., by and through her parents Duane Smith and Kelly Alford-Smith, of Seventeen Thousand Five Hundred Dollars (\$17,500) as class representative of the ABA Claims Subclass will be requested by Class Counsel to be paid by Defendants. This Agreement is not contingent upon this payment to P.S. as Class representative, and shall not terminate by reason of the Court awarding less than requested. Defendants shall take no position with respect to this application of an incentive award, which is subject to the Court's review and approval, provided that the requested amount does not exceed the above.

11.2 Costs of Notice and Administration. All costs and expenses of class notice set forth in ¶¶2.2.3.1, and claims processing and administration, as set forth in ¶¶7.1.3-7.1.4 shall be paid by Defendants.

11.3 Attorneys Fees and Costs. An attorney fee award in the amount of \$255,000 and costs in the amount of \$10,392.81 will be requested by Class Counsel to be paid by Defendants. This Agreement is not contingent upon an award of attorney fees at the level requested by Class Counsel provided the Court does not order more than the above amounts and shall not terminate by reason of the Court awarding less than the amounts requested by Class Counsel. Defendants will take no position with respect to Class Counsel's application for attorney's fees, provided that the request does not exceed the amount set forth herein.

12. Miscellaneous.

12.1 Dispute Resolution. The Parties agree that any dispute regarding the terms, conditions, releases, enforcement or termination of this Agreement shall be resolved by Sid Brockley through mediation and, if mediation is unsuccessful, through binding arbitration without the ability or right to appeal with a sole neutral arbitrator selected by the parties.

12.2 Governing Law. This Agreement shall be governed by the laws of State of Oregon without regard to conflict of law principles.

12.3 Severability. The provisions of this Agreement are not severable.

12.4 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 Court.

12.5 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.

12.6 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.

12.7 Principles of Interpretation. The following principles of interpretation apply to this Agreement:

12.7.1 Headings. The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

12.7.2 Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

12.7.3 References to a Person. References to a person include references to an entity, and include successors and assigns.

12.8 Survival. All representations, warranties and covenants set forth in herein shall be deemed continuing and shall survive the Effective Date of Settlement.

12.9 Entire Agreement. This Agreement contains the entire agreement among the Parties and their counsel relating to the claims brought in this litigation.

12.10 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.

12.11 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.

12.12 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:

STATE OF OREGON

By _____ DATED: _____
Its _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2015, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of the STATE OF OREGON, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the STATE OF OREGON, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of the STATE OF OREGON.

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

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

PUBLIC EMPLOYEES BENEFIT BOARD

By _____ DATED: _____
Its _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2015, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of the PUBLIC EMPLOYEES BENEFIT BOARD, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the PUBLIC EMPLOYEES BENEFIT BOARD, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of the PUBLIC EMPLOYEES BENEFIT BOARD.

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

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

PIPER SMITH, by and through her parent, KELLY ALFORD-SMITH

By _____ DATED: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, KELLY ALFORD-SMITH, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 2015.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

PIPER SMITH, by and through her parent, DUANE SMITH

By _____ DATED: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, DUANE SMITH, 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 _____ day of _____, 2015.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

NIKO BOSKOVIC, by and through his parent, LORETA BOSKOVIC

By _____ DATED: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

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

GIVEN under my hand and official seal this _____ day of _____, 2015.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

NIKO BOSKOVIC, by and through his parent, BOJAN BOSKOVIC

By _____ DATED: _____

STATE OF OREGON)
) ss.
COUNTY OF _____)

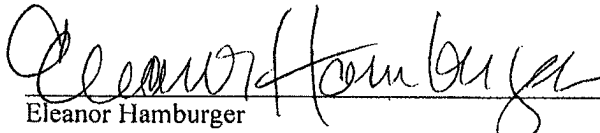
On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, BOJAN BOSKOVIC, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as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

GIVEN under my hand and official seal this _____ day of _____, 2015.

NOTARY PUBLIC in and for the State of _____
Residing at _____
My commission expires: _____

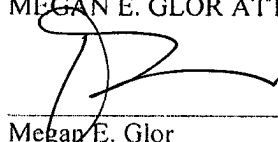
APPROVED:

SIRIANNI YOUTZ
SPOONEMORE HAMBURGER


Eleanor Hamburger
Attorneys for the Plaintiff and the Settlement Class

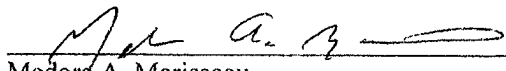
DATED: Dec. 3, 2015

MEGAN E. GLOR ATTORNEYS AT LAW


Megan E. Glor
Attorneys for the Plaintiff and the Settlement Class

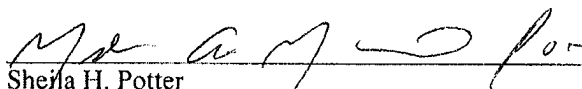
DATED: Dec. 3, 2015

KARR TUTTLE CAMPBELL


Medora A. Marisseau
Attorneys for Defendants

DATED: Dec. 3, 2015

ELLEN F. ROSENBLUM, ATTORNEY GENERAL


Sheria H. Potter
Attorneys for Defendants

DATED: Dec. 3, 2015

ATTENTION PROVIDENCE CHOICE AND STATEWIDE PLAN ENROLLEES: A SETTLEMENT AGREEMENT MAY AFFECT YOUR RIGHTS.

