

# APPENDIX 1

## AGREEMENT TO SETTLE CLAIMS

*Schmitt et al., v. Kaiser Foundation Health Plan of Washington et al.,*

*Case No. 2:17-cv-1611-RSL*

This Agreement to Settle Claims (“Agreement”) is between Named Plaintiffs (as defined in Section 1.14), the Settlement Class Members (as defined in Section 1.6), and Defendants (as defined in Section 1.10). Named Plaintiffs and Defendants are referred to collectively as the “Parties.” This Agreement is a full expression of the agreements between the Parties.

### RECITALS

Named Plaintiffs allege in the Action (as defined in Section 1.1), among other things, that Defendants violated the Affordable Care Act’s anti-discrimination statute, 42 U.S.C. §18116 and Washington’s health carrier anti-discrimination statute, RCW 48.43.0128 by excluding coverage of medically necessary hearing aids and associated treatment. Defendants categorically deny these allegations and all other assertions by the Named Plaintiffs in the Action that Defendants engaged in, or are liable for, violations of law. The Action, brought in the United States District Court for the Western District of Washington, seeks relief on behalf of a purported class of similarly situated enrollees in Defendants’ Washington insured health plans that contain the same or similar exclusions.

The Parties wish to resolve all claims with respect to coverage of hearing aids and associated treatment for the proposed Settlement Class Members and Named Plaintiffs Mohundro and O.L. through December 31, 2023, and as to Named Plaintiff Schmitt individually through December 31, 2024.

### AGREEMENT

#### 1. *Definitions.*

- 1.1 “*Action*” shall mean: *Schmitt et al., v. Kaiser Foundation Health Plan of Washington, et al., No.2:17-cv-1611 RSL* a putative class action pending in the United States District Court for the Western District of Washington.
- 1.2 “*Notice and Claims Processor*” shall mean: a notice and claims administrator selected by Plaintiffs.
- 1.3 “*Case Contribution Award*” shall mean: any monetary amount awarded by the Court in recognition of the Named Plaintiffs’ assistance in the prosecution of this Action and payable pursuant to Section 10.3.
- 1.4 “*Settlement Class Released Claims*” shall mean: any and all claims of any nature whatsoever (including those that were brought or that could have been brought against the Releasees by the Named Plaintiffs on behalf of the Settlement Class Members) relating to the coverage of, or benefits for, Hearing Aids and Related Services received during the Settlement Class Period, including but not limited to

claims for any and all benefits, losses, opportunity losses, damages, attorney fees, costs, expenses, costs of other coverage, contribution, indemnification or any other type of legal or equitable relief, claims under Section 1557 of the Affordable Care Act, 42 U.S.C. §18116, or Washington’s health carrier anti-discrimination statute, RCW 48.43.0128.

- 1.5 “*Class Counsel*” shall mean: Sirianni Youtz Spoonemore Hamburger PLLC.
- 1.6 “*Settlement Class Members*” or “*Settlement Class*” shall mean the following:
  - 1.6.1 All individuals who: (1) were insured at any time during the Settlement Class Period under a Washington health insurance plan that has been, is or will be delivered, issued for delivery, or renewed by Kaiser Foundation Health Plan of Washington and Kaiser Foundation Health Plan of Washington Options (collectively, “Kaiser”), excluding Medicare Advantage plans and plans governed by Federal Employees Health Benefits Act that did not cover Hearing Aids and Associated Services and (2) incurred unreimbursed out-of-pocket expenses in obtaining medically necessary treatment for hearing loss, including Hearing Aids and Associated Services.
- 1.7 “*Settlement Class Period*” shall mean: October 30, 2014 through December 31, 2023 inclusive.
- 1.8 “*Settlement Class Notice Recipients*” shall mean: Individuals who were enrolled in a Washington health insurance plan that has been, is or will be delivered, issued for delivery or renewed by Defendants at any time during the Settlement Class Period that did not cover Hearing Aids and Associated Services.
- 1.9 “*Court*” shall mean: the United States District Court for the Western District of Washington.
- 1.10 “*Defendants*” shall mean: Kaiser Foundation Health Plan of Washington, Inc., Kaiser Foundation Health Plan of Washington Options, Inc., Kaiser Foundation Health Plan of the Northwest Inc., and Kaiser Foundation Health Plan, Inc. Defendants are also collectively referred to as “Kaiser.”
- 1.11 “*Effective Date*” shall mean: the date on which all of the conditions to settlement set forth in Section 2 have been fully satisfied or waived, as set forth in Section 2.1.
- 1.12 “*Final*” shall mean: the Settlement contemplated under this Agreement shall become “Final” as described in Section 2.2.6.
- 1.13 “*Hearing Aids and Associated Services*” shall mean air conduction hearing aids for hearing loss which have been or are fitted by a licensed hearing care provider and the associated care and services related to such hearing aids. This definition excludes over-the-counter hearing aids.

EH per  
authorization  
of named  
plaintiffs

- 1.14 “*Named Plaintiffs*” shall mean: Andrea Schmitt, Elizabeth Mohundro, O [REDACTED] L [REDACTED] by and through her parents, J [REDACTED] and K [REDACTED] L [REDACTED].
- 1.15 “*Named Plaintiffs’ Released Claims*” shall mean: any and all claims of any nature whatsoever (i) that were brought or that could have been brought against the Releasees by the Named Plaintiffs in the Action, (ii) relating to the coverage of, or benefits for Hearing Aids and Associated Services received during the Settlement Class Period including but not limited to claims for any and all benefits, losses, opportunity losses, damages, attorney fees, costs, expenses, costs of other coverage, contribution, indemnification or any other type of legal or equitable relief, claims under ERISA, and claims under the ACA’s anti-discrimination law, 42 U.S.C. §18116 and Washington’s health carrier anti-discrimination law, RCW 48.43.0128 including but not limited to claims for penalties, sanctions, attorney fees, and costs.
- 1.16 “*Named Plaintiff Schmitt Released Claims*” shall mean: any and all claims of any nature whatsoever (i) that were brought or that could have been brought against the Releasees by Named Plaintiff Andrea Schmitt in the Action; (ii) relating to the coverage of, or benefits for Hearing Aids and Associated Services received from October 30, 2014 through December 31, 2024, including but not limited to claims for any and all benefits, losses, opportunity losses, damages, attorney fees, costs, expenses, costs of other coverage, contribution, indemnification or any other type of legal or equitable relief, claims under ERISA, and claims under the ACA’s anti-discrimination law, 42 U.S.C. §18116 and Washington’s health carrier anti-discrimination law, RCW 48.43.0128 including but not limited to claims for penalties, sanctions, attorney fees, and costs. Named Plaintiff Schmitt further agrees not to serve as a class representative in any class action or group action against Kaiser seeking coverage for Hearing Aids or Associated Services.
- 1.17 “*Releasees*” shall mean: Defendants each of their affiliates, subsidiaries, parents, fiduciaries, trustees, recordkeepers, partners, attorneys, administrators, representatives, agents, directors, officers, employees, insurers, reinsurers, predecessors, actuaries, vendors, service providers, agents, assigns, and the successors-in-interest of each of the foregoing. In the case of any individual referenced in the preceding sentence, the “*Releasees*” shall also include the family members, estate, heirs, executors, representatives, and administrators of the estate of such individual.
- 1.18 “*Reimbursement Claim*” shall mean: (i) a claim for reimbursement of uncovered, out-of-pocket expenses incurred by a Settlement Class Member for Hearing Aids and Associated Services received by the Settlement Class Member during the Settlement Class Period, (ii) that is timely submitted by a Settlement Class Member on a Claim Form for reimbursement as a part of and in accordance with the terms of this Settlement Agreement, and (iii) that meets either of the following two sets of criteria:
- 1.18.1 the claim (i) was previously submitted to Defendants and denied, (ii) is verified by sworn attestation of the Settlement Class Member on the Claim

Form that it was not covered by other health insurance and has not been paid by or reimbursed by another payor, insurer, entity, plan, or person other than the Settlement Class Member (or family member of that Settlement Class Member); and (iii) is verified by sworn attestation of the Settlement Class Member on the Claim Form that it was paid by the Settlement Class Member (or a family member of that Settlement Class Member) submitting the claim for reimbursement and/or the Settlement Class Member continues to owe the unpaid amount;

1.18.2 the claim (i) was not previously submitted to the Defendants for consideration; (ii) is verified by sworn attestation of the Settlement Class Member on the Claim Form that it is an uncovered out-of-pocket expense that was incurred by the Settlement Class Member during the Settlement Class Period while the Settlement Class Member submitting the claim was covered by Defendants' plan; (iii) is verified by sworn attestation of the Settlement Class Member on the Claim Form that it was not covered by other health insurance and has not been paid or reimbursed by another payor, insurer, entity, plan, or person other than the Settlement Class Member (or family member of that Settlement Class Member); and (iv) is verified by sworn attestation of the Settlement Class Member on the Claim Form that it was paid by the Settlement Class Member submitting the claim for reimbursement (or family member of that Settlement Class Member), and/or the Settlement Class Member continues to owe the unpaid amount.

1.19 "Settlement" shall mean: the settlement to be consummated under this Agreement.

1.20 "Settlement Amount" shall mean: \$3,000,000.

1.21 "Taxes" shall mean: any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

1.22 "Claim Form" shall mean: the claim form issued to Settlement Class Members, and described in Section 6.5.1, in connection with the Class Notice described in Sections 2.2.2 and 2.2.3.

1.23 "CAFA Notice" shall mean: the notice of the proposed settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.

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

2.1 *General.* The Settlement provided for in this Agreement shall become effective when each and every one of the following conditions in Sections 2.2 and 2.3 have been fully satisfied or waived as set forth in Section 7.1.

2.2 *Court Approval.* The Settlement contemplated under this Agreement shall be approved by the Court as provided in this Agreement. 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 facilitating or completing the following:

2.2.1 *Certification of Settlement Class.* The Court shall have certified the Settlement Class for settlement purposes only. Class Counsel shall make a motion for certification of the Settlement Class under Federal Rule of Civil Procedure 23(b)(3) as part of the motions to approve this Agreement. In agreeing to the certification of this class for settlement purposes, Defendants do not admit that the Named Plaintiffs could have met the requirements for class certification for this particular class under Rule 23 in the normal course of the litigation.