A Court has authorized this notice. This is not a solicitation from a lawyer.

- A Court has ordered this notice to be sent to all Oregon Public Employees Benefit Board (“PEBB”) self-funded plan enrollees who have submitted claims with an autism diagnosis at any time from January 1, 2010 to the present. As a result, many people will receive this notice who are not Class Members, and who are not affected by this notice. If you (or your enrolled dependent) did not receive Applied Behavior Analysis to treat autism spectrum disorder or did not incur unreimbursed expenses as a result of such therapy, then you should disregard this notice and its enclosures. However, if you or your enrolled dependent did receive Applied Behavior Analysis to treat autism or an autism spectrum disorder and you incurred certain unreimbursed expenses or debt as a result, then you should review this notice – and your rights – carefully.
- An individual with autism and her mother sued PEBB in a class action lawsuit, *P.S. and Alford-Smith v. PEBB*, No. 14C 15068, Marion County Circuit Court, Oregon. The individuals, called “Class Representatives,” sought coverage under PEBB’s self-funded health plans for Applied Behavior Analysis therapy to treat autism prior to April 29, 2014.
- Class Representatives and PEBB have reached a Settlement Agreement of the case in which PEBB will reimburse Class Members for certain unpaid expenses for 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 Court involved in the case has granted preliminary approval of the Agreement.

Legal Rights of Class Members	
You may comment on the proposed Settlement Agreement.	If you are a Class Member, then you have the right to comment on, object to or support the proposed Agreement. The Court will decide whether to approve or reject the proposed Settlement Agreement after a Final Hearing on: _____, 2015 at _____, Marion County Courthouse, Room _____. You may submit written comments or objections you wish to be considered by the Court by _____. You should not call the court.
You may make a claim.	If you are a Class Member, you may submit a claim if you paid for Applied Behavior Analysis therapy to treat autism spectrum disorder from January 1, 2010 to January 30, 2015. Claims must be submitted by _____. A claim form is included with this notice.
You may do nothing.	You do not need to take any action to receive coverage for medically necessary Applied Behavior Analysis therapy as described in the Agreement. If you do nothing, however, any claims you have against PEBB that could have been brought in the lawsuit will be forever released.
You may ask to be excluded.	If you are a Class Member, you may opt out of the class. 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. YOU DO NOT NEED TO OPT OUT IF YOU DO NOT HAVE ANY CLAIMS.

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, coverage under either the Providence Choice Plan or the Statewide plan offered through PEBB and submitted a claim with an autism diagnosis. **You are not a Class Member simply because you got this notice.**

Only individuals who have received Applied Behavior Analysis therapy to treat Autism Spectrum Disorder and incurred unreimbursed expenses or debt are “Class Members.” A complete definition of each class appears at www.sylaw.com/PEBBSettlement.

If you or a member of your family did NOT receive Applied Behavior Analysis therapy to treat an Autism Spectrum Disorder then you are NOT in either 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 called “Class Representatives” sue 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 dependents received Applied Behavior Analysis therapy to treat Autism Spectrum Disorder as listed in the DSM, then you may be a Class Member.

This notice concerns the proposed settlement of *P.S. v. PEBB*, No. 14C 15068, Marion County Circuit Court, Oregon.

3. What is this lawsuit about?

In the lawsuit, the Class Representatives claim that PEBB illegally excluded and/or limited coverage of medically necessary ABA therapies to treat autism spectrum disorder during the period prior to April 29, 2014. They allege that these exclusions and limitations violated their health plans and state and federal law. PEBB 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/ORPEBBSettlement. To be effective, the Court must approve the Agreement.

♦ Coverage of Applied Behavioral Analysis Therapy

PEBB will continue to cover medically necessary Applied Behavioral Analysis therapy to treat autism spectrum disorder at least through January 1, 2022. PEBB will not impose the Developmental Disability or Experimental/Investigational exclusion on coverage of medically necessary ABA therapy. All requests for ABA therapy must meet other standard requirements, such as the requirement that care be medically necessary.

♦ Reimbursement of Prior Unreimbursed ABA Expenses

The Agreement provides for reimbursement of Class Members for unpaid Applied Behavior Analysis therapy for the treatment of autism from January 1, 2010 to January 30, 2015, subject to a *pro rata* reduction if payment of claims and certain other payments exceed \$400,000. See Section on Insufficient Funds, below.