2.2.2 *Motion for Preliminary Approval and Notices.* The Court shall have preliminarily approved the Agreement (“Preliminary Approval Order”) and authorized the issuance of notices (“Settlement Class Notices”) to the Settlement Class Notice Recipients. Class Counsel shall make a motion for preliminary approval, for authorization to send the Settlement Class Notices, and for approval of and continuing jurisdiction over the proposed settlement claims process (“Preliminary Motion”). The Settlement Class Notices shall be in a form agreed upon by the Parties and submitted for approval by the Court with the Preliminary Motion and shall include prominent references to resources, including toll-free phone number, where Settlement Class Members can obtain more information. In the event that the Parties do not agree upon the form of Settlement Class Notices, they will “meet and confer” to attempt to resolve the dispute. If they are unable to resolve the dispute after the conference, then the Court will decide the content of the Settlement Class Notices. The Preliminary Motion shall include a proposed form of Preliminary Approval Order that shall be agreed upon by the Parties. In the event that the Parties do not agree upon the proposed form of Preliminary Approval Order, they will meet and confer to attempt to resolve the dispute. If they are unable to resolve the dispute after the conference, the Parties may submit competing forms of the order to the Court. The Court must approve the form of the Settlement Class Notices.

2.2.3 *Settlement Class Notice.*

2.2.3.1 By the date and in the manner set forth in this Section 2.2.3.1 (or in any different manner set forth by the Court in its Preliminary Approval Order), Defendants shall provide the necessary information to the Notice and Claims Processor provided that the Notice and Claims Processor has entered into Kaiser’s HIPAA compliant Business Associate Agreement and Data Security Addendum so that the Notice and Claims Processor may deliver the Court-approved notice to the Settlement Class Notice Recipients. For those Settlement Class Notice Recipients for whom Defendants

have an e-mail address in Kaiser's enrollment system, the Settlement Class Notice shall be sent by e-mail to the e-mail address that Defendants have in their enrollment system for the Settlement Class Notice Recipient. For those Settlement Class Notice Recipients for whom Defendants do not have a current email address on file, a Settlement Class Notice shall be sent by e-mail to the last known e-mail address of the Settlement Class Notice Recipient, and if there is no last known e-mail address, then the short-form postcard sized notice shall be sent by direct first-class United States mail to the last address (if any) for that Settlement Class Notice Recipient in the records of Defendants, forwarding requested. Notice to a current or former subscriber shall be deemed notice to each Settlement Class Notice Recipient who was covered by Defendants through that subscriber. If an e-mail is sent to a Settlement Class Notice Recipient pursuant to this Section 2.2.3.1 and the e-mail is returned as undeliverable, the postcard sized notice shall be sent to the last known address of that Settlement Class Notice Recipient by direct first-class United States mail to the last address (if any) for that Settlement Class Notice Recipient in the records of Defendants, forwarding requested.

2.2.3.2 Not later than the date when the Preliminary Motion is filed, Class Counsel and/or the Notice and Claims Processor shall create a webpage that contains at least the following material:

- a. A description of the Action, including a summary of the litigation.
- b. The Settlement Class definition.
- c. A timeline and schedule of events, including deadlines for submitting claims and objecting.
- d. How to contact Class Counsel for additional information.
- e. Settlement documents, or links to documents, including:
  - i. Settlement Class Notice;
  - ii. Instructions to Claim Forms;
  - iii. Claim Forms;
  - iv. Motions for preliminary approval; and
  - v. All court orders on preliminary approval.
- f. Litigation documents, or links to documents, including:

- i. Plaintiffs' Complaint and any materials filed with the Complaint.
- g. Updates. The webpage shall be updated as the following become available:
  - i. Class Counsel's application(s) for attorney fees, costs, and Case Contribution Award (with all supporting materials); and
  - ii. Motion(s) for Final Approval of the Settlement (including any objections and Class Counsel's response to those objections).

2.2.4 *Fairness Hearing.* On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in a hearing ("Fairness Hearing") during or after which the Court will determine by order (the "Final Order") whether: (i) the proposed Settlement between the Parties is fair, reasonable, and adequate and should be approved by the Court; (ii) dismissal of the Action with prejudice and without costs or fees should be entered ("Dismissal"); (iii) the requirements of Rule 23 and due process have been satisfied in connection with the distribution of the Settlement Class Notice; (iv) to approve the payment of attorney fees and costs to Class Counsel and a Case Contribution Award as set forth in this Agreement pursuant to Sections 10.1, 10.2, and 10.3; and (v) that notice to the appropriate state and federal officials has been provided as required by CAFA through the mailing of the CAFA Notice and that Defendants have satisfied their obligations pursuant to 28 U.S.C. § 1715. The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Order at the Fairness Hearing that contains the terms described in this section and will not do anything inconsistent with obtaining such a Final Order.

2.2.5 *Motion for Final Approval.* On the date set by the Court in its Preliminary Approval Order, Named Plaintiffs shall have filed a motion ("Final Approval Motion") for a Final Order which contains the terms described in Section 2.2.4. The Parties shall confer and agree on the terms of the proposed Final Order that Named Plaintiffs will submit to the Court with the Final Approval Motion.

2.2.6 *No Appeal or Appeal is Final.* If the Settlement is approved in a Final Order, this Settlement will be Final and Effective on the date: (i) that time for appeal of the Final Order has expired, if no appeal has been taken; or (ii) if there has been an appeal, (a) that the appeal has been decided by all appellate courts without causing material change in the Final Order, or (b) that the Final Order has been upheld on appeal without material change and



is no longer subject to appellate review by further appeal or writ of certiorari.

2.3 *No Termination.* The Settlement shall not have terminated pursuant to Section 8.

**3. Releases.**

3.1 *Releases of the Releasees.* Upon the Effective Date, Named Plaintiffs, on their own behalf and, to the full extent permitted by law, on behalf of the Settlement Class Members, absolutely and unconditionally release and forever discharge Releasees from any and all Settlement Class Released Claims (whether known or unknown and whether supported or unsupported) that Named Plaintiffs or the Settlement Class have, ever had, or will have (whether directly, indirectly, derivatively, or in any other capacity) through December 31, 2023. Provided, however, that claims relating to denials, exclusions, or limitations of coverage of Hearing Aids and Associated Services prescribed or received after December 31, 2023, are not released on or after January 1, 2024, with the exception of Named Plaintiff Schmitt, who releases such claims through December 31, 2024.

3.2 *Class's Covenant Not to Sue.* Named Plaintiffs and Settlement Class Members shall be conclusively deemed to have covenanted not to sue Releasees for any and all Settlement Class Released Claims and shall forever be enjoined and barred from asserting any Settlement Class Released Claims. This in no way applies to any action taken by the Named Plaintiffs or Settlement Class Members to enforce the terms of the Agreement or to assert claims that are not released under Section 3.1.

3.3 *Defendants' Releases of Named Plaintiffs, the Settlement Class, and Class Counsel.* Upon the Effective Date of Settlement, Defendants, to the full extent permitted by law, absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class Members, and Class Counsel from any and all claims based on the institution or prosecution of the Action. Notwithstanding the foregoing, claims relating to the breach of this Agreement are not released

3.4 *Defendants' Covenant Not to Sue.* Defendants shall be conclusively deemed to have covenanted not to sue Named Plaintiffs, the Settlement Class Members, and Class Counsel for any and all released claims relating to institution or prosecution of the Action. This in no way applies to any action taken by Defendants to enforce the terms of the Agreement.

**4. Representations and Warranties.**

4.1 *The Named Plaintiffs.* Named Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any Named Plaintiffs' Released Claims against any Releasees, and further covenant that they will not assign or otherwise transfer any interest in such claims.

- 4.2 *The Parties.* The Parties, and each of them, represent and warrant as follows: (i) they are voluntarily entering into this Agreement as a result of arm's-length negotiations; (ii) 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 under this Agreement and regarding all matters which relate in any way to the subject matter of this Agreement; (iii) they have carefully read the contents of this Agreement; (iv) they have made such investigation of the facts pertaining to the Settlement, this Agreement, and all of the matters pertaining to the Settlement and Agreement, as they deem necessary or appropriate (including the value of the Settlement Class Released Claims, and in the case of Named Plaintiffs, the value of the Named Plaintiffs' Released Claims); (v) this Agreement is signed freely by each person executing this Agreement on behalf of each party; and (vi) each individual executing this Agreement on behalf of any other person has the authority to do so.
- 4.3 *Settlement Class Members.* As a condition of receiving any monetary payment pursuant to this Agreement (and in addition to the other requirements set forth in Section 8.5), a Settlement Class Member must represent and warrant, on the Claim Form submitted with respect to his or her claim, that he or she (i) has not assigned or otherwise transferred any interest in any Settlement Class Released Claims against any Releasees; (ii) will not assign or otherwise transfer any interest in any Settlement Class Released Claims; and (iii) the out-of-pocket expenses submitted as part of the claims process have not been paid by any other entity, payor, plan, or person, apart from a family member.
5. ***No Admission of Liability.*** The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing in this Agreement shall be deemed to constitute an admission of any liability or wrongdoing by 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 Order and motions for preliminary and final approval.
6. ***Reimbursement Claims Processing.***
- 6.1 *Settlement Fund.*
- 6.1.1 The Parties agree that the Notice and Claims Processor shall establish a trust that shall be the "Settlement Fund" for purposes of this Agreement. No later than the date of the Preliminary Approval Order, the Parties may agree in writing that the Settlement Fund shall be established as, and treated at all times as, a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1, *et seq.* The Settlement Fund shall be established no later than fourteen (14) days after the date of the Preliminary Approval Order.