♦ Claims Process for Unpaid ABA Therapy Services

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

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

Agreement, § 7.1.2.1. To be entitled to reimbursement, a Class Member must have a diagnosis of Autism Spectrum Disorder (Diagnostic and Statistical Manual of Mental Disorders or DSM IV or V, 299.00, 299.10, or 299.80), received Applied Behavior Analysis for that condition and incurred unreimbursed expenses/debt as a result of the service. Agreement, § 7.1.2.1. 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, § 7.1.2.2. A Class Member is entitled to reimbursement even if no claim was made to PEBB, and/or a claim was denied by PEBB, 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, § 7.1.3. The Claims Processor will also confirm with PEBB that the Class Member was enrolled 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 PEBB. Agreement, § 7.1.3. 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, §§ 7.1.3.1, 7.1.3.2.

A claim form and instructions on how to submit claims are enclosed with this Notice.

♦ **Payment for Resolution of Employment Discrimination Claims**

Plaintiff Alford-Smith shall be paid \$17,500 for resolution of her employment discrimination claim. Agreement, §7.1.9. This payment is also subject to the *pro rata* reduction if payment of claims and certain other payments exceed \$400,000.

♦ **Payment for Compensable Expense for N.B.**

One PEBB enrollee incurred other expenses related to ABA therapy that the parties agreed should be reimbursed through this settlement agreement, totaling \$7,748.00. Agreement, §7.1.8. This payment is also subject to the *pro rata* reduction if payment of claims and certain other payments exceed \$400,000.

♦ **Attorneys' Fees and Litigation Costs**

Under the proposed Agreement, Class Counsel may apply for attorneys' fees of \$255,000. Agreement, § 11.3. In addition, reimbursement will be sought for litigation costs (sums Class Counsel paid out of pocket on behalf of the Class). Agreement, § 11.3. Class Counsel will seek \$10,392.81 in litigation costs. Class Counsel's requests for attorneys' fees and litigation costs are subject to review, and must be approved by the Courts. Agreement, § 11.3.

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/ORPEBBSettlement. Alternatively, you may write or email Class Counsel and request that a copy of the application be sent to you.

♦ **Incentive Award**

An incentive award of up to \$17,500 for P.S. as Class Representative will be requested. Agreement, § 11.1. The Court must approve the incentive award. Agreement, § 11.1.

You are permitted to review, object to, support or comment on the request for incentive award. On or before _____, Class Counsel will post the application for incentive award on www.sylaw.com/ORPEBBSettlement. Alternatively, you may write or email Class Counsel and request that a copy of the application be emailed or mailed to you.

- ♦ **Pro Rata Reduction if Claims Exceed \$400,000**

Class Counsel expects, but does not guarantee, that the claims for reimbursement of ABA expenses, payment to N.B. and payment to Alford-Smith will not exceed \$400,000. If there are insufficient funds to pay all Class Members who file valid claims and the payments to N.B. and Alford-Smith at 100%, then all Class Members, including N.B. and Alford-Smith, will receive a *pro rata* (percentage) distribution of their approved claimed amount. Agreement, § 7.1.5. If, however, Class Members would sustain over a 40% deduction of their approved reimbursement claims, then the Settlement Agreement will automatically terminate unless adjustments are made to ensure payment at or above that threshold level. Agreement, § 9.5. The threshold payment level represents a deduction that a Class Member would likely be required to pay for contingent legal representation and costs in an individual legal case, plus co-pays and deductibles. Agreement, § 7.2, 11.3.

As claims are received and processed, Class Counsel will periodically post projections on www.sylaw.com/ORPEBBSettlement with respect to whether the Agreement will pay all valid claims at 100%.

- ♦ **Claims Release**

Class Members (and their dependents) who received ABA therapy services will release Defendants from any and all claims related to PEBB's coverage for therapies that were or could have been brought in the lawsuit. Agreement, §§ 1.19, 1.20, 3.1 This means that if you have any claims arising out of PEBB's past failure to cover ABA therapy, then those claims will be resolved as part of the Agreement, and any right to payment will be governed exclusively by the Agreement.

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

PEBB 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, § 9.6.

5. When will the Payments Be Made?

The Court must finally approve the Agreement and, if any Class Members appeal, a final adjudication of any appeal(s) must be made before the reimbursement process can begin and before any funds are paid.

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

6. 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:

PEBB Class Opt-Out
c/o SIRIANNI YOUTZ SPOONEMORE HAMBURGER
999 Third Avenue, Suite 3650
Seattle, WA 98104

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 PEBB regarding past 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 this case do not affect you and you need not opt out.

♦ **Class Members May Comment on, Object to, or Support the Proposed Agreement**

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

- The *P.S. v. PEBB* Court will hold a hearing on _____ at _____. The hearing will be located in Courtroom _____ at the Marion County Courthouse, Salem, Oregon.