- 6.1.2 References in this Agreement to actions and responsibilities of the Notice and Claims Processor shall be to those actions and responsibilities it shall take in its position as administrator of the Settlement Fund.
  - 6.1.3 If the Settlement Fund is established as a qualified settlement fund, the Parties agree that for purposes of Section 468B of the Internal Revenue Code of 1986, as amended (the “Code”) and the Treasury Regulations promulgated thereunder, RTX shall be treated as the “transferor” within the meaning of Treasury Regulation §1.468B-1(d)(1), and that the Notice and Claims Processor shall be the “administrator” of the Settlement Fund within the meaning of Treas. Reg. §1.468B-2(k)(3).
  - 6.1.4 If the Settlement Fund is established as a qualified settlement fund, the Parties agree the Notice and Claims Processor shall, in establishing the Settlement Fund, make any such elections as necessary or advisable to carry out the “relation back election” (as defined in Treas. Reg. §1.468B-1(j)(2)(i)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Notice and Claims Processor to timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and to cause the appropriate filing to occur.
  - 6.1.5 If the Settlement Fund is established as a qualified settlement fund, the Parties intend that the transfers to the trust described in this paragraph will satisfy the “all events test” and the “economic performance” requirement of Code §461(h)(1) and Treas. Reg. §1.461-1(a)(2).
  - 6.1.6 The Notice and Claims Processor shall be responsible for filing tax returns for the Settlement Fund, if appropriate, including application for employer identification numbers in accordance with Treas. Reg. §1.468B-2(k)(4). All tax expenses shall be paid out of the Settlement Fund; in all events, the Releasees shall not have any liability or responsibility for any Taxes or tax expenses or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. Taxes and tax expenses shall be paid out of the Settlement Fund in a timely manner without prior order from the Court, and the Notice and Claims Processor shall be obligated to withhold from distribution any funds necessary to pay such amounts.
- 6.2 *Payment of Settlement Amount.* Defendants shall not be required to pay any amounts under this Agreement directly to Named Plaintiffs, Settlement Class Members, or Class Counsel. Defendants shall not be required to pay any amounts to the Settlement Fund under this Agreement, except as stated in this Section 6.2. Defendants shall cause the Settlement Amount to be paid to the Settlement Fund as follows:

6.2.1 Within thirty (30) days of the Preliminary Approval Order, Class Counsel and Defendants shall cause such portion of the Settlement Amount to be paid into the Settlement Fund that is necessary to effectuate the Class Notice as directed by the Preliminary Approval Order. Defendants shall pay into the Settlement Fund a portion of the Settlement Amount equal to one half of the amount necessary to effectuate Class Notice, up to a maximum of Two Hundred Thousand Dollars (\$200,000). Plaintiffs/Class Counsel shall pay into the Settlement Fund an amount equal to one half of the amount necessary to effectuate Class Notice, up to Two Hundred Thousand Dollars (\$200,000), plus any and all additional amounts necessary if total Class Notice costs exceed Four Hundred Thousand Dollars (\$400,000); and

Within fifteen (15) business days of the Effective Date, Defendants shall cause the remaining amount (\$3 million less the amount Defendants paid under Section 6.2.1) of the Settlement Amount to be paid into the Settlement Fund.

6.3 *Settlement Amount is Payment for Claims, Attorney Fees and Costs, Case Contribution Award and the Cost of Claims Administration and Notice.* The Settlement Fund shall cover the cost of class notice, claims administration, attorney fees as set forth in Section 10.1, litigation costs as set forth in Section 10.2, the case contribution award as set forth in Section 10.3, arbitration costs as set forth in Section 6.5.7, costs associated with copying and delivery of the Settlement Class Notice, payments to Settlement Class Members for valid and approved Reimbursement Claims as set forth in Section 6.5, and any Taxes due on the Settlement Fund. Defendants and Releasees shall not be liable for any Taxes that any person may owe due to the receipt of any portion of the Settlement Fund.

6.4 *Distribution of Settlement Fund.* The Settlement Fund will be used to pay the items identified in Section 6.3.

6.5 *Claims Processing.* Reimbursement Claims shall be processed as follows:

6.5.1 *Submission of Claims.* Claim forms will be made available to Settlement Class Members.

6.5.1.1 *Elements of Claim.* The Claim Form shall require the Settlement Class Member (or his or her designee) to indicate and verify by sworn attestation (i) the purchase of Hearing Aid(s) and Associated Treatment based on the prescription or recommendation of a licensed hearing professional; (ii) the date(s) purchased (at least month/year but also day if reasonably available); (iii) the name(s) and contact information of the licensed hearing professional who recommended and/or administered the associated treatment; (iv) a description of the unreimbursed Hearing Aid(s) (ie brand and model) and Associated Treatment, if any; (v) the unreimbursed charges or debt incurred associated with the Hearing Aid(s) and

Associated Treatment; and (v) each of the items to be verified by sworn attestation on the Claim Form as required under Section 1.18.1 or Section 1.18.2, as applicable. The Claim Form shall also include the representations and warranties required under Section 4.3.

6.5.1.2 *Documentation Required.* The following documentation will be required for a Reimbursement Claim to be considered valid:

- a. The unreimbursed charges or debt incurred associated with Hearing Aid(s) and Associated Treatment, which can be evidenced by cancelled checks, credit card account statements, provider ledgers, invoices stamped "paid," 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 connects payments/debt with the purchased Hearing Aid(s) or the dates of service of Associated Treatment) or other evidence of similar reliability.
- b. Class Members who previously submitted Claims for Hearing Aid(s) and Associated Services to Kaiser will not be required to resubmit documentation, but shall be required to verify the out-of-pocket expenses actually incurred. Kaiser will cooperate with the Notice and Claims Administrator to verify these claims.

6.5.2 *Review of Claim Forms.* In addition to other processes described in this Agreement (e.g., Section 6.5.5), the Notice and Claims Processor shall follow the following process in reviewing Claim Forms and approving the amounts of any Reimbursement Claims:

6.5.2.1 The Notice and Claims Processor shall review the Claim Forms to confirm that the items indicated in Sections 6.5.1 are present in the Claim Form and accompanying proof of claims.

6.5.2.2 The Notice and Claims Processor shall also confirm that the Settlement Class Member was enrolled under the Plan during the Settlement Class Period and covered by this Agreement.

6.5.2.3 The Notice and Claim Processor also shall receive verification from the Settlement Class Member or his/her designee that the claims were actually incurred by the Settlement Class Member (or a family member of that Settlement Class Member) submitting the claim for reimbursement and that the claims were not covered by other health insurance and have not been paid by or reimbursed by another payor,

insurer, entity, plan, or person other than the Settlement Class Member (or family member of that Settlement Class Member).

- 6.5.3 *Opportunity to Cure.* In the event of a deficiency of proof, the Notice and Claims Processor shall provide the Settlement Class Member with an explanation of the deficiency and a reasonable opportunity to cure the deficiency.
- 6.5.4 *Assistance in Perfecting Claim.* A copy of all deficiency notices with personally identifiable information removed or redacted and a unique number identifier assigned by the Notice and Claims Processor shall also be provided to Class Counsel, who may assist the Settlement Class Member in curing any problems with the Settlement Class Member's claim via communication with, or through, the Notice and Claims Processor or with the Settlement Class Member directly, provided the Settlement Class Member provides the Notice and Claims Processor with HIPAA-compliant authorization to release his or her contact information and other personal health information to Class Counsel or if he or she contacts Class Counsel directly.
- 6.5.5 *Disposition of Reimbursement Claims.*
  - 6.5.5.1 The Notice and Claims Processor shall provide the Settlement Class Member and counsel for the Parties with notice of the disposition of each claim submitted by Settlement Class Members. The notice will provide each Settlement Class Member and counsel for the Parties with information on how to appeal the decision of the Notice and Claims Processor to the Arbitrator and a deadline of at least thirty (30) days to submit an appeal to the Notice and Claims Processor. The Notice and Claims Processor will provide any appeal materials received to counsel for the Parties within two (2) business days of receipt of the materials. Class Counsel may assist the Settlement Class Member with the appeal. The Notice and Claims Processor and the Parties' counsel will work in good faith to present the appeals together to the Arbitrator in a reasonable time after all appeals have been received or the deadline for submitting the last appeal has passed.
  - 6.5.5.2 Payment on a claim may not be made until the Settlement Agreement is Final and Effective.
  - 6.5.5.3 Within fourteen (14) days of any payment, the Notice and Claims Processor shall notify counsel for the Parties of the fact of payment, the date of payment, and the amount of payment.

- 6.5.6 *Compliance.* Counsel for the Parties shall be provided with information by the Notice and Claims Processor in order to confirm and ensure compliance with the requirements of this Agreement.
- 6.5.7 *Arbitration.* Consistent with the timeframes in Section 6.5.5.1, Defendants, Class Counsel, or a Settlement Class Member may challenge the decision of the Notice and Claims Processor. Any dispute over whether a claim is valid or not with respect to the payment of Reimbursement Claims shall be submitted for final and binding arbitration before Judge George Finkle (ret.) at JDR in Seattle, Washington. The type and manner of the arbitration (in-person, by phone, or on the papers) shall be determined by the arbitrator in his sole discretion. Expenses of the arbitrator shall be paid by the Notice and Claims Processor from the Settlement Amount. If for any reason Judge Finkle becomes unavailable to arbitrate any of the claims, the Parties will agree in writing to a different arbitrator.
- 6.5.8 *Payment of Valid Reimbursement Claims.* Subject to termination pursuant to Section 10, the Notice and Claims Processor shall pay all approved Reimbursement Claims from the Settlement Amount through the Settlement Fund consistent with the timeframe set forth in Section 6.5.5.
- 6.5.9 *Payment to Settlement Class Members or Designees.* Payment of valid and approved Reimbursement Claims shall be made to the Settlement Class Member or his or her designee if the Settlement Class Member notifies the Notice and Claims Processor in writing to make such a payment to his or her designee.
- 6.6 *Pro Rata Distribution.* If, (i) after payment of the cost of notice and claims administration, attorney fees as set forth in Section 10.1, litigation costs as set forth in Section 10.2, the case contribution award as set forth in Section 10.3, arbitration costs as set forth in Section 6.5.7, costs associated with copying and delivery of the Settlement Class Notices, and any Taxes due on the Settlement Fund; and (ii) after taking into account any court-approved or agreed holdback for expenses incurred but not yet paid, Taxes, and estimated administrative expenses necessary to complete the activities of and close the Settlement Fund; (iii) insufficient funds remain in the Settlement Fund to pay all valid and approved Reimbursement Claims in full; then (iv) each such valid and approved Reimbursement Claim shall be reduced and paid on a *pro rata* basis with all other valid and approved Reimbursement Claims from the amount remaining in the Settlement Fund after taking into account clauses (i) and (ii) of this Section.
- 6.7 *Cy pres Distribution.* If, after the payment of all items identified in Section 6.3, funds remain in the Settlement Fund, then the remaining funds up to \$300,000 will be distributed to the Washington State Communication Access Project (Wash-CAP), a nonprofit organization dedicated to enabling persons who are hard of hearing to fully enjoy public venues and in honor of John Waldo's dedicated advocacy on behalf of people who are deaf and hard of hearing. See <https://wash->