Class Counsel will assist you with identifying whether you are a member of one of the classes. You can also refer to www.sylaw.com/ORPEBBSettlement, which has more detail on how to determine which class you may be in.

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:

P.S. v. PEBB Class Counsel
c/o SIRIANNI YOUTZ SPOONEMORE HAMBURGER
999 Third Avenue, Suite 3650
Seattle, WA 98104

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

7. What happens if I do nothing at all?

You are not required to do anything related to this lawsuit. If you or your dependents are enrolled in a PEBB self-funded plan, the health plan will continue cover medically necessary Applied Behavioral Analysis therapy services to treat Autism Spectrum Disorder.

If you do nothing, however, any claims you have against PEBB regarding unreimbursed expenses/debt for ABA therapy that could have been brought in these lawsuits will be released.

8. 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/ORPEBBSettlement, or write Class Counsel:

Eleanor Hamburger
SIRIANNI YOUTZ SPOONEMORE HAMBURGER
999 Third Avenue, Suite 3650
Seattle, WA 98104
Email: 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.

OPT-OUT FORM INSTRUCTIONS

This form is to be completed only by those individuals who are Class Members but do NOT wish to remain Class Members and do NOT want any monetary award.

- If you are not a Class Member, do **NOT** return this form.
- If you are a Class Member and you want reimbursement for ABA services, do **NOT** return this form.

This form is only for Class Members who want to exclude themselves from the settlement.

You and your dependent(s) are Class Members if, while covered under one of the self-funded employee health plans offered through the Oregon Public Employees Benefit Board from January 1, 2010 to January 30, 2015, you or your dependent(s) received Applied Behavior Analysis (ABA) therapy to treat Autism Spectrum Disorder and you incurred unreimbursed expenses/debt for that therapy.

You should refer to www.sylaw.com/ORPEBBSettlement for additional help in determining whether you are a Class Member and, if so, which class you belong to. You may also call Class Counsel, SIRIANNI YOUTZ SPOONEMORE HAMBURGER, at (206) 838-3210 for assistance.

OPT-OUT CERTIFICATION

By signing this form, I certify that I and my dependent(s), if any, are members of the Classes certified in *P.S. v. PEBB*. I further certify that I understand the following:

1. I am opting out and removing myself and my dependent(s), if any, as members of the Classes in *P.S. v. PEBB*.
2. I understand that I and/or my dependent(s), if any, will not receive a monetary award from the Settlement.
3. I understand that I have the right to pursue claims on my own, at my own expense, with or without my own attorney. I understand that my claims and those of my dependent(s), if any, may be subject to a statute of limitations and that I have been advised to discuss the statute of limitations with an attorney.

Print Name of Class Member: _____
First MI Last

Address: _____
Number and Street City State and Zip Code

Date of Birth: _____ Telephone: _____

PEBB ID number, if available: _____

Signature: _____ Date: _____

This form must be received no later than _____ and must be mailed to:

PEBB Class Opt-Out
c/o SIRIANNI YOUTZ SPOONEMORE HAMBURGER
999 Third Avenue, Suite 3650
Seattle, WA 98104

***P.S. v. PEBB* Settlement Claim Form**

CLAIM FORM FOR _____

Please print your name and ID number from the label on the envelope.

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/ORPEBBSettlement. 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.

† If you had other insurance during the Class Period while you were covered under a PEBB self-funded plan, and that insurance covered ABA therapy, you cannot claim expenses associated with your co-payments, co-insurance or annual deductibles under that insurance plan. Additionally, you cannot claim expenses associated with ABA covered by PEBB since August 1, 2014.

CLAIM FORM INSTRUCTIONS

You must complete a Claim Form for reimbursement of 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, or 299.80. If you do not know the correct diagnosis, 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 to 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 with similar reliability.
2. Proof of payment or debt owed for ABA services 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 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:

PEBB ABA Claims
P.O. Box 4158
Portland, OR 97208-4327

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

E. INVESTIGATION

The Claims Administrator, PEBB, 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 the expenses are eligible and the claim is approved. Payment of approved claims 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, 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, you may contact Class Counsel, SIRIANNI YOUTZ SPOONEMORE HAMBURGER, at (206) 838-3210.

CERTIFICATION OF PAYMENT(S)

I hereby certify that I or my dependent(s) incurred out-of-pocket expenses, or debt, for the 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: _____

Name of person who received services: _____

DSM diagnosis of person who received ABA services: _____

Diagnosis made by (name of provider): _____

Date of original diagnosis: _____

The information on this form is **required**. You **must also** include the following elements of proof with this claim form: (1) proof of ABA service dates, (2) identity of the 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

Telephone Numbers: _____
(day) (evening)

PEBB Identification Number: _____