cap.com/. Any additional cy pres funds shall be distributed to the Legal Foundation of Washington to be further distributed to charitable organizations dedicated to ensuring that persons who are hard of hearing have full access to public venues. A final report shall be submitted to the Court by Class Counsel a reasonable time after the Parties are notified by the Notice and Claims Processor that the last claim has been paid and/or the last appeal determined by the Arbitrator. Wash-CAP and, if applicable, Legal Foundation of Washington shall provide a report on the use of cy pres funds to the parties' counsel and the court upon the expending of all cy pres funds or one year from receipt of the funds, whichever is soonest.

6.8 *Payment of Claims for Named Plaintiffs.* Named Plaintiffs shall submit their Reimbursement Claims in the same manner as Settlement Class Members, pursuant to Section 6.5. Named Plaintiffs' valid claims will be subject to *pro rata* reduction, if required under Section 6.6.

**7. *Effective Date of Settlement.***

7.1 *Effective Date.* This Agreement shall be fully effective and binding on the date on which all of the conditions to the Settlement set forth in Section 2 have been fully satisfied or expressly waived by the Parties in writing.

7.2 *Disputes Concerning the Effective Date of Settlement.* If the 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.

**8. *Termination of Agreement to Settle Claims Due to Lack of Approval.***

8.1 *Court Rejection.* With the exception of approval of the form of the Settlement Class Notices or cy pres distribution, if the Court declines, in whole or in part, to preliminarily or finally approve the Settlement as written, then this Agreement shall automatically terminate and thereupon become null and void. In the event the Court approves a settlement that differs from the terms in this Agreement (whether material or immaterial), in whole or in part, or does not afford Defendants and other Releasees a complete release, then either Defendants or Class Counsel may, in their sole and absolute discretion, terminate this Agreement by delivering a notice of termination to counsel for the opposing party within fifteen (15) court days of the Court's order.

8.2 *Court of Appeals Reversal.* If the Court of Appeals reverses the Court's order approving the Settlement, then, provided that no appeal or other request for review is then pending from such a ruling before the Court of Appeals or the United States Supreme Court, this Agreement shall automatically terminate and thereupon become null and void on the 31st day after issuance of the mandate of the Court of Appeals.



- 8.3 *Supreme Court Reversal.* If the Supreme Court of the United States reverses the Court's order approving the Settlement, then this Agreement shall automatically terminate and thereupon become null and void on the 31st day after issuance of the Supreme Court's mandate.
- 8.4 *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. ***Consequences of Termination.*** If the Agreement is terminated and rendered null and void for any reason, then the following shall occur:
  - 9.1 *Reversion of Action.* The Action shall revert to its status as of September 15, 2023, and the fact and terms of this Agreement shall not be used in the Action for any purpose.
  - 9.2 *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.
  - 9.3 *Termination and Liquidation of the Settlement Fund.* No later than ten (10) days after the date of termination of the Agreement, the Notice and Claims Processor shall terminate the Settlement Fund and pay to Defendants all funds then remaining in the Settlement Fund up to the amount of Defendants' payment made pursuant to Section 6.2.1, with remaining funds, if any, to be returned to Class Counsel only after Kaiser is fully reimbursed. If the funds remaining in the Settlement Fund are insufficient to fully reimburse Defendants for their payment made pursuant to Section 6.2.1, then within 30 days of termination, Class Counsel shall pay Defendants the amount necessary to fully reimburse Defendants for the amount they paid under Section 6.2.1.
- 10. **Attorney Fees, Litigation Expenses, and Case Contribution Awards.**
  - 10.1 *Attorney Fees.* Class Counsel shall apply for attorney's fees under the common fund/common benefit doctrine in an amount up to, but not exceeding, 35% of the Settlement Amount, which is subject to review and approval by the Court.
  - 10.2 *Litigation Costs.* Class Counsel's out-of-pocket litigation costs, including costs of Class Notice, shall be reimbursed out of the Settlement Amount, subject to the Court's review and approval.
  - 10.3 *Case Contribution Award.* Subject to review and approval by the Court, a Case Contribution Award of \$15,000.00 for each Named Plaintiff shall be paid out of the Settlement Amount for a total of \$45,000.00.
- 11. ***Media.*** The Named Plaintiffs shall not discuss or comment on the Settlement Agreement on social media or in/on any other news and/or media format, including but not limited to

formats such as Law360. Nothing in this provision restricts the Named Plaintiffs from communicating with class members or the Court about the Settlement.

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 a mutually agreed upon mediator in Seattle, Washington through mediation and, if mediation is unsuccessful, through binding arbitration before Judge George Finkle (ret.) at JDR in Seattle, Washington. If Judge Finkle is unavailable, the Parties shall arbitrate before another mutually agreed upon arbitrator.
- 12.2 *Governing Law.* This Agreement shall be governed by the laws of State of Washington without regard to conflict of law principles, unless preempted by federal law.
- 12.3 *Amendment.* Before entry of the 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 the 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.
- 12.4 *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.
- 12.5 *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.
- 12.6 *Principles of Interpretation.* The following principles of interpretation apply to this Agreement:
- 12.6.1 *Headings.* The headings in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
- 12.6.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.
- 12.6.3 *References to a Person.* References to a person include references to an entity, and include successors and assigns.
- 12.6.4 *Sections.* A reference to a section in this Agreement also refers to any subsections within that section.

- 12.7 *Survival.* All representations, warranties, and covenants set forth in this Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.
- 12.8 *Entire Agreement.* This Agreement contains the entire agreement among the Parties relating to this Settlement and supersedes any and all prior verbal and written communications regarding the Settlement.
- 12.9 *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.
- 12.10 *Binding Effect.* This Agreement binds and inures to the benefit of the Parties, 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.
- 12.11 *Further Assurances.* Each Party agrees, 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.
- 12.12 *Tax Advice Not Provided.* No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Settlement Class, nor is any representation or warranty in this regard made by virtue of this Agreement. The Tax obligations of the Settlement Class and the determination thereof are the sole responsibility of each Settlement Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Settlement Class Member.
- 12.13 *Authority.* The Parties have executed this Agreement on the dates acknowledged below, and each signatory hereby certifies that they are authorized to sign this Agreement on behalf of their respective parties.
13. ***Dismissal with Prejudice.*** In the event the Final Order does not include a Dismissal of the Action, Class Counsel shall file a Dismissal with the Court within sixteen (16) business days of the Effective Date.


**SIGNATURES:**

(ADD KAISER SIGNATURES)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_



\_\_\_\_\_  
Andrea Schmitt, individually and on behalf  
of the proposed Settlement Class

Dated: 11/27/23 \_\_\_\_\_

\_\_\_\_\_  
Elizabeth Mohundro, individually and on  
behalf of the proposed Settlement Class

Dated: \_\_\_\_\_

\_\_\_\_\_  
K [redacted] L [redacted] on behalf of O [redacted] L [redacted],  
individually and on behalf of the proposed  
Settlement Class

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jamilya L [redacted] on behalf of O [redacted]  
L [redacted], individually and on behalf  
of the proposed Settlement Class

Dated: \_\_\_\_\_

**SIGNATURES:**

(ADD KAISER SIGNATURES)


By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Andrea Schmitt, individually and on behalf  
of the proposed Settlement Class

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Elizabeth Mohundro, individually and on  
behalf of the proposed Settlement Class

Dated: 11/21/2023

\_\_\_\_\_  
K [redacted] L [redacted] on behalf of C [redacted] L [redacted],  
individually and on behalf of the proposed  
Settlement Class

Dated: \_\_\_\_\_

\_\_\_\_\_  
J [redacted] L [redacted] on behalf of C [redacted]  
L [redacted], individually and on behalf  
of the proposed Settlement Class

Dated: \_\_\_\_\_

**SIGNATURES:**

(ADD KAISER SIGNATURES)

By: \_\_\_\_\_

Its: \_\_\_\_\_


Dated: \_\_\_\_\_


\_\_\_\_\_  
Andrea Schmitt, individually and on behalf  
of the proposed Settlement Class

\_\_\_\_\_  
Elizabeth Mohundro, individually and on  
behalf of the proposed Settlement Class

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
K [redacted] L [redacted] on behalf of C [redacted] L [redacted],  
individually and on behalf of the proposed  
Settlement Class

  
\_\_\_\_\_  
J [redacted] L [redacted] on behalf of C [redacted]  
L [redacted], individually and on behalf  
of the proposed Settlement Class

Dated: November 21, 2023

Dated: November 21, 2023

**KAISER FOUNDATION HEALTH PLAN OF WASHINGTON, INC.**

By: Angela Dowling  
Angela Dowling (Dec 5, 2023 14:56 PST)

Its: Regional President

Dated: Dec 5, 2023

**KAISER FOUNDATION HEALTH PLAN OF WASHINGTON OPTIONS, INC.**

By: Angela Dowling  
Angela Dowling (Dec 5, 2023 14:56 PST)

Its: Regional President

Dated: Dec 5, 2023

**KAISER FOUNDATION HEALTH PLAN OF THE NORTHWEST, INC.**

By: jeffrey a collins  
jeffrey a collins (Dec 4, 2023 12:24 PST)

Its: Region President

Dated: Dec 4, 2023

**KAISER FOUNDATION HEALTH PLAN, INC.**

By: Kimberly Horn  
Kimberly Horn (Dec 5, 2023 15:38 PST)

Its: EVP, Group President

Dated: Dec 5, 2023